

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

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

Plaintiffs,

v.

TEXAS HEALTH RESOURCES and
 TEXAS HEALTH PRESBYTERIAN
 HOSPITAL DENTON,

Defendants.

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CIVIL ACTION NO. 6:16-cv-431

JURY TRIAL DEMANDED

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 Texas Health Resources (“THR”) and Texas Health Presbyterian Hospital Denton (“Texas Health Denton”) (collectively “Defendants”) 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 numerous patents for its research and development. 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. THR, a Texas corporation, is a health care delivery system operating in the North Texas region with its principal place of business at 612 E. Lamar Boulevard, Suite 600, Arlington, Texas 76011. Upon information and belief, THR does business in the State of Texas and in the Eastern District of Texas. THR’s business in the State of Texas is evidenced in part by its maintenance of multiple business locations in Texas, including Plano, Allen, Flower Mound and Denton businesses each located in the Eastern District of Texas. THR may be served with process through its registered agent, Donald B. Collins, 612 E. Lamar Boulevard, Suite 600, Arlington, Texas 76011.

5. Texas Health Denton is a Texas corporation with its principal place of business at 3000 N Interstate 35 Denton, Texas, 76201. Texas Health Denton may be served with process through its registered agent, Donald B. Collins, 612 E. Lamar Boulevard, Suite 600, Arlington, Texas 76011. Upon information and belief, Texas Health Denton does business in the State of Texas and in the Eastern District of Texas. Texas Health Denton’s business in the State of Texas

is evidenced in part by its address and maintenance of a registered agent in Texas at 612 E. Lamar Boulevard, Suite 600, Arlington, Texas 76011.

JURISDICTION AND VENUE

6. 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.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendants are deemed to reside in this judicial district, have committed acts of infringement in this judicial district, have purposely transacted business involving its accused products in this judicial district and/or, have regular and established places of business in this judicial district.

8. Defendants are 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 their 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

9. 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.

10. 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.

11. 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.

12. 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.

13. The applications that issued as the '526 and '451 patents were both filed on July 20, 1995.

14. The '526 patent is incorporated by reference into the '451 patent. ('451 patent at 1:6–11).

15. The '451 patent is incorporated by reference into the '526 patent. ('526 patent at 7:2–5).

16. Over 20 years ago, when the applications for the patents-in-suit were filed, the general-purpose databases and rigid patient information databases then available to the medical field 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 prior computer systems were encumbered with features and data structures that particular medical 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 an electronic *patient information hierarchy* in the specific manner set forth in claims of the ‘526 and ‘451 patents.

17. The ‘526 and ‘451 patents claim technical solutions to problems unique to electronic medical/health records and their underlying technology. The preceding paragraph identifies non-limiting examples of problems solved by the claimed inventions.

18. Further, the claims of the patents-in-suit 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, in the specific and various manners set forth in the claims, an electronic patient information hierarchy according to the specific and often dynamically changing needs of a particular practice.

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

20. 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.

21. All claims of the ‘526 and ‘451 patents expressly require either specific operations performed by software (in the case of method claims), or software having the capability to perform specific operations (in the case of system or apparatus claims).

22. And such operations were non-conventional at that time, at least in that they required specific software, such as that taught in the patents-in-suit, which enabled functionality beyond what general-purpose computer systems available at that time and having only their operating systems installed could perform.

23. Indeed, the specification of the patents-in-suit expressly distinguishes the claimed inventions from “general-purpose databases and rigid patient information databases.” (‘526 patent, 1:39–63).

24. One of several example points of distinction emphasized in the specification and during prosecution of the patents-in-suit is that there is no teaching or implementation in the prior art, which included various general-purpose computer systems available at that time, that enabled the specifically claimed aspects of the “facility” software taught in the patents-in-suit.

25. In the context of the specification, the “facility” refers to computer programs or software configured to perform specific operations taught in the patents-in-suit. The specification states “[t]he computer programs that preferably comprise the facility 109.” (‘451 patent at 3:2–3.) As shown in Figure 1 of the ‘451 patent, the facility 109 is contained in the memory 103. The ‘451 incorporates the ‘526 specification, which states that the “facility” is comprised of software tools. (‘526 patent at 3:19–20, “A patient information management facility of the patient information (“the facility”) is comprised of software tools.”).

