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

10 UNILOC USA, INC., and )  
UNILOC LUXEMBOURG, S.A., )

11 Plaintiffs, )

12 v. )

13 APPLE INC., )

14 Defendant. )  
15

Case No.: 3:18-cv-00364-JST

**AMENDED COMPLAINT FOR PATENT  
INFRINGEMENT**

16 As the Docket Control Order (Dkt. 42 in what had been Consolidated Lead Case 2:17-cv-  
17 00470-JRG) permits amendment of pleadings through February 12, 2018, without leave of Court,  
18 Plaintiffs, Uniloc USA, Inc. (“Uniloc USA”) and Uniloc Luxembourg, S.A. (“Uniloc Luxembourg”) )  
19 (collectively, “Uniloc”), amend their earlier Complaint<sup>1</sup>, against defendant, Apple Inc. (“Apple”), to  
20 allege:

21 **THE PARTIES**

22 1. Uniloc USA is a Texas corporation, having a principal place of business at Legacy  
23 Town Center I, Suite 380, 7160 Dallas Parkway, Plano, Texas 75024.

24 2. Uniloc Luxembourg is a Luxembourg public limited liability company, having a  
25 principal place of business at 15, Rue Edward Steichen, 4<sup>th</sup> Floor, L-2540, Luxembourg (R.C.S.  
26 Luxembourg B159161).

27 \_\_\_\_\_  
28 <sup>1</sup> As this Amended Complaint completely supersedes the earlier Complaint, its filing moots the  
pending motions to dismiss, Dkt. 17.

1 3. Apple is a California corporation, having a principal place of business in Cupertino,  
2 California.

3 **JURISDICTION**

4 4. Uniloc brings this action for patent infringement under the patent laws of the United  
5 States, 35 U.S.C. § 271, *et seq.* This Court has jurisdiction under 28 U.S.C. §§1331 and 1338(a).

6 **PATENT INFRINGEMENT**

7 **COUNT I**

8 (INFRINGEMENT OF U.S. PATENT NO. 7,653,508)

9 5. Uniloc incorporates paragraphs 1-4 above, by reference.

10 6. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,653,508 (“the  
11 ’508 Patent”), entitled HUMAN ACTIVITY MONITORING DEVICE, which issued on January 26,  
12 2010, to DP Technologies, Inc. (“DP”). (A copy of the ’508 Patent was attached as Exhibit A to the  
13 Complaint.)

14 7. Uniloc USA is the exclusive licensee of the ’508 Patent, with ownership of all  
15 substantial rights in that patent, including the right to grant sublicenses, to exclude others, and to  
16 enforce, sue, and recover past damages for infringement.

17 8. The ’508 patent describes, in detail, and claims, in various ways and at different levels  
18 of specificity, an invention DP developed in 2006 as an improved activity monitoring device. The  
19 invention improved upon existing activity monitoring devices by constantly monitoring the  
20 orientation of an inertial sensor by identifying an updating a dominant axis, and determining the  
21 motion of a user by reference to that axis, thus allowing the device containing the inertial sensor to  
22 be carried anywhere on the user’s body.

23 9. The approach DP invented, and the methods and systems the ’508 patent claims, were  
24 not conventional or generic in the industry in 2006, but rather involved or contain programming that  
25 represented a novel, and not obvious, approach that other companies in this field had not reduced to  
26 practice.

1           10.     The invention represented a technological solution to a technological problem. The  
2 written description of the '508 patent describes, in technical detail, each of the limitations in the  
3 claims, allowing a person of skill in the art to understand what those limitations cover, and therefore  
4 what was claimed, and also understand how the nonconventional and non-generic ordered  
5 combination of the elements of the claims differs markedly from what had been conventional or  
6 generic in the industry in 2006.

7           11.     Apple makes, uses, sells, offers for sale, and imports electronic devices, such as  
8 iPhones, iPads, and Watches, which are equipped with motion sensors (such as, pedometers,  
9 gyroscopes, and accelerometers), processors to detect motion and associated software capable of  
10 counting steps or other periodic human motions by monitoring accelerations relative to the dominant  
11 axis (together, "Accused Infringing Devices").

