

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

Uniloc USA, Inc. et al.	§	
	§	
v.	§	CIVIL ACTION NO. 6:14-cv-625
	§	Consolidated
	§	JURY TRIAL DEMANDED
	§	
E-MDS, Inc. et al.	§	Member Case No. 6:14-cv-627

**PLAINTIFFS’ SECOND AMENDED COMPLAINT
ONLY AS TO GE¹**

Plaintiffs Uniloc USA, Inc. (“Uniloc USA”) and Uniloc Luxembourg S.A. (“Uniloc Luxembourg”) (collectively, “Uniloc”) file this Second Amended Complaint against General Electric Company d/b/a GE Healthcare (collectively “GE”),² for infringement of U.S. Patent Nos. 5,682,526 (“the ’526 patent”) and 5,715,451 (“the ’451 patent”) and breach of contract.

THE PARTIES

1. Uniloc USA, Inc. (“Uniloc USA”) is a Texas corporation with its principal place of business at Legacy Town Center I, Suite 380, 7160 Dallas Parkway, Plano, Texas 75024. Uniloc USA also maintains a place of business at 102 N. College, Ste. 603, Tyler, Texas 75702.

2. Uniloc Luxembourg S.A. (“Uniloc Luxembourg”) is a Luxembourg public limited liability company, with its principal place of business at 15, Rue Edward Steichen, 4th Floor, L-2540, Luxembourg (R.C.S. Luxembourg B159161).

¹ This second amended complaint relates only to GE. To avoid burdening other defendants (in responding to a complaint that does not pertain to them) and the Court (from having multiple answers for multiple defendants when the amendment only pertains to one), Uniloc submits this Second Amended Complaint Only as to GE.

² The original and first amended complaints for GE were against GE Healthcare, Inc. On September 2, 2015 (Dkt. No. 331), the Court granted a joint motion to substitute General Electric Company d/b/a GE Healthcare for GE Healthcare, Inc.

3. Uniloc Luxembourg and Uniloc USA are collectively referred to as “Uniloc.” Uniloc has researched, developed, manufactured, and licensed information security technology solutions, platforms and frameworks, including solutions for securing software applications and digital content. Uniloc owns and has been awarded a number of patents. Uniloc’s technologies enable, for example, software and content publishers to securely distribute and sell their high-value technology assets with maximum profit to its customers and/or minimum burden to legitimate end-users. Uniloc’s technologies are used in several markets including, for example, electronic health record software, software and game security, identity management, intellectual property rights management, and critical infrastructure security.

4. GE Healthcare, Inc. is a Delaware corporation with its principal place of business at 40 IDX Drive, South Burlington, Vermont 05403. GE Healthcare, Inc. may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. GE Healthcare, Inc. may also be served with process through its Texas registered agent, CT Corporation System, 1999 Bryan Street, Dallas, Texas 75201. Upon information and belief, GE Healthcare, Inc. does business in the State of Texas and in the Eastern District of Texas. GE Healthcare, Inc.’s business in the State of Texas is evidenced in part by its maintenance of a registered agent in Texas.

5. General Electric Company is a New York corporation with a principal place of business at 3135 Easton Turnpike, Fairfield, Connecticut 06828. General Electric Company may be served with process through its Texas registered agent, CT Corp. Systems, 1900 Bryan Street, Suite 900, Dallas, Texas 75201.

6. General Electric Company does business as GE Healthcare.

JURISDICTION AND VENUE

7. Uniloc brings this action, in part, for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. Uniloc also brings this action, in part, for breach of contract. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b). On information and belief, GE is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, has purposely transacted business involving its accused products in this judicial district and/or, has regular and established places of business in this judicial district. Venue is also proper in this district as breaching acts for the contract claim occurred in this district.

9. GE is subject to this Court's personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this State and judicial district, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods sold and services provided to Texas residents.

COUNT I
(INFRINGEMENT OF '526 PATENT)

10. Uniloc incorporates paragraphs herein by reference the paragraphs above.

11. Uniloc Luxembourg is the owner, by assignment, of the '526 patent, entitled "METHOD AND SYSTEM FOR FLEXIBLY ORGANIZING, RECORDING, AND DISPLAYING MEDICAL PATIENT CARE INFORMATION USING FIELDS IN FLOWSHEET." A true and correct copy of the '526 patent is attached as Exhibit A.

12. Uniloc USA is the exclusive licensee of the '526 patent with ownership of all substantial rights in the '526 patent, including the right to grant sublicenses, exclude others and to enforce, sue and recover damages for past and future infringements.

