

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNILOC USA, INC. and	§	
UNILOC LUXEMBOURG, S.A.,	§	Case No. 2:17-cv-01629
	§	
Plaintiffs,	§	
	§	
v.	§	COMPLAINT FOR
	§	PATENT INFRINGEMENT
HTC AMERICA, INC.,	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED
	§	

Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together “Uniloc”), as and for their complaint against defendant, HTC America, Inc. (“HTC”), 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.

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).

1 accelerometers), processors to detect motion, and with associated software, such as HTC's Fun
2 Fit app, and being capable of counting steps or other periodic human motions by monitoring
3 acceleration (together "Accused Infringing Devices").

4 11. HTC has directly infringed, and continues to directly infringe, one or more claims
5 of the '508 Patent within the United States during the pendency of the '508 Patent, including at
6 least claims 1, 3, 6-7, 11, 13, 15-16, 19 and 20 literally and/or under the doctrine of equivalents,
7 by or through making, using, offering for sale, selling and/or importing the Accused Infringing
8 Devices.

9 12. Should use of the Accused Infringing Devices be found to not literally infringe
10 the asserted claims of the '508 Patent, use of the Accused Infringing Devices would nevertheless
11 infringe the asserted claims of the '508 Patent. More specifically, the Accused Infringing
12 Devices perform substantially the same function (counting steps or other periodic human
13 motions), in substantially the same way (using components such pedometers, gyroscopes and
14 accelerometers, processors to detect motion and associated software), to yield substantially the
15 same result (providing a calculation of the distance traveled by monitoring accelerations relative
16 to the dominant axis). HTC would thus be liable for direct infringement under the doctrine of
17 equivalents.

18 13. HTC has indirectly infringed, and continues to indirectly infringe, at least claims
19 1, 3, 6-7, 11, 13, 15-16, 19 and 20 of the '508 Patent within the United States by, among other
20 things, actively inducing the using, offering for sale, selling and/or importing the Accused
21 Infringing Devices having the functionality described in this Count. HTC's customers who use
22 such devices in accordance with HTC's instructions directly infringe claims 1, 3, 6-7, 11, 13, 15-
23 16, 19 and 20 of the '508 Patent in violation of 35 U.S.C. § 271. HTC directly and/or indirectly
24 intentionally instructs its customers to infringe through training videos, demonstrations,
25 brochures, installation and/or user guides such as those located at one or more of the following:

- 26
- www.htc.com, including:

1 www.htc.com/us/smartphones/

2 www.htc.com/us/support/

- 3 • www.htcsource.com
- 4 • www.androidauthority.com/htc-fun-fit
- 5 • https://play.google.com/store/apps/details?id=com.aiqidi.nemo&hl=en
- 6 • www.youtube.com, including:

7 www.youtube.com/user/htc

8 HTC is thereby liable for infringement of the '508 Patent under 35 U.S.C. § 271(b).

9 14. HTC has indirectly infringed, and continues to indirectly infringe, at least claims
10 1, 3, 6-7, 11, 13, 15-16, 19 and 20 of the '508 Patent within the United States by, among other
11 things, contributing to the direct infringement by others including, without limitation customers
12 using the Accused Infringing Devices, by making, offering to sell, selling and/or importing into
13 the United States, a component of a patented machine, manufacture or combination, or an
14 apparatus for use in practicing a patented process, constituting a material part of the invention,
15 knowing the same to be especially made or especially adapted for use in infringing the '508
16 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing
17 use.

18 15. HTC will have been on notice of the '508 Patent since, at the latest, the service of
19 this complaint upon HTC. By the time of trial, HTC will have known and intended (since
20 receiving such notice) that its continued actions would actively induce the infringement of claims
21 1, 3, 6-7, 11, 13, 15-16, 19 and 20 of the '508 Patent.

22 16. HTC may have infringed the '508 Patent through other devices and software
23 utilizing the same or reasonably similar functionality, including through the sale and distribution
24 of third party applications that function to monitor motion as described above. Uniloc reserves
25 the right to discover and pursue all such additional infringing software and devices.

26 17. Uniloc has been damaged by HTC's infringement of the '508 Patent.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 8,712,723)

18. Uniloc incorporates paragraphs 1-6 above by reference.

19. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 8,712,723 (“the ’723 Patent”), entitled HUMAN ACTIVITY MONITORING DEVICE that issued on April 29, 2014. A true and correct copy of the ’723 Patent is attached as Exhibit B hereto.

