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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
AT SEATTLE

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10 AMAZON.COM, INC. and AMAZON WEB
SERVICES, INC.,

11   Plaintiffs,

12   -vs.-

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

14

15   Defendants.

No. C17-1307

COMPLAINT FOR DECLARATORY
JUDGMENT

JURY DEMAND

16   Plaintiffs Amazon.com, Inc. and Amazon Web Services, Inc. allege as follows:

17   **NATURE OF THE ACTION**

18   1.   This is a civil action arising under the patent laws of the United States, Title 35

19 of the United States Code, Washington common law, and the Federal Declaratory Judgment Act,

20 28 U.S.C. §§ 2201 and 2202.

21   **PARTIES**

22   2.   Plaintiff Amazon.com, Inc. ("Amazon.com") is a corporation organized and

23 existing under the laws of the state of Delaware, with a principal place of business at 2121 7th

24 Avenue, Seattle, Washington 98119.

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3.   Plaintiff Amazon Web Services, Inc. ("AWS") is a Delaware corporation having a principal place of business at 2121 7th Avenue, Seattle, Washington 98119.

4.   On information and belief, 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.

5.   On information and belief, 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).

6.   On information and belief, Uniloc USA and Uniloc Luxembourg (collectively, "Uniloc") are patent-licensing companies that neither make nor sell any products or services. Uniloc is one of world's most litigious patent assertion entities and has filed more than 50 patent lawsuits in the last year alone.

7.   Amazon.com and AWS are two of the world's most innovative and customer-focused companies.

JURISDICTION

8.   This action arises under the patent laws of the United States, Title 35 of the United States Code, Washington common law, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

9.   This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201(a).

10.   This Court has personal jurisdiction over Uniloc USA and Uniloc Luxembourg by virtue of, *inter alia*, the fact that they each consented to jurisdiction in Washington under the terms of a June 2015 license Uniloc entered into with Microsoft Corporation (the "Microsoft license"). *See Uniloc USA, Inc. v. Cisco Systems, Inc.*, No. 6:15-cv-1175, WL 959856 at *3

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1 (E.D. Tex. Mar. 13, 2017) ("*Cisco Sys.*") (granting motion to transfer to this District and quoting

2 from the terms of the Microsoft license).

3   11.   The Microsoft license resolved litigation concerning U.S. Patent Nos. 7,804,948

4 (the "'948 Patent"); 7,853,000 (the "'000 Patent"); and 8,571,194 (the "'194 Patent"). The same

5 three patents are at issue in this action.

6   12.   Under the Microsoft license, Uniloc granted broad releases, licenses, and

7 covenants not to sue Microsoft and other third parties. *See Cisco Sys.,* 2017 WL 959856, at *3.

8   13.   Third parties are third party beneficiaries of the Microsoft license, and are

9 "entitled to enforce the licenses and/or covenants not to sue without joinder of Microsoft as a

10 party." *Cisco Sys.,* 2017 WL 959856, at *3.

11   14.   Amazon.com and AWS are third party beneficiaries under the Microsoft license,

12 and are thus entitled to enforce the Microsoft license.

13   15.   Uniloc consented to exclusive venue in Washington for any dispute arising about

14 the scope, meaning, performance, or breach of the Microsoft license. *Cisco Sys.,* 2017 WL

15 959856, at *1.

16   16.   This action arises from Uniloc's failure to perform under, and breach of, the

17 Microsoft license, together with federal questions under the United States patent laws.

18   17.   In addition, on information and belief, Uniloc USA and Uniloc Luxembourg are

19 primarily engaged in the business of patent acquisition and licensing. On information and belief,

20 Uniloc USA and Uniloc Luxembourg have patent licensees in Washington, and have engaged in

21 extensive settlement and licensing negotiations with entities based in Washington. Uniloc USA

22 and Uniloc Luxembourg have appeared in at least two patent infringement actions in this District

23 in the past year. Uniloc USA and Uniloc Luxembourg have also sued Amazon.com and AWS,

24 companies with their headquarters within Washington.

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VENUE

18.   Venue is proper in this district because each of Uniloc USA and Uniloc Luxembourg consented to exclusive venue in the Western District of Washington under the Microsoft license. *Cisco Sys.,* 2017 WL 959856, at *1. In addition, Uniloc Luxembourg is an alien entity and therefore subject to suit in any district.

FACTUAL BACKGROUND

General Background

19.   Amazon.com and AWS are two of the world's most innovative and customer-focused companies.

20.   On information and belief, Uniloc is one of world's most litigious patent assertion entities and has filed more than 50 patent lawsuits in the last year alone.

21.   Uniloc neither makes nor sells any products or services covered by the patents that it acquires from others and asserts in litigation.

