

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

UNILOC USA, INC. and UNILOC
LUXEMBOURG S.A.,

Plaintiffs,

v.

PICIS, INC.,

Defendant.

CIVIL ACTION NO. 6:16-cv-465

JURY TRIAL DEMANDED

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**PLAINTIFFS' FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

Plaintiffs Uniloc USA, Inc. (“Uniloc USA”) and Uniloc Luxembourg S.A. (“Uniloc Luxembourg”) (collectively, “Uniloc”) file this Original Complaint against Picis, Inc. (“Defendant”) for infringement of U.S. Patent Nos. 5,682,526 (“the ‘526 patent”) and 5,715,451 (“the ‘451 patent”).

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. 806, 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).

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. Defendant is a Delaware corporation with its principal place of business at 100 Quannapowitt Parkway, Ste. 405, Wakefield, MA 01880. Defendant may be served with process through its registered agent, the Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, Delaware, 19801.

JURISDICTION AND VENUE

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

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant 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.

7. Defendant 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.

PATENTS-IN-SUIT

8. 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.

9. 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.

10. 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.

11. 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.

12. The '526 Patent spent over two years being examined at the United States Patent and Trademark Office. During examination of the '526 Patent, trained United States Patent Examiners considered at least twenty-four (24) references before determining that the inventions claimed in the '526 Patent deserved patent protection. Such references include, for example, various references from Emtex Health Care Systems, Inc., Motorola, Inc., Spacelabs Medical, Inc., and Hewlett-Packard Company.

13. Each claim of the '526 Patent is directed to a "process" as defined in 35 U.S.C. § 100.

14. The '451 Patent spent nearly three years being examined at the United States Patent and Trademark Office. During examination of the '451 Patent, trained United States Patent Examiners considered at least twenty-three (23) references before determining that the inventions claimed in the '451 Patent deserved patent protection. Such references include, for example, various references from Emtex Health Care Systems, Inc., Motorola, Inc., Spacelabs Medical, Inc., and Hewlett-Packard Company.

15. Over 20 years ago (when the applications that issued as the '526 and '451 Patents was filed), the general-purpose databases and rigid patient information databases then available took a one-size-fits-all approach, one that failed to address the technical and often dynamic needs of particular medical practices. (*See, e.g.*, '526 Patent, col. 1, lines 39-58). Certain systems were encumbered with features and data structures that particular practices never used. Other systems omitted features and data structures necessary for other medical practices. None of the electronic medical/health record systems available at that time (including those cited during prosecution) enabled users—regardless of their programming experience—to flexibly design a *patient information hierarchy* according to the present needs of a particular medical practice, let alone in the particular manner set forth in claims of the '526 and '451 Patents.

16. The '526 and '451 Patents claim technical solutions to problems unique to electronic medical/health records and computer networks involving the same, including the non-limiting example problems described above.

17. Further, the '526 and '451 Patent claims improve upon the functioning of computer systems. For example, certain (if not all) claims teach a much improved user-interface that, among other features, enables virtually any user, regardless of his or her programming experience, to flexibly design a patient information hierarchy according to the specific and often dynamically changing needs of a particular practice.

18. At least certain (if not all) claims of the ‘526 and ‘451 Patents require special-purpose software.

19. The ‘526 and ‘451 Patents are directed to computer-implemented technologies that have no pen-and-paper analog. As a non-limiting example, there is no pen-and-paper analog to the automatic and conditional display of a linked-to parameter in conjunction with the display of a new parameter having the linked-from possible result value. That is, if someone writes a particular dosage on a piece of paper, there is no way for the paper to automatically display an alert indicating that the dosage is too high, or that the medication interacts with other medication, or that the patient may have an allergic reaction to a particular medication.

20. The ‘526 and ‘451 Patent claims are not directed to a “method of organizing human activity,” “fundamental economic practice long prevalent in our system of commerce,” or “a building block of the modern economy.” Further, the claims are not directed to a longstanding or fundamental economic practice at the time of patented inventions. Nor do they involve a method of doing business that happens to be implemented on a computer. Nor were they fundamental principles in ubiquitous use on the Internet or computers in general.

21. Instead, as explained above, the ‘526 and ‘451 Patent claims are directed toward solutions rooted in computer technology and use technology unique to computers and computer networking to overcome a problem specifically arising in the realm of electronic medical records.