26. One of ordinary skill in the art at the time of the claimed inventions would understand from the specification of the patents-in-suit that the claimed operations are written from the perspective of software (e.g., the “facility” software or equivalents thereof). As non-limiting examples, the specification states “[i]n step 1210, the facility displays the linked-to parameter and its result values beneath the linked-from parameter. After the facility processes each linked-to

parameter, these steps conclude.” (‘526 patent, 9:42–10:17). Additionally, the specification states “[t]he facility further permits users to customize patient data flowsheets (“flowsheets”)” (‘526 patent at 3:25–29).

27. The claimed aspects of the “facility” software were novel and non-obvious as of the filing date of the patents-in-suit.

28. One of ordinary skill in the art at the time of the claimed inventions would not understand the statement “FIG. 1 is a high-level block diagram of the general-purpose computer system upon which the facility preferably operates” (‘526 patent, 2:23–26) to mean that a “general-purpose computer system” at that time could inherently perform all the claimed operations without the installation and operation of special-purpose software (e.g., the “facility” software or equivalents thereof).

29. To the contrary, one of ordinary skill in the art at the time of the claimed inventions would understand the statement “FIG. 1 is a high-level block diagram of the general-purpose computer system upon which the facility preferably operates” (‘526 patent, 2:23–26) to mean that practicing the claimed inventions requires installation and operation of special-purpose software, such as the “facility” software or equivalents thereof, which according to the specification preferably (though not necessarily) operates on a general-purpose computer.

30. The fact that software can operate on a general-purpose computer does not render that software patent ineligible. To hold otherwise would invalidate literally hundreds-of-thousands of patents and pending patent applications.

31. The specification of the ‘526 and ‘451 patents does not state that a general-purpose computer system could inherently perform all operations of the claimed inventions, even without the installation and operation of the claimed aspects of the “facility” software programming.

32. In *Bascom Global Internet Servs. v. At&T Mobility LLC*, 2016 U.S. App. LEXIS 11687 (Fed. Cir. June 27, 2016), the Federal Circuit reversed a finding that U.S. Patent No. 5,987,606 (“the ‘606 patent”) covered nothing more than a basic idea and was thus patent-ineligible. The Federal Circuit described the ‘606 patent as enabling individuals “to customize how requests for Internet content from their own computers are filtered instead of having a universal set of filtering rules applied to everyone’s requests.” *Id.* at *6; see also *id.* at *23 (noting that certain prior art solutions were “confined to an inflexible one-size-fits-all scheme.”)

33. In reversing the district court finding of patent-ineligibility, the Federal Circuit noted the following:

The district court first determined that no individual limitation was inventive because each limitation, in isolation, was a “well-known, generic computer component []” or a standard filtering mechanism. *Id.* at 654. The district court then determined that the limitations in combination were not inventive either because “[f]iltering software, apparently composed of filtering schemes and filtering elements, was well-known in the prior art” and “using ISP servers to filter content was well-known to practitioners.” *Id.* The district court also noted that the absence of specific structure for the generic computer components “raises the likelihood that such claims could preempt every filtering scheme under the sun.” *Id.* at 655.

34. In *BASCOM*, the Federal Circuit agreed with the district court that “the limitations of the claims, taken individually, recite generic computer, network and Internet components, none of which is inventive by itself.” *Id.* at *20. Nevertheless, the Federal Circuit found the “specific method of filtering Internet content cannot be said, as a matter of law, to have been conventional or generic.” *Id.* at *22.

35. As was the case with *BASCOM*, the claimed methods and operational capability recited in the claims of the ‘526 and ‘451 patents are not conventional or generic.

36. At least Claims 7 through 14 of the ‘451 patent all require “a formula construction subsystem.”

37. The teachings of the patents-in-suit, including without limitation those cited in this document, together with their respective prosecution histories, confirm that general-purpose computers at the time of the claimed inventions did not inherently possess, as part of their operating system, either the “facility” software or its “formula construction subsystem” as taught and claimed in the ‘451 Patent.