22.   Amazon Chime creates a secure, easy-to-use communications service that works seamlessly across various Windows, Apple, and Android devices, allowing people to teleconference as if they are all gathered in the same conference room, regardless of the device they use.

The Patents-in-Suit

23.   Uniloc Luxembourg purports to be the owner of the '948 Patent, entitled "System and Method for Initiating a Conference Call," a copy of which is attached as **Exhibit A**.

24.   Uniloc USA purports to be the exclusive licensee of the '948 Patent.

25.   Uniloc Luxembourg purports to be the owner of the '000 Patent, entitled "System and Method for Initiating a Conference Call," a copy of which is attached as **Exhibit B**.

26.   Uniloc USA purports to be the exclusive licensee of the '000 Patent.

27.   The '000 Patent is in the same patent family as the '948 Patent.

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28.   Uniloc Luxembourg purports to be the owner of the '194 Patent, entitled "System and Method for Initiating a Conference Call," a copy of which is attached as **Exhibit C**.

29.   Uniloc USA purports to be the exclusive licensee of the '194 Patent.

30.   The '194 Patent is in the same patent family as the '948 and '000 Patents.

The Microsoft License

31.   In 2014, Uniloc accused Microsoft's Lync Server and Lync Online messaging service of infringing the '948, '000, and '194 Patents. *See Uniloc USA, Inc. et al v. Microsoft Corp.*, No. 2:14-cv-01040-JRG-RSP (E.D. Tex. 2014). The case settled, and Uniloc and Microsoft entered into the Microsoft license in June of 2015.

32.   Under the Microsoft license, Uniloc granted a broad license to the '948, '000, and '194 Patents for use with "Microsoft Products."

33.   As used in the Microsoft license, the term "Microsoft Products" refers to any "past, present, or future machine, apparatus, tool, kit, including porting or development kits, technology, software, product, equipment or service, including instruction on use, marketing materials, specifications and other documentation and information, that is directly or indirectly provided to, made or composed by, obtained from, licensed from, or provided by or for Microsoft." *Cisco Sys.,* 2017 WL 959856, at *3.

34.   Uniloc licensed the patents to cover Microsoft Products that relate in any way to the claims of the '948, '000, and '194 Patents: "Should any Microsoft Product (in whole or in part) *or the use thereof* (in whole or in part) satisfy (in whole or in part) or provide a means for satisfying (in whole or in part) any element, step, portion or limitation of any claim of any Licensed Patent . . . that Microsoft Product and its use shall be deemed licensed under the Licensed Patents and for the purpose of so satisfying such element, step, portion or limitation." *Cisco Sys.,* 2017 WL 959856, at *3 (emphasis supplied by the Court).

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35.   The Microsoft license broadly protects Microsoft third parties, and entitles Microsoft third parties to enforce the Microsoft license as third party beneficiaries. Microsoft third parties include "any and all third parties (including, without limitation Microsoft's direct and indirect customers, suppliers, licensees, distributors, independent software vendors and end users)." *Id.* at 3.

36.   Moreover, Microsoft does not need to be joined as a party for third party beneficiaries to enforce the Microsoft license: "[e]ach entity or person that is within the scope of the licenses and covenants not to sue in this Agreement is intended to be, and is, a third-party beneficiary and is entitled to enforce the licenses and/or covenants not to sue without joinder of Microsoft as a party." *Id.*

37.   The Microsoft license provides that any dispute related to it shall be resolved in Washington. *Id.* at *1-2.

Uniloc's Repeated Breaches of the Microsoft License

38.   Despite having entered into the Microsoft license, Uniloc has continued to assert the patents-in-suit in the Eastern District of Texas.

39.   Six months after entering into it, Uniloc breached the Microsoft license when it sued Cisco in the Eastern District of Texas. In *Uniloc USA, Inc. et al v. Cisco Systems, Inc.*, No. 6:15-cv-01175-JRG (E.D. Texas 2015), Uniloc accused Cisco's Jabber product of infringing the '948, '000, and '194 Patents. Uniloc's complaint alleged that Cisco Jabber infringed the patents it had licensed to both Microsoft and Microsoft third parties.

40.   On March 13, 2017, Cisco prevailed on a motion to transfer *Uniloc v. Cisco* to Washington in accordance with Uniloc's voluntary agreement to the forum selection clause of the Microsoft license.

41.   Uniloc again breached the Microsoft license when on March 24, 2017, a mere 11 days after the Texas court transferred Uniloc's action against Cisco to Washington, Uniloc

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1   filed an original complaint against Amazon.com and AWS in the Eastern District of Texas.