20. 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.

21. HTC manufactures, uses, sells, offers for sale and/or imports into the United States the Accused Infringing Devices.

22. HTC has directly infringed, and continues to directly infringe, one or more claims of the ’723 Patent within the United States during the pendency of the ’723 Patent, including at least claims 1, 5-6, 10, 14 and 16-17 literally and/or under the doctrine of equivalents, by or through making, using, offering for sale, selling and/or importing the Accused Infringing Devices.

23. Should use of the Accused Infringing Devices be found to not literally infringe the asserted claims of the ’723 Patent, use of the Accused Infringing Devices would nevertheless infringe the asserted claims of the ’723 Patent. More specifically, the Accused Infringing Devices perform substantially the same function (counting steps or other periodic human motions), in substantially the same way (using components such as pedometers, gyroscopes, accelerometers, processors to detect motion and associated software), to yield substantially the same result (providing a calculation of the distance traveled when accelerations showing a motion cycle that meets motion criteria is detected). HTC would thus be liable for direct infringement under the doctrine of equivalents.

1 24. HTC has indirectly infringed, and continues to indirectly infringe, at least claims
2 1, 5-6, 10, 14 and 16-17 of the '723 Patent within the United States by, among other things,
3 actively inducing the using, offering for sale, selling and/or importing the Accused Infringing
4 Devices having the functionality described in this Count. HTC's customers who use such
5 devices in accordance with HTC's instructions directly infringe claims 1, 5-6, 10, 14 and 16-17
6 of the '723 Patent in violation of 35 U.S.C. § 271. HTC directly and/or indirectly intentionally
7 instructs its customers to infringe through training videos, demonstrations, brochures, installation
8 and/or user guides such as those located at one or more of the following:

- 9 • www.htc.com, including:
10 www.htc.com/us/smartphones/
11 www.htc.com/us/support/
- 12 • www.htcsource.com
- 13 • www.androidauthority.com/htc-fun-fit
- 14 • https://play.google.com/store/apps/details?id=com.aiqidi.nemo&hl=en
- 15 • www.youtube.com, including:
16 www.youtube.com/user/htc

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

18 25. HTC has indirectly infringed, and continues to indirectly infringe, at least claims
19 1, 5-6, 10, 14 and 16-17 of the '723 Patent within the United States by, among other things,
20 contributing to the direct infringement by others including, without limitation customers using
21 the Accused Infringing Devices, by making, offering to sell, selling and/or importing into the
22 United States, a component of a patented machine, manufacture or combination, or an apparatus
23 for use in practicing a patented process, constituting a material part of the invention, knowing the
24 same to be especially made or especially adapted for use in infringing the '723 Patent and not a
25 staple article or commodity of commerce suitable for substantial non-infringing use.

26

1 26. HTC will have been on notice of the '723 Patent since, at the latest, the service of
2 this complaint upon HTC. By the time of trial, HTC will have known and intended (since
3 receiving such notice) that its continued actions would actively induce the infringement of claims
4 1, 5-6, 10, 14 and 16-17 of the '723 Patent.

5 27. HTC may have infringed the '723 Patent through other software and devices
6 utilizing the same or reasonably similar functionality, including through the sale and distribution
7 of third party applications that function to monitor motion as described above. Uniloc reserves
8 the right to discover and pursue all such additional infringing software and devices.

9 28. Uniloc has been damaged by HTC's infringement of the '723 Patent.

10 **COUNT III**

11 (INFRINGEMENT OF U.S. PATENT NO. 7,881,902)

12 29. Uniloc incorporates paragraphs 1-6 above by reference.

13 30. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,881,902
14 ("the '902 Patent"), entitled HUMAN ACTIVITY MONITORING DEVICE that issued on
15 February 1, 2011. A true and correct copy of the '902 Patent is attached as Exhibit C hereto.

16 31. Uniloc USA is the exclusive licensee of the '902 Patent with ownership of all
17 substantial rights therein, including the right to grant sublicenses, to exclude others, and to
18 enforce, sue and recover past damages for the infringement thereof.

19 32. HTC manufactures, uses, sells, offers for sale and/or imports into the United
20 States the Accused Infringing Devices.

21 33. HTC has directly infringed, and continues to directly infringe one or more claims
22 of the '902 Patent within the United States during the pendency of the '902 Patent, including at
23 least claims 1-4 literally and/or under the doctrine of equivalents, by or through making, using,
24 offering for sale, selling and/or importing the Accused Infringing Devices.