38. One of ordinary skill in the art at the time of the claimed inventions would understand from the specification of the patents-in-suit that “formula construction subsystem” refers to software having a special and specific purpose.

39. The prosecution histories of the patents-in-suit confirm that the claimed software operations were not merely conventional operations that a general-purpose computer at that time could have performed using its operating system alone, without the installation and execution of any special-purpose programming (e.g., the disclosed “facility” software or equivalents thereof).

40. 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.

41. The trained United States Patent Examiner determined that the ‘526 Patent was novel.

42. The trained United States Patent Examiner determined that the ‘526 Patent was non-obvious.

43. The ‘526 is inventive over prior art.

44. One of the many references the Examiner expressly considered during prosecution of the application that issued as the ‘526 patent is U.S. Patent No. 4,878,175 (the “*Norden-Paul*” patent). The *Norden-Paul* patent is directed to a computer system for displaying and entering patient information in flowsheet forms. The *Norden-Paul* patent discloses an implementation using general-purpose workstations or “personal computers” available at that time. (*See, e.g., Norden-Paul*, 5:5–40).

45. In finding the claims of the ‘526 patent to be allowable, the Examiner considered the conventional operations of general-purpose computers available as of the filing date of the ‘526 patent, including the conventional operations of computers disclosed in the references listed in the prosecution history and on the face of the ‘526 patent, such as *Norden-Paul*.

46. Upon information and belief, one or more of Epic Systems Corporation and Epic Hosting (collectively, “Epic”) has an indemnification agreement with Defendants in connection with Defendants’ licensed use of one or more Epic software products.

47. A petition for *Inter Partes Review* (“IPR”) of the ‘526 patent was filed on July 23, 2015 (the ‘526 IPR Petition”).

48. The ‘526 IPR Petition names Epic Systems Corp. and Epic Hosting LLC as real parties-in-interest (among other parties).

49. The ‘526 IPR Petition identifies a number of references that the petition alleges disclose prior electronic medical charting systems. The ‘526 IPR Petition further alleges that the cited references either anticipate or render obvious at least certain claims of the ‘526 patent.

50. In making those arguments, Epic submitted what Epic considered at that time to be among the most material prior art references, in view of the claims in the patents-in-suit.

51. At least some of the references named in the ‘526 IPR Petition were considered by the Examiner during original prosecution prior to issuing a notice of allowance, including the *Norden-Paul* reference (U.S. Patent No. 4,878,175).

52. On February 7, 2016, the United States Patent Trial and Appeal Board (“PTAB”) issued a decision to deny to the ‘526 IPR Petition.

53. In denying the Petition, the PTAB found that the Petition and its attached claim charts had failed to make a preliminary showing of anticipation or obviousness for claim language that the PTAB had expressly found to be limiting. The PTAB did not find that the cited references expressly or inherently disclosed each and every limitation. Nor did the PTAB find that the claim limitations merely recited conventional operations of generic computers.

54. Regarding Claim 4 of the ‘526 patent, for example, the PTAB found “that Petitioner does not indicate adequately how the portions of *Musen* cited by Petitioner describe receiving an instruction from a user to ‘expand’ (claim 5) or ‘collapse’ (claim 6) a “first encapsulating parameter.”

55. Throughout the claim construction process in the pending matter of *Uniloc USA, Inc. et al v. Epic Systems Corporation* (6:14-cv-00626), later consolidated together with lead case *Uniloc USA, Inc. et al v. E-MDs, Inc.*, (6:14-cv-00635) (the “Epic Litigation”), Epic argued that the term “a formula construction subsystem” was indefinite.

