

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

	§	
UNILOC USA, INC. and	§	
UNILOC LUXEMBOURG, S.A.,	§	Civil Action No. 2:16-cv-638
	§	
Plaintiffs,	§	
	§	
v.	§	PATENT CASE
	§	
APPLE INC.,	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED
	§	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together “Uniloc”), as and for their First Amended Complaint against defendant, Apple Inc. (“Apple”), allege as follows:

THE PARTIES

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

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

3. Uniloc Luxembourg owns a number of patents in the field of text/voice instant messaging.

4. Upon information and belief, Apple is a California corporation having a principal place of business in Cupertino, California, regular and established places of business at 2601

Preston Road, Frisco, Texas 75034 and 6121 West Park Boulevard, Plano, Texas and offers its products and/or services, including those accused herein of infringement, to customers and/or potential customers located in Texas and in the judicial Eastern District of Texas. Apple may be served with process through its registered agent in Texas: CT Corporation System, 1999 Bryant Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

5. Uniloc brings this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 *et seq.* 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). Upon information and belief, Apple is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, and/or has purposely transacted business involving the accused products in this judicial district, including sales to one or more customers in Texas.

7. Apple is subject to this Court's 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 past infringing activities, (B) regularly doing or soliciting business in Frisco and Plano, Texas and/or (C) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 7,535,890)

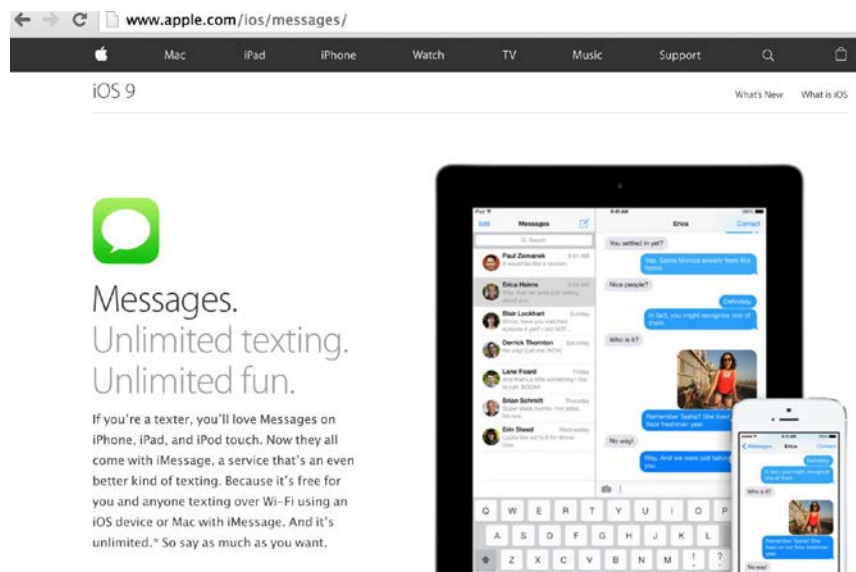
8. Uniloc incorporates paragraphs 1-7 above by reference.

9. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,535,890 ("the '890 Patent"), entitled SYSTEM AND METHOD FOR INSTANT VOIP MESSAGING

that issued on May 19, 2009. A true and correct copy of the '890 Patent is attached as Exhibit A hereto.






10. Uniloc USA is the exclusive licensee of the '890 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

11. Upon information and belief, the following describes, at least in part, Apple's Messages app system:




12. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:

Send audio messages using iMessage

1. Open the Messages app and tap .
2. Touch and hold  to record an audio message.
3. To preview your message, tap . To cancel, tap . To send, tap .

Play or save audio messages

If your device uses iOS 8 or later, tap the audio message to listen.

If your device uses iOS 7 or earlier, tap , then tap the audio message to listen.

You can also save audio messages by tapping Keep underneath the message. To see your saved attachments, tap Details.



13. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:

iMessages are sent from Apple's servers rather than via a mobile network. When you set up iMessage you tell Apple's servers that text messages should be diverted through this system to your phone number so that you can save you money as you won't be paying your network for the text messages. However, if you don't remove your

14. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:

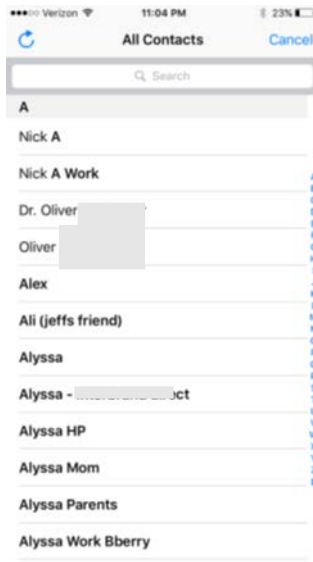


iOS 9

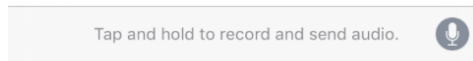
Text one. Text all.