12           12.     Apple has infringed, and continues to infringe, at least claims 1-3, 6-8, 11, 15-16, and  
13 19 of the '508 Patent, by making, using, offering for sale, selling, and importing Accused Infringing  
14 Devices. (Attached as Exhibit 1 is a chart identifying, as specifically as possible without discovery,  
15 where each element of each asserted claim is found within the accused instrumentalities.)

16           13.     Apple has infringed, and continues to infringe, those same claims of the '508 Patent  
17 by actively inducing others to use, offer for sale, or sell Accused Infringing Devices. Apple's  
18 customers who use those devices in accordance with Apple's instructions infringe claims of the '508  
19 Patent. Apple intentionally instructs its customers to infringe through training videos,  
20 demonstrations, brochures, and installation and user guides, such as those located at:

- 21           • [www.apple.com](http://www.apple.com)
- 22           • <https://support.apple.com>
- 23           • <https://appleid.apple.com>
- 24           • <https://itunes.apple.com>
- 25           • [www.youtube.com](http://www.youtube.com)

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

1 14. Apple has infringed, and continues to infringe, those same claims of the '508 Patent  
2 by contributing to the infringement by others, including customers who use the Accused Infringing  
3 Devices, by offering for sale, selling, and importing a component of a patented machine, manufacture,  
4 or combination, or an apparatus for use in practicing a patented process, constituting a material part  
5 of the invention, knowing the same to be especially made or adapted for use in infringing the '508  
6 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

7 15. For example, the software that causes the Accused Infringing Devices to operate as  
8 described above is a component of a patented machine, manufacture, or combination, and of an  
9 apparatus for use in practicing patented process. The software is a material part of the claimed  
10 inventions and is not a staple article or commodity of commerce suitable for substantial non-  
11 infringing use.

12 16. Apple has been on notice of the '508 Patent since, at the latest, the service of the  
13 Complaint. By the time of trial, Apple will have known and intended (since receiving such notice)  
14 that its continued actions would actively induce, and contribute to, the infringement of claims of the  
15 '508 Patent.

16 17. Apple may have infringed the '508 Patent through other software and devices utilizing  
17 the same or reasonably similar functionality, including through the sale and distribution of third party  
18 apps, such as Pedometer and Stepz, Runtastic, Microsoft Band, and Strava Running, that allow a user  
19 of iPhones, iPads, and Watches to count steps or other periodic human motions by monitoring  
20 accelerations relative to the dominant axis, as described above.

21 18. Uniloc has been damaged by Apple's infringement of the '508 Patent.

22 **COUNT II**  
23 (INFRINGEMENT OF U.S. PATENT NO. 8,712,723)

24 19. Uniloc incorporates paragraphs 1-4 above by reference.

25 20. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 8,712,723 ("the  
26 '723 Patent"), entitled HUMAN ACTIVITY MONITORING DEVICE, which issued on April 29,  
27 2014. (A copy of the '723 Patent was attached as Exhibit B to the Complaint.)  
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1           21.     Uniloc USA is the exclusive licensee of the '723 Patent with ownership of all  
2 substantial rights in that patent, including the right to grant sublicenses, to exclude others, and to  
3 enforce, sue and recover past damages for the infringement.

4           22.     The '723 patent describes, in detail, and claims, in various ways and at different levels  
5 of specificity, an invention DP developed in 2006 as an improved human activity monitoring device.  
6 The invention improved upon existing human activity monitoring devices by assigning the dominant  
7 axis of an inertial sensor with respect to gravity, updating the dominant axis as the orientation of the  
8 inertial sensor changes, and determining motion of a user based on reference to the dominant axis  
9 and cadence of the movement, thereby minimizing the false positives frequently recorded using prior  
10 art motion detectors.

11           23.     The approach DP invented, and the methods and systems the '723 patent claims, were  
12 not conventional or generic in the industry in 2006, but rather involved or contain programming that  
13 represented a novel, and not obvious, approach that other companies in this field had not reduced to  
14 practice.