56. In rejecting Epic’s arguments on the merits, the Court stated “[i]n reading the claim elements in light of the specification, one of ordinary skill would understand the formula construction subsystem is the apparatus’ software.” (Epic Litigation, Dkt. 495 at 18). The Court further stated “the facility refers to the software the users interact with to construct the formulae. ‘451 claims 7,10.” *Id.*

57. In the Epic Litigation, the Court construed “formula construction subsystem” as “formula construction software.” *Id.*

58. Throughout the claim construction process in the pending Epic Litigation, Epic argued that the claims of both patents-in-suit require a “user” and the software developers who actually created that tool, i.e., developers of the software such as Epic, cannot be users.

59. Further, in its claim construction briefing, Epic expressly distinguished “persons involved in the development of the software that embodies the method (e.g., computer programmers and software developers)” from “end users of the software (e.g., healthcare systems and providers)” and argued the claims of both patents-in-suit required actions that could be performed only by the latter.

60. The Court in the pending Epic Litigation did not adopt Epic’s proposed construction for the claim term “user.”

61. In rejecting Epic’s proposed construction for the claim term “user,” the Court stated Epic’s “proposed construction invites confusion by potentially excluding consultants, software support staff that customize the products at customer demands, and people who perform quality-control testing, training or run demonstrations.”

62. 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.

63. The trained United States Patent Examiner determined that the '451 patent was novel.

64. The trained United States Patent Examiner determined that the '451 patent was non-obvious.

65. The '451 patent is inventive over prior art.

66. One of the many references the Examiner expressly considered during prosecution of the application that issued as the '451 patent is U.S. Patent No. 5,072,383 (the "Brimm" patent or reference).

67. The *Brimm* patent states on its face that it had been assigned to Emtex Health Care Systems located at Tempe, Arizona; and the *Norden-Paul* reference discussed in the preceding paragraphs states the same.

68. The respective specifications of the *Brimm* and *Norden-Paul* patents have similar disclosures, including numerous statements that appear either verbatim or near-verbatim in both specifications.

69. As with the *Norden-Paul* patent discussed in preceding paragraphs, the *Brimm* patent discloses an implementation using general-purpose workstations or "personal computers" available at that time. (*See, e.g., Brimm*, 5:59–6:27).

70. In finding the claims of the '451 patent to be allowable, the Examiner considered the conventional operations of general-purpose computers available as of the filing date of the '451 patent, including the conventional operations of computers disclosed in the references listed in the prosecution history and on the face of the '451 patent, such as *Brimm*.

71. The '526 and '451 patents require computer implementations that have no pen-and-paper analog. For example, a computer system specifically programmed to perform certain

algorithmic steps is necessary to the performance of each claim of the '526 patent, in a highly specific (not just faster) way that no human could perform. As a more specific example, there is no pen-and-paper analog to digitally designing, under control of a user, 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 a previously-designed, conditional 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.

72. The claims recited in both patents-in-suit each expressly require a specific transformation of an electronic patient information hierarchy under the control of a user. For example, the steps of independent Claim 4 of the '526 patent require, inter alia, the transformative acts of responding to instructions from a user by newly creating within a computer system a number of result parameters and an encapsulating parameter. Further, the steps require receiving an instruction from the user for encapsulating one or more parameters to represent them together at a higher conceptual level, such that the newly created encapsulating parameter has the parameter name and the list of parameters identified in the user instruction. As a result of these required steps (together with the other steps of Claim 4), the underlying electronic patient information hierarchy is transformed, in response to instructions from a user, into a different state or thing.

73. Similar to Claim 4, each independent claim of the '526 patent requires specific steps corresponding to a particular transformation of a patient information hierarchy. Users are thus enabled, for example, to flexibly design and redesign (i.e., transform) electronic patient information hierarchies in the specific manner set forth in the claims and according to the particular and perhaps ever-changing needs of a particular medical practice.

74. The Supreme Court rejected the machine-or-transformation test as the “sole test” for patentability in *Bilski v. Kappos*, 561 U.S. 593, 603–04 (U.S. 2010), but reiterated that it remains an “important and useful clue.”

75. The claims of the patents-in-suit 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.

76. Instead, as explained above, the ‘526 and ‘451 patent claims are directed toward technical 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/health records.

77. 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.