Send a message to one person or to many friends at once — along with photos, videos, or links you like. When someone replies, everyone sees it. With more people you'll get more texts, but remember, it's iMessage, so every text is free over Wi-Fi.*

15. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



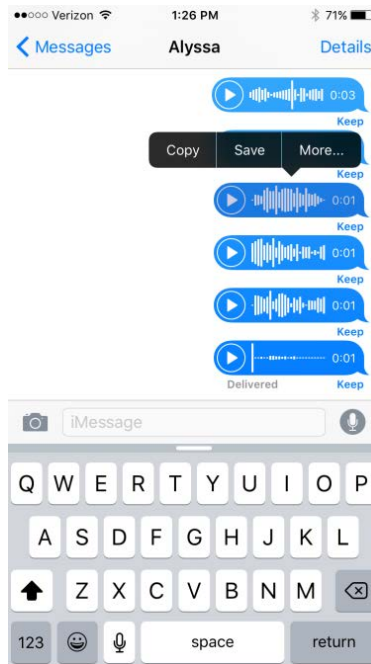
16. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



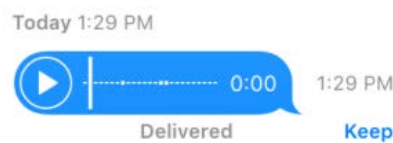
17. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



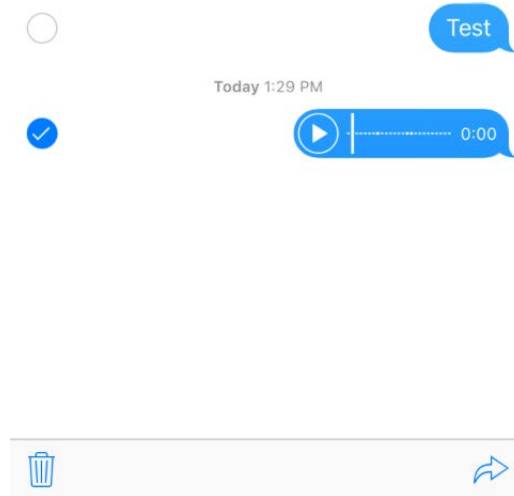
18. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



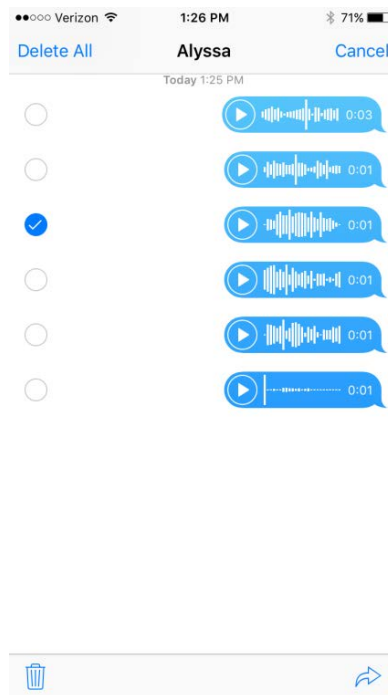
19. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



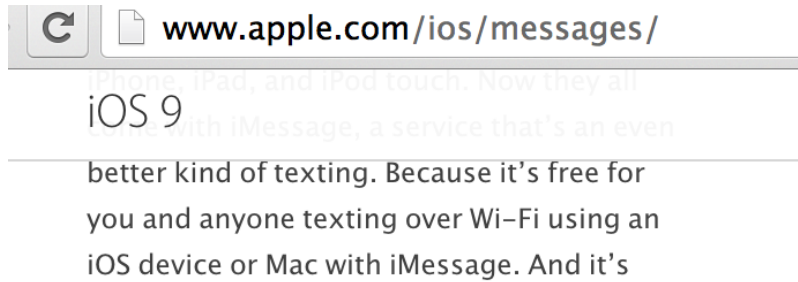
20. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



21. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



22. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:



23. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:

- Once your device has retrieved a message, that encrypted copy of the message is deleted from Apple's servers. If you have multiple devices, another encrypted copy

24. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:

If a user has several iOS devices, then the message is encrypted for each of these devices, and only the intended device can open the particular message sent to that device. Once the encrypted copy of a message is retrieved, it is then deleted from Apple's servers.