2   Uniloc alleged in *Uniloc USA, Inc., et. al., v. Amazon.com, Inc.*, *et al*. Case No. 2:17-cv-228

3   (E.D. Tex. 2017), that Amazon.com and AWS infringe one or more claims of the '948, '000,

4   and '194 Patents. Uniloc named Amazon Chime as the accused service.

5   42.   Amazon Chime is fully licensed under the Microsoft license. Amazon Chime

6   qualifies as "Microsoft Product" at a minimum, and without limitation, because Amazon Chime

7   includes instructions on use that are, directly or indirectly, provided to, by, or for Microsoft. *See*

8   (http://docs.aws.amazon.com/chime/latest/ug/chime-requirements.html)   (describing   Windows

9   system requirements); *see also* (https://chime.aws/features/) (describing End User Management

10   features of Amazon Chime, noting "all Amazon Chime users using an email address in your

11   domain are automatically added to your Amazon Chime account . . . You can also use your

12   existing   corporate   Microsoft   Active   Directory   to   manage   and   authenticate   users");

13   (https://chime.aws/) (stating that Amazon Chime allows users to take meetings on multiple

14   products and services "from any device" across Android, iOS, Mac, and Windows because

15   Amazon Chime's use of those products and services is "always synchronized" and allows users

16   to "switch seamlessly between devices anytime.").

17   43.   On August 15, 2017, Uniloc filed an amended complaint in the *Uniloc USA,*

18   *Inc., et. al., v. Amazon.com, Inc.*, *et al*. Case No. 2:17-cv-228 (E.D. Tex. 2017). The amended

19   complaint is nearly identical to the original complaint that Uniloc filed on March 24, 2017. The

20   amended complaint, however, purports that Uniloc does not accuse of infringement any product

21   that Uniloc refers to as "Amazon Chime for Windows."

22   44.   The amended complaint is nothing more than an attempt to plead around the

23   Microsoft license.

24   45.   Amazon Chime is a service that works seamlessly across products and services:

25   "Take your meetings anywhere with a rich, easy-to-use application available for Android, iOS,

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Mac, and Windows. Meetings and chats are always synchronized, you can join meetings from any device, and you can switch seamlessly between devices anytime – even in the middle of a meeting." (https://chime.aws/)

46.   Amazon Chime is thus covered by the Microsoft license.

47.   Uniloc breached the Microsoft license when it asserted the '948, '000, and '194 Patents against Amazon.com and AWS in the Eastern District of Texas.

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COUNT I – DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 7,804,948

</div>

48.   Amazon.com and AWS restate and incorporate by reference each of the allegations set forth in paragraphs 1 through 47 above.

49.   Uniloc alleges in *Uniloc USA, Inc., et. al., v. Amazon.com, Inc.*, *et al*. Case No. 2:17-cv-228 (E.D. Tex. 2017), that Amazon.com and AWS infringe one or more claims of the '948 Patent.

50.   Amazon.com and AWS have not and do not make, use, offer for sale, or import any product, service, or technology that infringes, directly or indirectly, any claims of the '948 Patent, either literally or under the doctrine of equivalents.

51.   By way of example, Amazon.com and AWS do not directly or indirectly, literally or under the doctrine of equivalents, infringe Claim 1 or any other claim of the '948 Patent for at least the following reasons. Amazon Chime does not satisfy the "providing a conference call requester with a network access device" or "automatically establishing a conference call connection to said conference call requester, said conference call connection initiated by said conference call server, said conference call connection further being connected to each of the potential targets" limitations of Claim 1.

52.   An actual and justiciable controversy exists between Amazon.com and AWS, on the one hand, and Uniloc, on the other hand, as to Amazon.com's and AWS' non-infringement of the '948 Patent.

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53.   Under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, Amazon.com and AWS seek a declaration that they do not infringe any claim of the '948 Patent.

COUNT II – DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 7,853,000

54.   Amazon.com and AWS restate and incorporate by reference each of the allegations set forth in paragraphs 1 through 53 above.

55.   Uniloc alleges in *Uniloc USA, Inc., et. al., v. Amazon.com, Inc.*, *et al.*, Case No. 2:17-cv-228 (E.D. Tex. 2017), that Amazon.com and AWS infringe one or more claims of the '000 Patent.

56.   Amazon.com and AWS have not and do not make, use, offer for sale, or import any product, service, or technology that infringes, direct or indirectly, any claims of the '000 Patent, either literally or under the doctrine of equivalents.

57.   By way of example only, Amazon.com and AWS do not directly or indirectly, literally or under the doctrine of equivalents, infringe Claim 1 or any other claim of the '000 Patent for at least the following reasons. Amazon Chime does not satisfy the "generating a conference call request responsively to a single request by the conference call requester, said conference call request identifying each of the indicated potential targets" and "wherein, a conference call connection initiated by the conference call server and connected to the conference call requestor and each of the indicated potential targets is automatically established responsively to the transmitted conference call request" limitations of Claim 1.

