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7 ZENPAYROLL, INC., dba GUSTO

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

12 ZENPAYROLL, INC., dba GUSTO,

13 Plaintiff,

14 v.

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

17 Defendants.

Case No.: _____

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT**

DEMAND FOR JURY TRIAL

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19 1. Plaintiff ZenPayroll, Inc. (“Gusto”) hereby alleges as follows for this complaint
20 against Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (collectively “Uniloc”):

21 **THE PARTIES**

22 2. Plaintiff Gusto is a corporation organized under the laws of Delaware, having a
23 principal place of business at 500 Third St., Suite 405, San Francisco, CA 94107.

24 3. Uniloc USA, Inc. (“Uniloc USA”) is a Texas corporation having a principal place
25 of business at Legacy Town Center I, Suite 380, 7160 Dallas Parkway, Plano, Texas 75024.

26 4. Uniloc Luxembourg S.A. (“Uniloc Luxembourg”) is a Luxembourg public limited
27 liability company having a principal place of business at 15, Rue Edward Steichen, 4th Floor, L-
28 2540, Luxembourg (R.C.S. Luxembourg B159161).

JURISDICTION AND VENUE

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2 5. This action is based on the patent laws of the United States, Title 35 of the United
3 States Code, § 1 et. seq., with a specific remedy sought under the Federal Declaratory Judgments
4 Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy
5 exists between Gusto and Uniloc that requires a declaration of rights by this Court.

6 6. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.
7 §§ 1331 and 1338(a).

8 7. This Court has personal jurisdiction over Uniloc USA. Uniloc USA is engaged
9 primarily in the business of patent licensing. It financed the patent licensing and assertion campaign
10 at issue at least in part with funding from a company located in the Northern District of California.
11 In addition, Uniloc USA has at least thirty-three patent licensees in this District. Uniloc USA has
12 further engaged in extensive settlement and licensing negotiations with entities based in this
13 District.

14 8. This Court also has personal jurisdiction over Uniloc Luxembourg. Uniloc
15 Luxembourg, along with Uniloc USA, is primarily engaged in the business of patent licensing.
16 Uniloc Luxembourg also financed the patent-licensing and assertion campaign at issue at least in
17 part with funding from a company located in the Northern District of California. In addition, Uniloc
18 Luxembourg has at least thirty-three patent licensees in this District. Uniloc Luxembourg has
19 further engaged in extensive settlement and licensing negotiations with entities based in this
20 District.

21 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because Uniloc USA
22 resides in this district, and Uniloc Luxembourg is an alien entity and therefore subject to suit in any
23 district.

24 **INTRADISTRICT ASSIGNMENT**

25 10. This is an intellectual property action subject to district-wide assignment pursuant
26 to Local Rule 3-2(c) and 3-5(b).

27 **FACTUAL BACKGROUND**

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11. Gusto is a leader in providing payroll, benefits, and human-resources services to modern companies. Gusto provides software that makes complicated, impersonal business tasks simple and personal, and provides its services to thousands of companies.

12. Uniloc is a patent-licensing company that neither makes nor sells any products or services.

13. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No. 6,324,578 (“the ’578 patent”), entitled “Methods, Systems and Computer Program Products for Management of Configurable Application Programs on a Network.”

14. Uniloc USA purports to be the exclusive licensee of the ’578 patent.

15. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No. 7,069,293 (“the ’293 patent”), entitled “Methods, Systems and Computer Program Products for Distribution of Application Programs to a Target Station on a Network.”

16. Uniloc USA purports to be the exclusive licensee of the ’293 patent.

17. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No. 6,510,466 (“the ’466 patent”), entitled “Methods, Systems and Computer Program Products for Centralized Management of Application Programs on a Network.”

18. Uniloc USA purports to be the exclusive licensee of the ’466 patent.

19. Collectively, the ’578 patent, the ’293 patent, and the ’466 patent will be referred to as the “patents-in-suit.”

20. On May 9, 2017, Uniloc filed suit against Gusto alleging infringement of the patents-in-suit in *Uniloc USA, Inc. v. ZenPayroll, Inc. d/b/a Gusto*, Case No. 2:17-cv-00409-RWS (E.D. Tex.). That case is currently pending and Gusto has not yet filed a responsive pleading.

21. Section 1400(b) of Title 35 states that “any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.”

22. On May 22, 2017, the Supreme Court of the United States announced its decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, No. 16-341 (Slip op. May 22, 2017),

1 holding that “[a]s applied to domestic corporations, ‘reside[nce]’ in [28 U.S.C.] § 1400(b) refers
2 only to the State of incorporation.” *Id.* at 10.

3 23. Gusto is not incorporated in the State of Texas, does not infringe any claims of the
4 patents-in-suit, and does not have a regular and established place of business in the Eastern District
5 of Texas. Consequently, venue is improper in the Eastern District of Texas in *Uniloc USA, Inc. v.*
6 *ZenPayroll, Inc. d/b/a Gusto*, Case No. 2:17-cv-00409-RWS (E.D. Tex.).