22. The ‘526 and ‘451 Patents both issued after *Bilski v. Kappos*, 561 U.S. 593 (2010), and *Mayo Collaborative Servs’. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289 (2012). And although the examinations predated *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014), that case applied the *Mayo* framework and stated that its holding “follows from our prior cases, and *Bilski* in particular”

23. Because the claims of the ‘526 and ‘451 Patents are directed to improving the functioning of such computers and computer networks, they cannot be considered abstract ideas. *Enfish, LLC v. Microsoft Corp.*, 2015-1244, 2016 WL 2756255, at *8 (Fed. Cir. May 12, 2016).

24. Indeed, the Federal Circuit in *Enfish* reaffirmed that software is a “large field of technological progress” which patents can protect:

Much of the advancement made in computer technology consists of improvements to software that, by their very nature, may not be defined by particular physical features but rather by logical structures and processes. We do not see in *Bilski* or *Alice*, or our cases, an exclusion to patenting this large field of technological progress.

Id.

25. The patents-in-suit do not claim, or attempt to preempt, the performance of an abstract business practice on the Internet or using a conventional computer.

26. The patents-in-suit do not claim a pre-existing but undiscovered algorithm.

27. Although the systems and methods taught in the ‘526 and ‘451 Patents have been adopted by leading businesses today, at the time of invention, the claimed inventions were innovative and novel, as evidenced, for example, by the breadth and volume of the references considered during prosecution.

28. The ‘526 Patent has been referenced by more than one hundred (100) other patent applications. The ‘451 Patent has been referenced by more than two hundred forty (240) other patent applications. Such patent applications citing the patents-in-suit include patents applications by General Electric Company; Siemens Medical Solutions USA, Inc.; Baxter International, Inc.; OptumInsight, Inc.; NASA; The United States Army; International Business Machines (IBM); Microsoft Corporation; Koninkl Philips Electronics Nv; GE Medical Systems Global Technology Company; St. Louis University; Washington University; and The University Of Texas System.

COUNT I
(INFRINGEMENT OF '526 PATENT)

29. Uniloc incorporates the preceding paragraphs herein by reference.

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

31. 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.

32. Defendant directly or through intermediaries has infringed (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 Claims 2-7, 10-19, and 25 without Uniloc's consent or authorization. Defendant'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) (hereinafter "Infringing Products").

33. Defendant's Infringing Products enabled users, including Defendant itself, to flexibly modify the operation of the Infringing Products.

34. Defendant's Infringing Products enabled users, including Defendant itself, to create and modify clinical decision support rules.

35. Defendant's Infringing Products enabled users, including Defendant itself, to create and modify linkages amongst parameters within the Infringing Products corresponding to patients, procedures, tests, medications, and diagnoses.

36. Defendant's Infringing Products implemented automated, electronic clinical decision support rules based on the data elements included in: problem list; medication list; demographics; and laboratory test results.

37. Defendant's Infringing Products automatically and electronically generated and indicated in real-time, notifications and care suggestions based upon clinical decision support rules.

38. Defendant's Infringing Products enabled a limited set of identified users to select or activate one or more electronic clinical decision support interventions based on each one and at least one combination of the following data: problem list, medication list, medication allergy list, demographics, laboratory test and values/results, and vital signs.

39. Defendant's Infringing Products enabled electronic clinical decision support interventions to be configured by a limited set of identified users (e.g., system administrator) based on a user's role.

40. Upon information and belief, the following describes, at least in part, certain aspects of a representative sample of Defendant's Infringing Products:

Top Health Honors For Quality Performance

Black Book Market Research
#1 ranking in physician satisfaction by a full-service healthcare-centric market research and public opinion research company.

KLAS Category Leader
Category leader for three consecutive years. ED Pulsecheck has been cited as top EDIS for quality of patient care.

ONC Certified HIT 2014
Picis Anesthesia Manager, PACU Manager, OR Manager, Critical Care Manager version 8.3, 8.4 and 8.5, and ED PulseCheck have been tested and certified under the InfoGard Certification program and meet the requirements as a Modular EHR system for EHR Certified Technology.

Available at: <http://www.picis.com/about.html>.

41. Upon information and belief, the following describes, at least in part, certain aspects of a representative sample of Defendant’s Infringing Products:

Picis ED PulseCheck version 5.4 and 5.5 has been tested and certified under the InfoGard Certification program and meets the requirements as a Modular EHR system for EHR Certified Technology. This EHR Module is 2014 Edition compliant and has been certified by an ONC-ACB in accordance with the applicable certification criteria adopted by the Secretary of Health and Human Services. This certification does not represent an endorsement by the U.S. Department of Health and Human Services or guarantee the receipt of incentive payments.