13. The '526 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

14. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, Uniloc and all predecessors in interest to the '526 patent complied with any such requirements.

15. GE directly or through intermediaries has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '526 patent in this judicial district and elsewhere in Texas, including at least Claim 1, without Uniloc's consent or authorization. GE's infringing products include, as a non-limiting examples, the products listed in Exhibit C, which have received federal certification by the Office of the National Coordinator (ONC-ATCB) as being complete Electronic Health Record ("EHR") products (hereinafter "Infringing Products"). GE's infringement occurs and has occurred through operation of the Infringing Products, which each practice the method of one or more claims of the '526 patent. Such operation includes GE's own operation (directly or through intermediaries) including, but not limited to, testing of the Infringing Products prior to federal certification; testing of the Infringing Products during federal certification; testing of the Infringement Products after federal certification; operation of the Infringing Products during classes and demonstrations; hosting of the operation of the Infringing Products on behalf of third parties such as medical groups or medical providers; installing, setting up, or maintaining the Infringing Products on behalf of third parties such as medical groups or medical providers; and operation of the Infringing Products on behalf of third parties such as medical groups or medical providers.

16. GE directly or through intermediaries has and continues to induce infringement (literally and/or under the doctrine of equivalents) of the '526 patent under 35 U.S.C. § 271(b) in this judicial district and elsewhere in Texas, including at least Claim 1, without Uniloc's consent or authorization. Direct infringement has and continues to occur by activities performed by parties operating the Infringing Products. Such activities include, as non-limiting examples, operation of the infringing products by customers of the products (such as medical groups, medical providers, etc.), and/or by third parties servicing such customers.

17. GE directly or through intermediaries specifically intended such parties to infringe (literally and/or under the doctrine of equivalents) the '526 patent, or, alternatively, has been willfully blind to the possibility that its inducing acts would cause infringement. By way of example, and not as a limitation, GE's deliberate actions directly or through intermediaries include, but are not limited to providing training courses on the use of the Infringing Products, providing manuals on the operation of the Infringing Products, advertising the Infringing Product's compliance with federal regulations, encouraging use by, and instructing consumers, businesses, distributors, resellers, and sales representatives, to use, promote, market, distribute, and/or sell the Infringing Products. At least as to the time of this filing (or earlier through the original complaint), GE knew of the '526 Patent, and knows, or at least should know, that its actions would result in infringement of the '526 Patent. Through its actions, GE specifically intended that the respective Infringing Products perform the methods recited in one or more claims of the '526 Patent.

18. Uniloc has been and continues to be damaged as a result of GE's infringing conduct described in this Count. GE is thus liable to Uniloc in an amount that adequately compensates it for GE's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

19. Unless a preliminary and permanent injunction is issued enjoining GE and its respective agents, servants, employees, representatives, affiliates, and all others acting in concert therewith from infringing the '526 patent, Uniloc will be greatly and irreparably harmed.

COUNT II
(INFRINGEMENT OF THE '451 PATENT)

20. Uniloc incorporates paragraphs by reference the paragraphs above.

21. Uniloc Luxembourg is the owner, by assignment, of the '451 patent, entitled "METHOD AND SYSTEM FOR CONSTRUCTING FORMULAE FOR PROCESSING MEDICAL DATA." A true and correct copy of the '451 patent is attached as Exhibit B.

22. Uniloc USA is the exclusive licensee of the '451 patent with ownership of all substantial rights in the '451 patent, including the right to grant sublicenses, exclude others and to enforce, sue and recover damages for past and future infringements.

23. The '451 patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

24. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, Uniloc and all predecessors in interest to the '451 patent complied with any such requirements.

25. GE directly or through intermediaries has infringed and continues to infringe (literally and/or under the doctrine of equivalents) one or more claims of the '451 patent in this judicial district and elsewhere in Texas, including at least Claim 6, without Uniloc's consent or authorization. GE's infringement occurs and has occurred through making, selling, offering to sell, using, and/or importing the Infringing Products, and, also, by operation of the Infringing Products, which each practice the method of one or more claims of the '451 patent. Such operation includes GE's own operation (directly or through intermediaries) including, but not limited to, testing of

the Infringing Products prior to federal certification; testing of the Infringing Products during federal certification; testing of the Infringement Products after federal certification; operation of the Infringing Products during classes and demonstrations; hosting of the operation of the Infringing Products on behalf of third parties such as medical groups or medical providers; installing, setting up, or maintaining the Infringing Products on behalf of third parties such as medical groups or medical providers; and operation of the Infringing Products on behalf of third parties such as medical groups or medical providers.