15           24.     The invention represented a technological solution to a technological problem. The  
16 written description of the '723 patent describes, in technical detail, each of the limitations in the  
17 claims, allowing a person of skill in the art to understand what those limitations cover, and therefore  
18 what was claimed, and also understand how the nonconventional and non-generic ordered  
19 combination of the elements of the claims differ markedly from what had been conventional or  
20 generic in the industry in 2006.

21           25.     Apple makes, uses, sells, offers for sale, and imports electronic devices, such as  
22 iPhones, iPads, and Watches, which are equipped with motion sensors (such as pedometers,  
23 gyroscopes, and accelerometers), processors to detect motion, and associated software capable of  
24 counting steps or other periodic human motions when accelerations showing a motion cycle that  
25 meets motion criteria is detected (together, "Accused Infringing Devices").

26           26.     Apple has infringed, and continues to infringe, at least claims 1, 5-7, 10, 12, 14, and  
27 16-17 of the '723 Patent, by making, using, offering for sale, selling, and importing Accused  
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1 Infringing Devices. (Attached as Exhibit 2 is a chart identifying, as specifically as possible without  
2 discovery, where each element of each asserted claim is found within the accused instrumentalities.)

3 27. Apple has infringed, and continues to infringe, those same claims of the '723 Patent  
4 by actively inducing others to use, offer for sale, or sell Accused Infringing Devices. Apple's  
5 customers who use those devices in accordance with Apple's instructions infringe claims of the '723  
6 Patent. Apple intentionally instructs its customers to infringe through training videos,  
7 demonstrations, brochures, and installation and user guides, such as those located at:

- 8 • [www.apple.com](http://www.apple.com)
- 9 • <https://support.apple.com>
- 10 • <https://appleid.apple.com>
- 11 • <https://itunes.apple.com>
- 12 • [www.youtube.com](http://www.youtube.com)

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

15 28. Apple has infringed, and continues to infringe, those same claims of the '723 Patent  
16 by contributing to the infringement by others, including customers who use the Accused Infringing  
17 Devices, by offering for sale, selling, and importing a component of a patented machine, manufacture,  
18 or combination, or an apparatus for use in practicing a patented process, constituting a material part  
19 of the invention, knowing the same to be especially made or adapted for use in infringing the '556  
20 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

21 29. For example, the software that causes the Accused Infringing Devices to operate as  
22 described above is a component of a patented machine, manufacture, or combination and of an  
23 apparatus for use in practicing a patented process. The software is a material part of the claimed  
24 inventions and is not a staple article or commodity of commerce suitable for substantial non-  
25 infringing use.

26 30. Apple has been on notice of the '723 Patent since, at the latest, the service of the  
27 Complaint. By the time of trial, Apple will have known and intended (since receiving such notice)

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1 that its continued actions would actively induce, and contribute, to the infringement of claims of the  
2 '723 Patent.

3 31. Apple may have infringed the '723 Patent through other software and devices utilizing  
4 the same or reasonably similar functionality, through the sale and distribution of third party apps,  
5 such as Pedometer and Stepz, Runtastic, Microsoft Band, and Strava Running, that allow a user of  
6 iPhones, iPads, and Watches to count steps or other periodic human motions by monitoring  
7 accelerations to determine when a motion cycle meets motion criteria, as described above.

8 32. Uniloc has been damaged by Apple's infringement of the '723 Patent.

9 **COUNT III**

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

11 33. Uniloc incorporates paragraphs 1-4 above by reference.

12 34. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,881,902 ("the  
13 '902 Patent"), entitled HUMAN ACTIVITY MONITORING DEVICE, which issued on April 29,  
14 2014. (A copy of the '902 Patent was attached as Exhibit C to the Complaint.)

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

18 36. Apple makes, uses, sells, offers for sale, and imports electronic devices, such as  
19 iPhones, iPads, and Watches, which are equipped with motion sensors (such as pedometers,  
20 gyroscopes, and accelerometers), processors to detect motion, and associated software capable of  
21 detecting motion, and, when the motion does not have a motion signature of a user activity that the  
22 mobile device is configured to monitor, entering a sleep mode (together, "Accused Infringing  
23 Devices").