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

79. Epic has applied for patents before the United States Patent and Trademark Office that are directed to software that can be operated on a general-purpose computer. One of those Epic patent applications is U.S. Application Serial No. 13/917,835 (“the ‘835 Application”).

80. During prosecution of the ‘835 Application, the Examiner submitted an Office Action dated January 29, 2015 that rejected certain claims as being directed to patent ineligible subject matter under 35 U.S.C. § 101.

81. On April 29, 2015, Epic submitted a response (the “Epic Response”) to the January 29, 2015 Office Action. Epic stated in its Response that “[p]atent claims directed to a technological problem specific to the digital environment . . . do not implement an abstract idea.” Citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014), Epic further stated “[w]hen the digital environment ‘introduces a problem that does not arise in the ‘brick and mortar’ context’ and the claim is directed at solving that particular problem, the claim is not an abstract idea.” Additionally, citing *Research Corp. Techs., Inc. v. Microsoft Corp.*, 627 F.3d 859, 867-68 (Fed. Cir. 2010), Epic stated “a claim that ‘presents functional and palpable applications in the field of computer technology’ is not excluded by Section 101.” Epic’s Response also emphasized certain language of the pending claims, including limitations addressing receiving and responding to input from a clinician. (Response at 8, “the clinician chooses a hyperlink: presented by the web browser, the URL router receives the active guideline tag associated with the chosen hyperlink: and causes an order to be entered”).

82. Epic’s Response also stated that:

There are a number of factors that have been identified to assess whether a claim does ‘significantly more’ than describe an abstract idea.” *Alice* and *Bilski*, for example, identify three guideposts: (1) whether the claims unduly preempt too broad a category of innovation; (2) the degree of detail contained in the claims (because specific limitations demonstrate a limited application of the concept); and (3) whether the claims improve technology in a concrete and useful way.”

83. Under at least the reasoning in the Epic Response, the claims of the patents-in-suit are not directed to an abstract idea. As explained in preceding paragraphs, incorporated herein, the transition from paper medical records to electronic medical records introduced a number of technical problems that did not arise in the “brick and motor” context; and the claims of the patents-in-suit are directed to solving those particular problems. Further, the claims are directed to

technology that evolved due to computerization, such as enabling users to flexibly design and redesign automated clinical decision support, including alerts that conditionally appear to users under certain circumstances, thereby providing potentially life-saving information that previously had no pen-and-paper analogue.

84. The claims recite significantly more than any abstract idea, under at least the reasoning in the Epic Response as applied to the particular claim limitations of the patents-in-suit.

85. The claims of the patents-in-suit do not attempt to preempt every application of an abstract idea, such as organizing information in the abstract, but rather are narrowly tailored to specific ways of accomplishing various, patentably distinct operations in a computer system environment. Moreover, the claims each recite narrow limitations, such as, for example, web-based user interfaces, highly-specific formula construction subsystems (software), the creation and conditional display of distinct types of parameters for patient information hierarchies (e.g., encapsulating parameters, encapsulated parameters, linked-to parameters, linked-from parameters, etc.), and complex ordered operations involving specific user input and particular responses to that input that collectively result in a patient information hierarchy that is transformed under the control of that user.

86. The claims of the patents-in-suit do not merely add to an abstract idea a bald instruction to perform an idea on a computer. Rather, each recites a practical innovation and contain a significant degree of detail regarding how this innovation is accomplished in practice. The claims amount to a practical, specific, and detailed application of an idea, rather than effectively claiming the idea itself.

87. 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.

88. 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.

89. The '526 and '451 patents both expired on July 20, 2015.

90. Uniloc accuses Defendants' of acts of infringement of the patents-in-suit that occurred before those patents expired, to the full extent allowed by law.

COUNT I
(INFRINGEMENT OF '526 PATENT)

91. Uniloc incorporates paragraphs 1 through 8 herein by reference.

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

93. The Federal Circuit has observed “[t]he law is clear that the notice provisions of § 287 do not apply where the patent is directed to a process or method.” *Crown Packaging Tech., Inc. v. Rexam Bev. Can Co.*, 559 F.3d 1308, 1316 (Fed. Cir. 2009) (citation omitted).