26. GE directly or through intermediaries has and continues to induce infringement (literally and/or under the doctrine of equivalents) of the '451 patent under 35 U.S.C. § 271(b) in this judicial district and elsewhere in Texas, including at least Claim 6, without Uniloc's consent or authorization. Direct infringement has and continues to occur by activities performed by parties operating the Infringing Products and/or making, using, selling, offering to sell, and/or importing the Infringing Products. Such activities include, as non-limiting examples, operation of the infringing products by customers of the products (such as medical groups, medical providers, etc.), and/or by third parties servicing such customer. Such activities further include distributors and/or other third parties making, selling, offering to sell, using and/or importing the Infringing Products.

27. GE directly or through intermediaries specifically intended such parties to infringe (literally and/or under the doctrine of equivalents) the '451 patent, or, alternatively, has been willfully blind to the possibility that its inducing acts would cause infringement. By way of example, and not as a limitation, GE's deliberate actions directly or through intermediaries include, but are not limited to providing training courses on the use of the Infringing Products, providing manuals on the operation of the Infringing Products, advertising the Infringing Product's compliance with federal regulations, encouraging use by, and instructing consumers, businesses, distributors, resellers, and sales representatives, to use, promote, market, distribute, manufacture

and/or sell the Infringing Products. At least as to the time of this filing (or earlier through the original complaint), GE knew of the '451 Patent, and knows, or at least should know, that its actions would result in infringement of the '451 Patent. Through its actions, GE specifically intended that the respective Infringing Products perform the methods recited in one or more claims of the '451 Patent and/or that a party makes, uses, sales, offers to sale, and/or import the Infringing Products.

28. Uniloc has been and continues to be damaged as a result of GE's infringing conduct described in this Count. GE is thus liable to Uniloc in an amount that adequately compensates it for GE's infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

29. Unless a preliminary and permanent injunction is issued enjoining GE and its respective agents, servants, employees, representatives, affiliates, and all others acting in concert therewith from infringing the '451 patent, Uniloc will be greatly and irreparably harmed.

COUNT III
(BREACH OF CONTRACT)

30. Uniloc incorporates herein by reference the paragraphs above.

31. GE owned the '526 patent and '451 patent (collectively "patents-in-suit") through a subsidiary prior to Uniloc's acquisition of the patents-in-suit.

32. Following an agreement in December 2002, in October of 2003, GE closed a deal to acquire the patents-in-suit through acquisition of Datex-Ohmeda, Inc.

33. Because of this acquisition, the United States Department of Justice filed an antitrust lawsuit against GE, Civil Action No. 03-1923 in the District of Columbia. The European Commission also raised similar antitrust concerns. Accordingly, GE was required to divest certain Datex-Ohmeda assets, including the patents-in-suit.

34. To satisfy these antitrust concerns, GE entered into a purchase agreement with OSI System, Inc. (“OSI”) on or about January 2, 2004 to divest Datex-Ohmeda assets, including the patents-in-suit. The transaction closed on or about March of 2004.

35. Upon information and belief, OSI performed all contractual obligations required in the purchase agreement, yielding the closing on or about March 2004. OSI is reported to have paid \$57 million dollars for the divested Datex-Ohmeda assets, including the patents-in-suit.

36. Uniloc Luxembourg S.A. subsequently acquired the patents-in-suit

37. By operation of law including provisions of assignor estoppel, an implied negative covenant existed in GE’s transfer agreements (including the purchase agreement and closing) whereby GE, as an assignor that was paid value for the patents-in-suit, was prohibited from challenging the validity and enforceability of the patents-in-suit.

38. Under Texas law, this implied negative covenant arises under contract implied-in-law or quasi contract principals.

39. The benefit of the implied negative covenant inured to subsequent assignees of the patents-in-suit, including Uniloc.

40. GE either know or should have known that it previously owned the patents-in-suit. Among other things, GE could have discovered as much by looking at the chain of title of the patents-in-suit, which lists Datex-Ohmeda, Inc. as prior owner.

41. GE concealed the knowledge of its prior ownership from Uniloc by stating in an interrogatory response dated April 6, 2015 that GE first learned of the patents-in-suit when Uniloc served its complaint in 2014. Alternatively, if GE did not conceal this knowledge of its prior ownership, GE failed to investigate its corporate knowledge concerning the patents-in-suit. GE has breached and continues to breach the implied negative covenant by challenging the validity of the patents-in-suit in this lawsuit.