25. Upon information and belief, the following describes, at least in part, how Apple's Messages app system works:

Messages everywhere

All of your messages are available on any of your devices when you use the same accounts with your Mac and your iPhone, iPad or iPod Touch. You can start a conversation on one device, you can continue it from another.



26. Apple has directly infringed, and continues to directly infringe one or more claims of the '890 Patent in this judicial district and elsewhere in Texas, including at least Claims 1-6, 14, 15, 17-20, 28, 29, 31-34, 40-43, 51-54, 62-65 and 68 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Apple

Messages app system during the pendency of the '890 Patent which software and associated Apple servers perform instant voice messaging over Wi-Fi and the Internet between persons using iPhones and/or other devices capable of instant voice messaging wherein the instant messages are temporarily stored if an intended message recipient is unavailable and thereafter delivered once the intend recipient becomes available.

27. In addition, should Apple's Messages app system be found to not literally infringe the asserted claims of the '890 Patent, Apple's Messages app system would nevertheless infringe the asserted claims of the '890 Patent. More specifically, the accused Apple Messages app system performs substantially the same function (instant voice messaging), in substantially the same way (via a client/server environment), to yield substantially the same result (delivering voice messages to available intended recipients). Apple would thus be liable for direct infringement under the doctrine of equivalents.

28. Apple has indirectly infringed and continues to indirectly infringe at least Claims 1-6, 14, 15, 17-20, 28, 29, 31-34, 40-43, 51-54, 62-65 and 68 of the '890 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the Messages app. Apple's customers who purchase the Messages app and operate such application in accordance with Apple's instructions directly infringe one or more of the forgoing claims of the '890 Patent in violation of 35 U.S.C. § 271. Apple directly and indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

<https://support.apple.com>

www.apple.com

<http://developer.apple.com>

www.youtube.com

Apple is thereby liable for infringement of the '890 Patent under 35 U.S.C. § 271(b).

29. Apple has indirectly infringed and continues to indirectly infringe at least Claims 1-6, 14, 15, 17-20, 28, 29, 31-34, 40-43, 51-54, 62-65 and 68 of the '890 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the Messages app, by making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringing the '890 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

30. For example, the Messages app is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Messages app is a material part of the claimed inventions and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Apple is, therefore, liable for infringement under 35 U.S.C. § 271(c).

31. Apple will have been on notice of the '890 Patent since, at the latest, the service of this complaint upon Apple. By the time of trial, Apple will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more of Claims 1-6, 14, 15, 17-20, 28, 29, 31-34, 40-43, 51-54, 62-65 and 68 of the '890 Patent.

32. Apple may have infringed the '890 Patent through other software utilizing the same or reasonably similar functionality, including other versions of its Messages app. Uniloc reserves the right to discover and pursue all such additional infringing software/devices.

33. Uniloc has been damaged, reparably and irreparably, by Apple's infringement of the '890 Patent and such damage will continue unless and until Apple is enjoined.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 8,995,433)

34. Uniloc incorporates paragraphs 1-33 above by reference.

35. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 8,995,433 ("the '433 Patent"), entitled SYSTEM AND METHOD FOR INSTANT VOIP MESSAGING that issued on March 31, 2015. A true and correct copy of the '433 Patent is attached as Exhibit B hereto.

36. Uniloc USA is the exclusive licensee of the '433 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

37. Apple has directly infringed, and continues to directly infringe one or more claims of the '433 Patent in this judicial district and elsewhere in Texas, including at least Claims 1-5 and 8 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Messages app system during the pendency of the '433 Patent which software and associated Apple servers perform instant voice messaging over Wi-Fi and the Internet between persons using iPhones and/or other devices capable of instant voice messaging; wherein a list of one or more potential recipients is displayed on the device, the instant messages are temporarily stored using a unique identifier, and a file manager stores, retrieves and/or deletes the messages in response to the users request.

38. In addition, should Apple's Messages app system be found to not literally infringe the asserted claims of the '433 Patent, Apple's accused Messages app system would nevertheless infringe the asserted claims of the '433 Patent. More specifically, the accused Messages app system performs substantially the same function (instant voice messaging), in substantially the same way (identifying potentially available recipients, storing messages using unique identifiers and a file manager for storing, retrieving and/or deleting the messages), to yield substantially the same result (delivering voice messages to available intended recipients and wherein the messages may be stored, retrieved and/or deleted). Apple would thus be liable for direct infringement under the doctrine of equivalents.