Vendor Name:	Picis Clinical Solutions, Inc.	
Certified EHR Product Name and Version:	ED PulseCheck 5.4	ED PulseCheck 5.5
Certification #[i]:	IG-3245-14-0023	IG-3245-14-0094
Certification Date:	5/22/14	12/16/2014
Classification and Practice Setting:	Modular EHR Inpatient	
Requirements Edition:	2014	
Certification Criteria:	170.314: (a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(7), (a)(9), (a)(10), (a)(11) (a)(13), (a)(14), (a)(17), (b)(3), (b)(5), (d)(1), (d)(4), (d)(5), (d)(6), (d)(8), (f)(1) , (f)(3), (g)(1), (g)(3), (g)(4)	

Available at: <http://www.picis.com/meaningful-use.html>.

42. Upon information and belief, the following describes, at least in part, certain aspects of a representative sample of Defendant’s Infringing Products:

Picis ED PulseCheck

Zone	Patient	Age	Complaint	Physician	IBU	Orders	Diagn	LDS	Done
ZONE1 05	Anderson, B. B.	Go	F21 BILATERAL LEG PAIN	ALGA JHOU	LTCF DANNY			9:29	S C A P V
ZONE1 03	Ashby, P.	Go	M58 ABD RN	ALGA MREN	EVE DANNY			2:48	S C P A P V
ZONE1 01	Brewer, G. S.	Go	F90 WEARINESS	ALGA MREN	EVE DANNY		TELE 726-1 87790	3:44	S C E F A P B V
ZONE1 07	Brown, C. D.	Go	M44 MIGRAINE	ALGA JHOU	KRET DANNY			5:59	S C E P V
ZONE1 10	Carberry, J. W.	Go	M59 Abnormal Labs	ALGA JHOU	KRET DANNY			6:58	S C E F A P V
ZONE1 09	Colliver, J. A.	Go	F36 Allergic Reaction	ALGA MREN	KRET DANNY			2:58	S C E F A P V
ZONE1 04	Koschoff, N. D.	Go	M42 BACK PAIN/LEO NUMBNESS	ALGA MREN	EVE DANNY			9:32	S C E P A P V
ZONE1 11	Miller, K. L.	Go	F54 KIDNEY STONES/VOIRING	ALGA MREN	KRET DANNY			6:59	S C E P V
ZONE1 05	Shawson, R.	Go	M47 CHEST PAIN	ALGA JHOU	LTCF DANNY			1:55	S C E P P V
ZONE1 02	Tillman, B.	Go	F91 AMS	ALGA MREN	EVE DANNY			1:46	S C E F P V
ZONE1 06	Wilk, C. S.	Go	M00 Finger Laceration	ALGA LOON	LTCF DANNY		DC	2:17	S C A P V

A customizable tracking board displays updated patient information, helping coordinate the flow of patients through the emergency department, allowing clinicians to track their patient documentation, and helping improve communication by linking ED clinicians and patient records to a wider community.

Clinical decision support

Integrated risk mitigation

ED PulseCheck’s built-in notifications help improve documentation by reminding caregivers of important clinical documentation requirements, such as need for re-evaluation, vital sign range, drug/allergy and drug/drug interaction checks and open order reminders.

ED PulseCheck Insight ED

ED PulseCheck Insight ED rules processor sends notifications to clinicians and administrators during patient documentation to help provide better department management and adhere to patient care protocols for increased charge capture.

The Sullivan Group Risk Mitigation for ED PulseCheck Insight ED Rules Processor

The Sullivan Group’s Risk Mitigation Module provides ED PulseCheck users with a robust, evidence-based, clinical decision support tool that consolidates all data to match to high-risk cases, helping clinicians consider what is needed as part of their care process.

Available at: http://www.picis.com/uploads/6/1/5/6/61562319/product_sheet_ed_pulsecheck.pdf.

43. Upon information and belief, the following describes, at least in part, certain aspects of a representative sample of Defendant's Infringing Products:

Applying new rules to solve an old problem

Siddon saw the potential of mining data from Erlanger's Picis ED PulseCheck EMR system to address capacity management challenges. Using the system's built-in Insight ED rules processor, Siddon created a solution to help improve the flow of patients through the ED.

He created rules to track activity within the ED and proactively notify key personnel when conditions exist that require immediate attention. "The rules processor is fairly easy to use," says Siddon. "We use it, in combination with the system's reporting capabilities, to address capacity management issues." The ED has been using the solution that Siddon developed for more than four years.

Available at:

http://www.picis.com/uploads/6/1/5/6/61562319/optimizing_clinical_performance_in_the_ed_white_paper.pdf.