25 34. Should use of the Accused Infringing Devices be found to not literally infringe
26 the asserted claims of the '902 Patent, use of the Accused Infringing Devices would nevertheless

1 infringe the asserted claims of the '902 Patent. More specifically, the Accused Infringing
2 Devices perform substantially the same function (detecting motion or other user activity), in
3 substantially the same way (using components such as pedometers, gyroscopes, accelerometers,
4 processors to detect motion and associated software), to yield substantially the same result
5 (detecting motion and when the motion does not have a motion signature of a user activity that
6 the mobile device is configured to monitor, entering a sleep mode). HTC would thus be liable
7 for direct infringement under the doctrine of equivalents.

8 35. HTC has indirectly infringed, and continues to indirectly infringe at least claims
9 1-4 of the '902 Patent within the United States by, among other things, actively inducing the
10 using, offering for sale, selling and/or importing the Accused Infringing Devices having the
11 functionality described in this Count. HTC's customers who use such devices in accordance
12 with HTC's instructions directly infringe claims 1-4 of the '902 Patent in violation of 35 U.S.C.
13 § 271. HTC directly and/or indirectly intentionally instructs its customers to infringe through
14 training videos, demonstrations, brochures, installation and/or user guides such as those located
15 at one or more of the following:

- 16 • www.htc.com, including:
 - 17 www.htc.com/us/smartphones/
 - 18 www.htc.com/us/support/
- 19 • www.htcsource.com
- 20 • <https://play.google.com/store/apps/details?id=com.aiqidi.nemo&hl=en>
- 21 • www.androidauthority.com/htc-fun-fit
- 22 • www.youtube.com, including:
 - 23 www.youtube.com/user/htc

24 HTC is thereby liable for infringement of the '902 Patent under 35 U.S.C. § 271(b).

25 36. HTC has indirectly infringed, and continues to indirectly infringe, at least Claims
26 1-4 of the '902 Patent within the United States by, among other things, contributing to the direct

1 infringement by others including, without limitation customers using the Accused Infringing
2 Devices, by making, offering to sell, selling and/or importing into the United States, a
3 component of a patented machine, manufacture or combination, or an apparatus for use in
4 practicing a patented process, constituting a material part of the invention, knowing the same to
5 be especially made or especially adapted for use in infringing the '902 Patent and not a staple
6 article or commodity of commerce suitable for substantial non-infringing use.

7 37. HTC will have been on notice of the '902 Patent since, at the latest, the service of
8 this complaint upon HTC. By the time of trial, HTC will have known and intended (since
9 receiving such notice) that its continued actions would actively induce the infringement of claims
10 1-4 of the '902 Patent.

11 38. HTC may have infringed the '902 Patent through other software and devices
12 utilizing the same or reasonably similar functionality, including through the sale and distribution
13 of third party applications that function to monitor motion as described above. Uniloc reserves
14 the right to discover and pursue all such additional infringing software and devices.

15 39. Uniloc has been damaged by HTC's infringement of the '902 Patent.

16 **PRAYER FOR RELIEF**

17 Uniloc requests that the Court enter judgment against HTC as follows:

18 (A) declaring that HTC has infringed the '508 Patent, the '723 Patent and the '902
19 Patent;

20 (B) awarding Uniloc its damages suffered as a result of HTC's infringement of the
21 '508 Patent, the '723 Patent and the '902 Patent;

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

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

24 **DEMAND FOR JURY TRIAL**

25 Uniloc hereby demands trial by jury on all issues so triable pursuant to Fed. R. Civ. P. 38.
26

1 Dated this 1st day of November, 2017

2 Respectfully submitted,

3 *s/ Al Van Kampen*

4 Al Van Kampen, WSBA No. 13670
5 Van Kampen & Crowe PLLC
6 1001 Fourth Avenue, Suite 4050
7 Seattle, WA 98154
8 Tel: (206) 386-7353
9 Fax: (206) 405-2825
10 Email: AVanKampen@VKClaw.com

11 James J. Foster (*Pro Hac Vice* will be filed)
12 Aaron Jacobs (*Pro Hac Vice* will be filed)
13 Prince Lobel Tye LLP
14 One International Place - Suite 3700
15 Boston, MA 02110
16 Tel: 617-456-8000
17 Email: jfoster@princelobel.com
18 Email: ajacobs@princelobel.com

19 ATTORNEYS FOR THE PLAINTIFFS

20 2821738.v1