

**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. 2:17-cv-00470-JRG
Plaintiffs,	§	
	§	
v.	§	PATENT CASE
	§	
APPLE INC.,	§	
	§	
Defendant.	§	

AMENDED COMPLAINT FOR PATENT INFRINGEMENT

As the Docket Control Order (Dkt. 42 in Consolidated Lead Case 2:17-cv-00470-JRG) permits amendment of pleadings through February 12, 2018, without leave of Court, Plaintiffs, Uniloc USA, Inc. (“Uniloc USA”) and Uniloc Luxembourg, S.A. (“Uniloc Luxembourg”) (collectively, “Uniloc”), amend their earlier Complaint, against defendant, Apple Inc. (“Apple”), to allege:

THE PARTIES

1. 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 USA also maintains a place of business at 102 N. College, Suite 303, Tyler, Texas 75702.

2. 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. Apple is a California corporation, having a principal place of business in Cupertino, California, and regular and established places of business at 2601 Preston Road, Frisco, Texas and 6121 West Park Boulevard, Plano, Texas.

JURISDICTION

4. 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 jurisdiction under 28 U.S.C. §§1331 and 1338(a).

PATENT INFRINGEMENT

5. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,690,556 (“the ’556 Patent”), entitled STEP COUNTER ACCOUNTING FOR INCLINE, which issued on April 6, 2010, to DP Technologies, Inc. (“DP”). (A copy of the ’556 Patent was attached as Exhibit A to the Complaint.)

6. Uniloc USA is the exclusive licensee of the ’556 Patent, with ownership of all substantial rights in that patent, including the right to grant sublicenses, to exclude others, and to enforce, sue, and recover past damages for infringement.

7. The ’556 patent describes, in detail, and claims, in various ways and at different levels of specificity, an invention DP developed in 2006 as an improved step counter. The invention improved upon existing step counters by adding an incline logic to make a calculation of an incline of a surface by utilizing motion detected by an accelerometer, which detects three-dimensional motion of a user on a surface, where the calculation is performed for a step based on identifying a vertical travel up portion of the step, a vertical travel down portion of the step, and computing a difference between them. The invention also uses an altimeter to determine a change in altitude, with the incline logic utilizing that change to make an additional calculation of the

incline. The invention also uses energy calculation logic to calculate a calorie expenditure based on the steps and incline data.

8. The approach DP invented, and the methods and systems the '556 patent claims, were not conventional or generic in the industry in 2006, but rather involved or contain programming that represented a novel, and not obvious, approach that other companies in this field had not reduced to practice.

9. The invention represented a technological solution to a technological problem. The written description of the '556 patent describes, in technical detail, each of the limitations in the claims, allowing a person of skill in the art to understand what those limitations cover, and therefore what was claimed, and also understand how the nonconventional and non-generic ordered combination of the elements of the claims differ markedly from what had been conventional or generic in the industry in 2006.

10. Apple makes, uses, sells, offers for sale, and imports electronic devices, such as iPhones, iPads, and Watches, that incorporate hardware (such as an accelerometer, inclinometer, altimeter, and barometer) and software (such as the Health app in iOS 8.0.x, iOS 9.0.x, iOS 10.0.x, and watchOS versions) that are capable of calculating the number of steps taken (e.g., "Steps") and distance covered (e.g., "Walking + Running Distance") by a user, as well as the user's change in elevation (e.g., "Flights Climbed") (together, "Accused Infringing Devices").

11. Apple has infringed, and continues to infringe, at least claims 1-6, 8-15, and 17-23, of the '566 Patent, by making, using, offering for sale, selling, and importing Accused Infringing Devices. (Attached as Exhibit 1 is a chart identifying, as specifically as possible without discovery, where each element of each asserted claim is found within the accused instrumentalities.)

12. Apple has infringed, and continues to infringe, those same claims of the '556 Patent by actively inducing others to use, offer for sale, or sell Accused Infringing Devices. Apple's customers who use those devices in accordance with Apple's instructions infringe claims of the '556 Patent. Apple intentionally instructs its customers to infringe through training videos, demonstrations, brochures, and installation and user guides, such as those located at:

- www.apple.com
- <https://support.apple.com>
- <https://appleid.apple.com>
- <https://itunes.apple.com>
- www.youtube.com

Apple also induces infringement by failing to remove or diminish infringing features of the Accused Infringing Devices.

13. Apple has infringed, and continues to infringe, those same claims of the '556 Patent by contributing to the infringement by others, including customers who use the Accused Infringing Devices, by offering for sale, selling, and importing 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 adapted for use in infringing the '556 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

14. For example, the software that causes the Accused Infringing Devices to operate as described above is a component of a patented machine, manufacture, or combination. The software is a material part of the claimed inventions and is not a staple article or commodity of commerce suitable for substantial non-infringing use.

15. Apple has been on notice of the '556 Patent since, at the latest, the service of the Complaint. 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 claims of the '556 Patent.

16. Apple may have infringed the '556 Patent through other software and devices utilizing the same or reasonably similar functionality, as described above, through the sale and distribution of third party apps, such as Pedometer and Stepz, Runtastic, and Strava Running, that allow a user of iPhones, iPads, and Watches to calculate steps and changes in elevation, as described above.

17. Uniloc has been damaged by Apple's infringement of the '556 Patent.

PRAYER FOR RELIEF

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

- (A) declaring that Apple has infringed the '556 Patent;
- (B) awarding Uniloc its damages suffered as a result of Apple's infringement of the '556 Patent;
- (C) awarding Uniloc its costs, attorneys' fees, expenses, and interest; and
- (D) granting Uniloc such further relief as the Court may decide is warranted.

Date: December 19, 2017

Respectfully submitted,

/s/ James J. Foster

Paul J. Hayes

Kevin Gannon

James J. Foster

PRINCE LOBEL TYE LLP

One International Place, Suite 3700

Boston, MA 02110

Tel: (617) 456-8000

Email: phayes@princelobel.com

Email: kgannon@princelobel.com

Email: jfoster@princelobel.com

Edward R. Nelson III

ed@nelbum.com

Texas State Bar No. 00797142

Anthony M. Vecchione

anthony@nelbum.com

Texas State Bar No. 24061270

NELSON BUMGARDNER PC

3131 West 7th Street, Suite 300

Fort Worth, TX 76107

Tel: (817) 377-9111

Fax: (817) 377-3485

ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I 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/ECF system per Local Rule CV-5(a)(3) on December 19, 2017.

/s/ James J. Foster