42. On September 30, 2014, in response to Uniloc's original complaint, GE asserted affirmative defenses asserting the patents-in-suit were invalid and unenforceable. GE also filed counterclaims, seeking a declaratory judgment that the patents-in-suit were invalid.

43. On March 13, 2015, GE provided invalidity contentions alleging the patents-in-suit were invalid. GE provided its own invalidity contentions separate from other defendants in this lawsuit. GE provided a copy of such invalidity contentions to the other defendants in the lawsuit.

44. On March 27, 2015, in response to Uniloc's first amended complaint, GE asserted affirmative defenses asserting the patents-in-suit were invalid and unenforceable. GE also filed counterclaims, seeking a declaratory judgment that the patents-in-suit were invalid.

45. On August 17, 2015, GE provided updated invalidity contentions alleging the patents-in-suit were invalid. GE, again, provided its own invalidity contentions separate from other defendants in this lawsuit. GE provided a copy of such updated invalidity contentions to the other defendants in the lawsuit.

46. On September 9, 2015 GE sent Uniloc interrogatories asking Uniloc to establish why the patents-in-suit were valid.

47. Through the above actions and other correspondence, GE has also threatened sanctions and attorney's fees for alleged grievances specifically arising from GE's prohibited attack on the patents-in-suit.

48. The preceding challenges by GE to validity and enforceability of the patents-in-suit are non-limiting examples of GE breaching the implied negative covenant to not challenge the enforceability or validity of the patents-in-suit.

49. As a direct and proximate result of GE's breach, Uniloc has suffered damages, including but not limited to the attorneys' fees and expenses that Uniloc has incurred and will continue to incur in this lawsuit.

50. Uniloc has expended and will continued to expend attorneys' fees and expenses in defending against GE's prohibited attacks to the validity and enforceability of the patents-in-suit.

51. Uniloc has also suffered damage and will continue to suffer damage as a result of GE's public attack and disparagement of the patents-in-suit, including without limitation GE supplying its work-product to other defendants in the lawsuit.

52. Because GE already provided its work product to other parties (namely, defendants in this litigation), Uniloc will have to continue to defend against such prohibited GE work product – even if GE repudiates its challenges to the patents-in-suit. The other defendants in this lawsuit have stated their intent to rely upon GE's prohibited work product.

53. As a result of GE's actions, Uniloc is entitled to recover its reasonable and necessary attorneys' fees pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code.

JURY DEMAND

54. Uniloc hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Uniloc requests that the Court find in its favor and against GE, and that the Court grant Uniloc the following relief:

- a. Judgment that one or more claims of the '526 and '451 patents have been infringed, either literally and/or under the doctrine of equivalents, by GE;
- b. Judgment that GE account for and pay to Uniloc all damages to and costs incurred by Uniloc because of GE's infringing activities and other conduct complained of herein;
- c. Judgment preliminarily and permanently enjoining GE, its employees and agents, and any other persons in active concert or participation with it from directly enjoining the '526 and '451 patents;
- d. That Uniloc be granted pre-judgment and post-judgment interest on the damages caused by GE's infringing activities and other conduct complained of herein;

- e. That Uniloc be awarded damages to compensate Uniloc for GE's breach of contract, including but not limited to an award of attorney's fees and costs incurred in this lawsuit and the Customer Lawsuits; and
- f. That Uniloc be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: October 30, 2015

Respectfully submitted,

/s/ James L. Etheridge

James L. Etheridge
Texas State Bar No. 24059147
Ryan S. Loveless
Texas State Bar No. 24036997
Brett A. Mangrum
Texas Bar No. 24065671
Etheridge Law Group, PLLC
2600 E. Southlake Blvd., Suite 120/324
Southlake, Texas 76092
817.470-7249
817.877.5950 (Fax)
Jim@EtheridgeLaw.com
Ryan@EtheridgeLaw.com
Brett@EtheridgeLaw.com

**ATTORNEYS FOR PLAINTIFFS
UNILOC USA, INC. AND UNILOC
LUXEMBOURG S.A.**

CERTIFICATE OF SERVICE

I certify that on October 30, 2015, the foregoing document was served upon all counsel of record via the Court's CM/ECF electronic filing system in accordance with the Federal Rules of Civil Procedure.

/s/ James L. Etheridge
James L. Etheridge