7 **FIRST CAUSE OF ACTION**

8 **(Declaratory Judgment of Non-Infringement of the ’578 Patent)**

9 24. Gusto incorporates by reference its allegations contained in paragraphs 1 through 23
10 of this Complaint as though fully set forth herein.

11 25. Uniloc alleges in *Uniloc USA, Inc. v. ZenPayroll, Inc. d/b/a Gusto*, Case No. 2:17-
12 cv-00409-RWS (E.D. Tex.), that Gusto infringes one or more claims of the ’578 patent. Gusto
13 incorporates by reference the content of that Complaint, which is facially deficient, in that it fails
14 to articulate a factual basis for Uniloc’s infringement contentions. Among other things, it does not
15 even purport to map the Gusto product to all elements of any asserted claim.

16 26. Gusto asserts that it does not infringe or contribute to any infringement of any claim
17 of the ’578 patent either literally or under the doctrine of equivalents. Gusto further asserts that it
18 has not and does not induce any infringement of any claim of the ’578 patent.

19 27. Therefore, there exists a substantial controversy between Gusto and Uniloc, the
20 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
21 of a declaratory judgment that Gusto has not infringed any claim of the ’578 patent.

22 28. An actual and justiciable controversy exists regarding the alleged infringement of
23 the ’578 patent by Gusto. Gusto accordingly requests a judicial determination of its rights, duties,
24 and obligations with regard to the ’578 patent.

25 29. A judicial declaration is necessary and appropriate so that Gusto may ascertain its
26 rights regarding the ’578 patent.

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SECOND CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the '293 Patent)

30. Gusto incorporates by reference its allegations contained in paragraphs 1 through 23 of this Complaint as though fully set forth herein.

31. Uniloc alleges in *Uniloc USA, Inc. v. ZenPayroll, Inc. d/b/a Gusto*, Case No. 2:17-cv-00409-RWS (E.D. Tex.) that Gusto infringes one or more claims of the '293 patent. Gusto incorporates by reference the content of that Complaint, which is facially deficient, in that it fails to articulate a factual basis for Uniloc's infringement contentions. Among other things, it does not even purport to map the Gusto product to all elements of any asserted claim.

32. Gusto asserts that it does not infringe or contribute to any infringement of any claim of the '293 patent either literally or under the doctrine of equivalents. Gusto further asserts that it has not and does not induce any infringement of any claim of the '293 patent.

33. Therefore, there exists a substantial controversy between Gusto and Uniloc, the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Gusto has not infringed any claim of the '293 patent.

34. An actual and justiciable controversy exists regarding the alleged infringement of the '293 patent by Gusto. Gusto accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '293 patent.

35. A judicial declaration is necessary and appropriate so that Gusto may ascertain its rights regarding the '293 patent.

THIRD CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the '466 Patent)

36. Gusto incorporates by reference its allegations contained in paragraphs 1 through 23 of this Complaint as though fully set forth herein.

37. Uniloc alleges in *Uniloc USA, Inc. v. ZenPayroll, Inc. d/b/a Gusto*, Case No. 2:17-cv-00409-RWS (E.D. Tex.) that Gusto infringes one or more claims of the '466 patent. Gusto incorporates by reference the content of that Complaint, which is facially deficient, in that it fails

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1 to articulate a factual basis for Uniloc’s infringement contentions. Among other things, it does not
2 even purport to map the Gusto product to all elements of any asserted claim.

3 38. Gusto asserts that it does not infringe or contribute to any infringement of any claim
4 of the ’466 patent either literally or under the doctrine of equivalents. Gusto further asserts that it
5 has not and does not induce any infringement of any claim of the ’466 patent.

6 39. Therefore, there exists a substantial controversy between Gusto and Uniloc, the
7 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
8 of a declaratory judgment that Gusto has not infringement any claim of the ’466 patent.

9 40. An actual and justiciable controversy exists regarding the alleged infringement of
10 the ’466 patent by Gusto. Gusto accordingly requests a judicial determination of its rights, duties,
11 and obligations with regard to the ’466 patent.

12 41. A judicial declaration is necessary and appropriate so that Gusto may ascertain its
13 rights regarding the ’466 patent.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Gusto prays for a declaratory judgment against Uniloc as follows:

16 A. A declaration that Gusto’s technology is not covered by any claim of the ’578 patent
17 and that Gusto does not infringe any claim of the ’578 patent;

18 B. A declaration that Gusto’s technology is not covered by any claim of the ’293 patent
19 and that Gusto does not infringe any claim of the ’293 patent;

20 C. A declaration that Gusto’s technology is not covered by any claim of the ’466 patent
21 and that Gusto does not infringe any claim of the ’466 patent;

22 D. A declaration that Gusto’s case against Uniloc is an exceptional case within the
23 meaning of 35 U.S.C. § 285;

24 E. An award of costs and attorneys’ fees to Gusto; and

25 F. Such other and further relief as the Court deems just and reasonable.

26 **JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE**

27 Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 3-6, Plaintiff Gusto hereby demands a trial
28 by jury of all issues triable before a jury.

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Dated: May 30, 2017

Respectfully submitted,

FENWICK & WEST LLP

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