39. Apple has indirectly infringed and continues to indirectly infringe at least Claims 1-5 and 8 of the '433 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the Messages app. Apple's customers who purchase the Messages app and operate such application in accordance with Apple's instructions directly infringe one or more of the forgoing claims of the '433 Patent in violation of 35 U.S.C. § 271. Apple directly and indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

<https://support.apple.com>

www.apple.com

<http://developer.apple.com>

www.youtube.com

Apple is thereby liable for infringement of the '433 Patent under 35 U.S.C. § 271(b).

40. Apple has indirectly infringed and continues to indirectly infringe at least Claims 1-5 and 8 of the '433 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the Messages app, by making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringing the '433 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

41. For example, the Messages app is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Messages app is a material part of the claimed inventions and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Apple is, therefore, liable for infringement under 35 U.S.C. § 271(c).

42. Apple will have been on notice of the '433 Patent since, at the latest, the service of this complaint upon Apple. By the time of trial, Apple will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more of Claims 1-5 and 8 of the '433 Patent.

43. Apple may have infringed the '433 Patent through other software utilizing the same or reasonably similar functionality, including other versions of its Messages app system. Uniloc reserves the right to discover and pursue all such additional infringing software/devices.

44. Uniloc has been damaged, reparably and irreparably, by Apple's infringement of the '433 Patent and such damage will continue unless and until Apple is enjoined.

COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 8,724,622)

45. Uniloc incorporates paragraphs 1-44 above by reference.

46. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 8,724,622 (“the ’622 Patent”), entitled SYSTEM AND METHOD FOR INSTANT VOIP MESSAGING that issued on May 13, 2014. A true and correct copy of the ’622 Patent is attached as Exhibit C hereto.

47. Uniloc USA is the exclusive licensee of the ’622 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

48. Apple has directly infringed, and continues to directly infringe one or more claims of the ’622 Patent in this judicial district and elsewhere in Texas, including at least Claims 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 38 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Messages app system during the pendency of the ’622 Patent which software and associated Apple servers perform instant voice messaging over Wi-Fi and the Internet between persons using iPhones and/or other devices capable of instant voice messaging; wherein digitized audio files are transmitted between a plurality of recipients on a packet switched network and a list of one or more currently potential recipients is displayed on the device.

49. In addition, should Apple’s Messages app system be found to not literally infringe the asserted claims of the ’622 Patent, Apple’s accused Messages app system would nevertheless infringe the asserted claims of the ’622 Patent. More specifically, the accused Messenger app system performs substantially the same function (instant voice messaging), in substantially the same way (via a digitized audio files in a client/server environment), to yield substantially the

same result (delivering voice messages to available intended recipients). Apple would thus be liable for direct infringement under the doctrine of equivalents.

50. Apple has indirectly infringed and continues to indirectly infringe at least Claims 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 38 of the '622 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the Messages app. Apple's customers who purchase the Messages app and operate such application in accordance with Apple's instructions directly infringe one or more of the forgoing claims of the '622 Patent in violation of 35 U.S.C. § 271. Apple directly and indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

<https://support.apple.com>

www.apple.com

<http://developer.apple.com>

www.youtube.com

Apple is thereby liable for infringement of the '622 Patent under 35 U.S.C. § 271(b).

51. Apple has indirectly infringed and continues to indirectly infringe at least Claims 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 38 of the '622 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the Messages app, by making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or

especially adapted for use in infringing the '622 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

52. For example, the Messages app is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Messages app is a material part of the claimed inventions and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Apple is, therefore, liable for infringement under 35 U.S.C. § 271(c).

53. Apple will have been on notice of the '622 Patent since, at the latest, the service of this complaint upon Apple. By the time of trial, Apple will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more of Claims 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 38 of the '622 Patent.

54. Apple may have infringed the '622 Patent through other software utilizing the same or reasonably similar functionality, including other versions of its Messages app system. Uniloc reserves the right to discover and pursue all such additional infringing software/devices.

55. Uniloc has been damaged, reparably and irreparably, by Apple's infringement of the '622 Patent and such damage will continue unless and until Apple is enjoined.