58.   An actual and justiciable controversy exists between Amazon.com and AWS, on the one hand, and Uniloc, on the other hand, as to Amazon.com's and AWS' non-infringement of the '000 Patent.

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59.   Under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq*., Amazon.com and AWS seek a declaration that they do not infringe any claim of the '000 Patent.

COUNT III – DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 8,571,194

60.   Amazon.com and AWS restate and incorporate by reference each of the allegations set forth in paragraphs 1 through 59 above.

61.   Uniloc alleges in *Uniloc USA, Inc., et. al., v. Amazon.com, Inc.*, *et al*., Case No. 2:17-cv-228 (E.D. Tex. 2017), that Amazon.com and AWS infringe one or more claims of the '194 Patent.

62.   Amazon.com and AWS have not and do not make, use, offer for sale, or import any product, service, or technology that infringes, directly or indirectly, any claims of the '194 Patent either literally or under the doctrine of equivalents.

63.   By way of example only, Amazon.com and AWS do not directly or indirectly, literally or under the doctrine of equivalents, infringe Claim 16 or any other claim of the '194 Patent for at least the following reason. Amazon Chime does not satisfy the "receive a request from the first party to establish voice communication amongst current participants of the IM session without requiring registration with a conference call server for establishing the voice communication by potential members including the first party and the at least one other party, the request lacking a specific identification of the at least one other party" limitation of Claim 16.

64.   An actual and justiciable controversy exists between Amazon.com and AWS, and Uniloc as to Amazon.com's and AWS' non-infringement of the '194 Patent.

65.   Under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq*., Amazon.com and AWS seek a declaration that they do not infringe any claim of the '194 Patent.

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COUNT IV –BREACH OF CONTRACT

2   66.   Amazon.com and AWS restate and incorporate by reference each of the

3 allegations set forth in paragraphs 1 through 65 above.

4   67.   The Microsoft license is a valid and enforceable contract between Uniloc and

5 Microsoft.

6   68.   Amazon.com and AWS are third party beneficiaries of the Microsoft license.

7   69.   Under the terms of the Microsoft license, Amazon.com and AWS are entitled to

8 enforce the Microsoft license without joinder of Microsoft as a party.

9   70.   The Microsoft license includes a covenant not to sue any Microsoft third parties

10 for infringement of, at a minimum, the '948, '000, and '194 Patents.

11   71.   The Microsoft license includes a forum selection clause selecting Washington as

12 the exclusive venue for any disputes for any dispute arising as to the scope, meaning,

13 performance, or breach of the Microsoft license.

14   72.   Uniloc breached the Microsoft license by bringing suit against Amazon.com

15 and AWS on the '948, '000, and '194 Patents in the Eastern District of Texas in violation of the

16 terms of the Microsoft license that establish Washington as the exclusive jurisdiction for any

17 claims arising under the Microsoft license.

18   73.   As a direct and proximate result of Uniloc's breaches of the Microsoft license,

19 Amazon.com and AWS have been damaged at least in the amount of costs and attorneys' fees

20 incurred in responding to Uniloc's claims brought in violation of the Microsoft license.

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PRAYER FOR RELIEF

22   WHEREFORE, Amazon.com and AWS request that this Court enter judgment against

23 Uniloc USA and Uniloc Luxembourg, and against its affiliates, agents, servants, employees and

24 all persons in active concert or participation with Uniloc USA and Uniloc Luxembourg, granting

25 the following relief:

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1   1.   A declaration that Amazon.com and AWS have not and do not infringe, either directly or indirectly, any valid and enforceable claim of the '948 Patent, literally or under the doctrine of equivalents;

2.   A declaration that Amazon.com and AWS have not and do not infringe, either directly or indirectly, any valid and enforceable claim of the '000 Patent, literally or under the doctrine of equivalents;

3.   A declaration that Amazon.com and AWS have not and do not infringe, either directly or indirectly, any valid and enforceable claim of the '194 Patent, literally or under the doctrine of equivalents;

4.   An injunction against Uniloc, and all persons acting on its behalf or in concert with it, restraining them from further prosecuting or instituting any worldwide action alleging that any method or product of Amazon.com or AWS, or others' use thereof, infringes any claim of any of the patents-in-suit or related patents;

5.   A declaration that this case is exceptional and that Amazon.com and AWS are entitled to an award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285;

6.   An award of damages against Uniloc for its breach of the Microsoft license; and

7.   Any such other and further relief as the Court may deem just and fair.

JURY DEMAND

Amazon.com and AWS demand a jury trial of all issues so triable.

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1   August 29, 2017.

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