94. Each claim of the '526 patent is directed to a “process” as defined in 35 U.S.C. § 100.

95. Because each claim of the '526 patent is directed to a "process" as defined in 35 U.S.C. § 100, no marking was required by 35 U.S.C. § 287.

96. Nevertheless, 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.

97. Defendants directly or through intermediaries have infringed and continue 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 4, without Uniloc's consent or authorization. The infringing products include, as non-limiting examples, the products and services listed in Exhibit C, which are not licensed under the '526 Patent or '451 Patent, and have received federal certification by the Office of the National Coordinator (ONC-ATCB) as being complete Electronic Health Record ("EHR") products (hereinafter "Infringing Products").

98. Defendants' 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 Defendant's own operation (through, among other things, operations by their employees) as well as operation Defendants have done on their behalf, for example, through third parties.

99. Throughout the claim construction process in the pending matter of *Uniloc USA, Inc. et al v. Epic Systems Corporation* (6:14-cv-00626), later consolidated together with lead case *Uniloc USA, Inc. et al v. E-MDs, Inc.*, (6:14-cv-00635), Epic Systems Corporation ("Epic") argued that the claims of the '526 patent requires a "user" and that as developers of the certified EHR products listed in Exhibit C, they cannot possibly practice the claims of the '526 patent as a "user." In its claim construction briefing, Epic expressly distinguished "persons involved in the development of the software that embodies the method (e.g., computer programmers and software

developers)” from “end users of the software (e.g., healthcare systems and providers)” and argued the claims of the ‘526 patent required actions that could be performed only by the latter.

100. Uniloc has been and continues to be damaged as a result of Defendants’ infringing conduct described in this Count. Defendants are thus liable to Uniloc in an amount that adequately compensates it for Defendants’ 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)**

101. Uniloc incorporates all the preceding paragraphs herein by reference.

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

103. 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.

104. Defendants 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 7, without Uniloc’s consent or authorization. Defendants’ infringement occurs and has occurred through using 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 Defendants’ own operation (through, among other things, operations by their employees) as well as operation Defendants have done on their behalf, for example, through third parties.

105. Should Defendants be found not to have literally infringed any claim of the ‘451 patent, Defendants would nevertheless be liable for infringement of the ‘451 patent under the

Doctrine of Equivalents. More specifically, the Defendants used the Infringing Products to perform substantially the same function (e.g., contains instructions for enabling a user to flexibly establish encapsulated and encapsulating parameters elements in electronic health records software), in substantially the same way (e.g., comprising computer readable instructions contained in or loaded into non-transitory memory) to yield substantially the same result (e.g., effecting such a flexibly transformative design).

106. Throughout the claim construction process in the pending matter of *Uniloc USA, Inc. et al v. Epic Systems Corporation* (6:14-cv-00626), later consolidated together with lead case *Uniloc USA, Inc. et al v. E-MDs, Inc.*, (6:14-cv-00635), Epic argued that the claims of the ‘451 patent requires a “user” and that as developers of the certified EHR products listed in Exhibit C, they cannot possibly practice the claims of the ‘451 patent as a “user.” In its claim construction briefing, Epic expressly distinguished “persons involved in the development of the software that embodies the method (e.g., computer programmers and software developers)” from “end users of the software (e.g., healthcare systems and providers)” and argued the claims of the ‘451 patent required actions that could be performed only by the latter.

107. Uniloc has been and continues to be damaged as a result of Defendants’ infringing conduct described in this Count. Defendants are thus liable to Uniloc in an amount that adequately compensates it for Defendants’ 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.

JURY DEMAND

108. 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 Defendants, 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 Defendants;
- b. Judgment that Defendants account for and pay to Uniloc all damages to and costs incurred by Uniloc because of Defendants' infringing activities and other conduct complained of herein;
- c. That Uniloc be granted pre-judgment and post-judgment interest on the damages caused by Defendants' 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: July 1, 2016

Respectfully submitted,

/s/ James L. Etheridge

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