24 37. The '902 patent describes, in detail, and claims, in various ways and at different levels  
25 of specificity, an invention DP developed in 2006 as an improved activity monitoring device. The  
26 invention improved upon existing activity monitoring devices by using an inertial sensor in a mobile  
27 device to monitor for motion that includes indicators of a type of motion the device is configured to  
28

1 record, and in the absence of such motion signatures, putting the device into a sleep/idle mode, thus  
2 conserving battery power and improving motion detection.

3 38. The approach DP invented, and the methods the '902 patent claims, were not  
4 conventional or generic in the industry in 2006, but rather involved or contain programming that  
5 represented a novel, and not obvious, approach that other companies in this field had not reduced to  
6 practice.

7 39. The invention represented a technological solution to a technological problem. The  
8 written description of the '902 patent describes, in technical detail, each of the limitations in the  
9 claims, allowing a person of skill in the art to understand what those limitations cover, and therefore  
10 what was claimed, and also understand how the nonconventional and non-generic ordered  
11 combination of the elements of the claims differ markedly from what had been conventional or  
12 generic in the industry in 2006.

13 40. Apple has infringed, and continues to infringe, at least claims 1-4 of the '902 Patent,  
14 by making, using, offering for sale, selling, and importing Accused Infringing Devices. (Attached as  
15 Exhibit 3 is a chart identifying, as specifically as possible without discovery, where each element of  
16 each asserted claim is found within the accused instrumentalities.)

17 41. Apple has infringed, and continues to infringe, those same claims of the '902 Patent  
18 by actively inducing others to use Accused Infringing Devices. Apple's customers who use those  
19 devices in accordance with Apple's instructions infringe claims of the '902 Patent. Apple  
20 intentionally instructs its customers to infringe through training videos, demonstrations, brochures,  
21 and installation and user guides, such as those located at:

- 22 • [www.apple.com](http://www.apple.com)
- 23 • <https://support.apple.com>
- 24 • <https://appleid.apple.com>
- 25 • <https://itunes.apple.com>
- 26 • [www.youtube.com](http://www.youtube.com)
- 27
- 28



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

3 42. Apple has infringed, and continues to infringe, those same claims of the '902 Patent  
4 by contributing to the infringement by others, including customers who use the Accused Infringing  
5 Devices, by offering for sale, selling, and importing a component of an apparatus for use in practicing  
6 a patented process, constituting a material part of the invention, knowing the same to be especially  
7 made or adapted for use in infringing the '902 Patent, and not a staple article or commodity of  
8 commerce suitable for substantial non-infringing use.

9 43. For example, the portion of the software that causes the Accused Infringing Devices  
10 to operate as described above is a component of an apparatus for use in practicing a patented process.  
11 The software is a material part of the claimed inventions and is not a staple article or commodity of  
12 commerce suitable for substantial non-infringing use.

13 44. Apple has been on notice of the '902 Patent since, at the latest, the service of the  
14 Complaint. By the time of trial, Apple will have known and intended (since receiving such notice)  
15 that its continued actions would actively induce, and contribute, to the infringement of claims of the  
16 '902 Patent.

17 45. Apple may have infringed the '902 Patent through other software and devices utilizing  
18 the same or reasonably similar functionality, through the sale and distribution of third party apps,  
19 such as Pedometer and Stepz, Runtastic, Microsoft Band, and Strava Running, that allow a user of  
20 iPhones, iPads, and Watches to count steps or other periodic human motions by monitoring for motion  
21 signatures indicative of user motion, for tracking, and absent such signatures entering a sleep/idle  
22 mode, as described above. Uniloc reserves the right to discover and pursue all such additional  
23 infringing software and devices.

24 46. Uniloc has been damaged by Apple's infringement of the '902 Patent.  
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**PRAYER FOR RELIEF**

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

(A) declaring that Apple has infringed the '508, '723, and '902 Patents;

(B) awarding Uniloc its damages suffered as a result of Apple's infringement of the '508, '723, and '902 Patents;

(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: January 30, 2018

*/s/ James J. Foster*

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