44. Upon information and belief, the following describes, at least in part, certain aspects of a representative sample of Defendant's Infringing Products:

InSight ED™, integrated with Picis ED PulseCheck®, provides advanced decision support for a high-performance ED. InSight ED sends notifications to clinicians and administrators, during patient documentation, to help capture events for core measures reporting and help provide them with clinical reminders during the documentation of high-risk patients. InSight ED helps emergency departments provide better department management, proactive patient care and, as a result, increase charge capture.

Problem

Emergency department (ED) clinicians and administrators are constantly making rapid decisions. Picis understands clinicians' need for a full-featured decision support tool to help them provide better department management, help provide proactive patient care and improve charge capture.

Solution

The Picis InSight ED tool, within Picis ED PulseCheck, consists of a rules processor that allows clinicians and administrators to create "rules" that automatically track activity, both within the ED and within individual patient records. It notifies clinicians, in near real-time, when certain defined conditions are present that require immediate attention. InSight ED features department rules, charge rules and "your rules."

Rules are written with an easy-to-use "natural" query language. The main components of each rule include the rule itself and notification options for when the rule is activated. InSight ED checks for new rules that have fired at regular intervals. Users are able to track and report on the instances of rules being triggered.

Available at:

http://www.picis.com/uploads/6/1/5/6/61562319/picis_ed_pulsecheck_insight_ed_product_sheet.pdf.

45. Upon information and belief, the following describes, at least in part, certain aspects of a representative sample of Defendant's Infringing Products:

Your Rules

Build custom clinical reminders for staff

Your rules are developed entirely by individual hospital ED personnel, and involve writing something unique that meets the need of that particular ED, such as a clinical or departmental metric that must be measured or a unique rule that may change clinician behavior, based on what the rule indicates. Your rules can be used to build reminders for ED staff on anything from clinical protocols to consideration of a patient for a research project. Your rules are based on documentation and are able to pull up special order sets, documentation reminders, questions to be answered prior to discharge and reportable content to determine staff compliance with suggested actions.

Available at:

http://www.picis.com/uploads/6/1/5/6/61562319/picis_ed_pulsecheck_insight_ed_product_sheet.pdf.

46. Defendant's infringement occurred through operation of the Infringing Products, which each practice the method of one or more claims of the '526 patent. Such operation includes Defendant'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.

47. In addition, should Defendant's Infringing Products be found to not literally infringe the asserted claims of the '526 Patent, Defendant's Infringing Products would nevertheless infringe the asserted claims of the '526 Patent. More specifically, the Infringing Products performed substantially the same function (contains instructions for enabling a user to flexibly establish linkages amongst elements in electronic health records software), in substantially the same way (comprising computer readable instructions contained in or loaded into non-transitory memory) to yield substantially the same result (effecting such a flexible linkage). Defendant would thus be liable for direct infringement under the doctrine of equivalents.

48. Defendant may have infringed the '526 Patent through other software, currently unknown to Uniloc, utilizing the same or reasonably similar functionality, including other versions of its EHR software. Uniloc reserves the right to discover and pursue all such additional infringing software.

49. Uniloc has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is thus liable to Uniloc in an amount that adequately compensates it for Defendant'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.

COUNT II
(INFRINGEMENT OF THE '451 PATENT)

50. Uniloc incorporates the preceding paragraphs herein by reference.

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

52. 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.

53. Defendant directly or through intermediaries has infringed (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 1, 2, and 7-8, without Uniloc's consent or authorization. Defendant's infringement 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 Defendant'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.

54. In addition, should Defendant's Infringing Products be found to not literally infringe the asserted claims of the '451 Patent, Defendant's Infringing Products would nevertheless

infringe the asserted claims of the '451 Patent. More specifically, the Infringing Products performed substantially the same function (contains instructions for configure clinical decision support rules and alerts), in substantially the same way (comprising computer readable instructions contained in or loaded into non-transitory memory) to yield substantially the same result (effecting a clinical decision support rule). Defendant would thus be liable for direct infringement under the doctrine of equivalents.

55. Defendant may have infringed the '451 Patent through other software, currently unknown to Uniloc, utilizing the same or reasonably similar functionality, including other versions of its EHR software. Uniloc reserves the right to discover and pursue all such additional infringing software.

56. Uniloc has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is thus liable to Uniloc in an amount that adequately compensates it for Defendant'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.

JURY DEMAND

57. 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 Defendant, 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 Defendant;
- b. Judgment that Defendant account for and pay to Uniloc all damages to and costs incurred by Uniloc because of Defendant's infringing activities and other conduct complained of herein;
- c. Judgment that Uniloc be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein; and
- d. That Uniloc be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: June 15, 2016

Respectfully submitted,

/s/ James L. Etheridge

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