COUNT IV
(INFRINGEMENT OF U.S. PATENT NO. 8,243,723)

56. Uniloc incorporates paragraphs 1-55 above by reference.

57. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 8,243,723 ("the '723 Patent"), entitled SYSTEM AND METHOD FOR INSTANT VOIP MESSAGING that issued on August 14, 2014. A true and correct copy of the '723 Patent is attached as Exhibit D hereto.

58. Uniloc USA is the exclusive licensee of the '723 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

59. Apple has directly infringed, and continues to directly infringe one or more claims of the '723 Patent in this judicial district and elsewhere in Texas, including at least Claims 1 and 3 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Messages app system during the pendency of the '723 Patent which software and associated Apple servers perform instant voice messaging over Wi-Fi and the Internet between persons using iPhones and/or other devices capable of instant voice messaging; wherein the availability of the recipients' nodes is monitored, recorded and displayed and the instant message(s) are temporarily stored if an intended message recipient is unavailable and thereafter delivered once the intend recipient becomes available.

60. In addition, should Apple's Messages app system be found to not literally infringe the asserted claims of the '723 Patent, Apple's accused Messages app system would nevertheless infringe the asserted claims of the '723 Patent. More specifically, the accused Messenger app performs substantially the same function (instant voice messaging), in substantially the same way (monitoring, recording and displaying recipients' availability), to yield substantially the same result (delivering voice messages to available intended recipients and storing messages for unavailable recipients until they become available). Apple would thus be liable for direct infringement under the doctrine of equivalents.

61. Apple has indirectly infringed and continues to indirectly infringe at least Claims 1 and 3 of the '723 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the Messages

app. Apple's customers who purchase the Messages app and operate such application in accordance with Apple's instructions directly infringe one or more of the forgoing claims of the '723 Patent in violation of 35 U.S.C. § 271. Apple directly and indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

<https://support.apple.com>

www.apple.com

<http://developer.apple.com>

www.youtube.com

Apple is thereby liable for infringement of the '723 Patent under 35 U.S.C. § 271(b).

62. Apple has indirectly infringed and continues to indirectly infringe at least Claims 1 and 3 of the '723 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the Messages app, by making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in infringing the '723 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

63. For example, the Messages app is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Messages app is a material part of the claimed inventions and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Apple is, therefore, liable for infringement under 35 U.S.C. § 271(c).

64. Apple will have been on notice of the '723 Patent since, at the latest, the service of this complaint upon Apple. By the time of trial, Apple will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more of Claims 1 and 3 of the '723 Patent.

65. Apple may have infringed the '723 Patent through other software utilizing the same or reasonably similar functionality, including other versions of its Messages app system. Uniloc reserves the right to discover and pursue all such additional infringing software/devices.

66. Uniloc has been damaged, reparably and irreparably, by Apple's infringement of the '723 Patent and such damage will continue unless and until Apple is enjoined.

PRAYER FOR RELIEF

Uniloc requests that the Court enter judgment against Apple as follows:

(A) that Apple has infringed the '890 Patent, the '622 Patent, the '723 Patent and the '433 Patent;

(B) awarding Uniloc its damages suffered as a result of Apple's infringement of the '890 Patent, the '723 Patent, the '622 Patent and the '433 Patent pursuant to 35 U.S.C. § 284;

(C) enjoining Apple, its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries and parents, and all others acting in concert or privity with it from infringing the '890 Patent, the '622 Patent, the '723 Patent and the '433 Patent pursuant to 35 U.S.C. § 283;

(D) awarding Uniloc its costs, attorneys' fees, expenses and interest, and

(E) granting Uniloc such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Uniloc hereby demands trial by jury on all issues so triable pursuant to Fed. R. Civ. P. 38.

Dated: July 11, 2016

Respectfully submitted,

/s/ Kevin Gannon

Craig Tadlock

Texas State Bar No. 00791766

Keith Smiley

Texas State Bar No. 24067869

TADLOCK LAW FIRM PLLC

2701 Dallas Parkway, Suite 360

Plano, TX 75093

Tel: (903) 730-6789

Email: craig@tadlocklawfirm.com

Email: keith@tadlocklawfirm.com

Paul J. Hayes

Kevin Gannon

CESARI AND MCKENNA, LLP

88 Black Falcon Ave

Suite 271

Boston, MA 02110

Telephone: (617) 951-2500

Facsimile: (617) 951-3927

Email: pjh@c-m.com

Email: ktg@c-m.com

ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/EMF system per Local Rule 5(a)(3) on July 11, 2016.

By: /s/ Kevin Gannon