

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNILOC USA, INC., ET AL.,**

**Plaintiffs,**

**v.**

**ACTIVISION BLIZZARD, INC.,  
ET AL.,**

**Defendants.**

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**CAUSE NO. 6:13-CV-256**

**CONSOLIDATED LEAD CASE**

**ORDER**

On November 17, 2014, the Court heard oral arguments on the following pretrial motions. Based on the parties' briefing and arguments, the Court rules as follows:

- The Court **GRANTS-IN-PART** and **DENIES-IN-PART** Defendant Electronic Arts, Inc.'s ("EA") Motion for Summary Judgment of Non-infringement (Docket No. 393). The Court **GRANTS** the Motion with respect to EA Access and **DENIES** the Motion with respect to EA Origin, with opinion to follow.
- The Court **DENIES** Defendant Activision Blizzard, Inc.'s ("Blizzard") Motion for Summary Judgment of Non-infringement (Docket No. 396).
- The Court **DENIES** Defendants' Motion for Summary Judgment on Pre-Suit Damages (Docket No. 395).
- The Court **DENIES** Defendants' Motion for Summary Judgment of Invalidity for Indefiniteness (Docket No. 397).

- The Court **DENIES** Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg S.A.’s (collectively, “Uniloc”) Motion to Strike Blizzard’s Notice of Supplemental Evidence for Claim Construction (Docket No. 432).
- The Court **DENIES** Uniloc’s Motion to Strike the Supplemental Report of Dr. Putnam (Docket No. 418). However, the Court **ORDERS** EA to make Mr. Zvenigorodsky available to Uniloc for a one-hour deposition prior to **December 1, 2014**.
- The Court **DENIES** Uniloc’s Motion to Exclude Opinions of Dr. Putnam (Docket No. 443).
- The Court **GRANTS-IN-PART** and **DENIES-IN-PART** Blizzard’s Motion to Exclude Opinions of Dr. Kerr (Docket No. 394). The Court **GRANTS** the Motion with respect to Dr. Kerr’s comparison of Blizzard’s profit margins before and after the application of his proposed royalty rate. The Court **DENIES** the Motion with respect to Dr. Kerr’s royalty rates for subscription and non-subscription games and Dr. Kerr’s use of the Sony settlement.
- The Court **GRANTS-IN-PART** and **DENIES-IN-PART** EA’s Motion to Exclude Opinions of Dr. Kerr (Docket No. 440).<sup>1</sup> The Court **GRANTS** the Motion with respect to Dr. Kerr’s opinion that user activations beyond the initial activation should be valued at a constant \$0.115 rate. Based on the evidence before the Court, Dr. Kerr’s report applies too linear a relationship between the first and all subsequent activations. If there is a quantifiable value for the second, third, and other activations, Uniloc may present evidence of that value at trial. The Court **DENIES** the Motion with respect to Dr. Kerr’s use of the Microsoft settlement to derive a proposed royalty rate.

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<sup>1</sup> The Court’s ruling on EA’s Motion for Summary Judgment of Non-infringement (Docket No. 393) may render Dr. Kerr’s analysis moot. To the extent that Dr. Kerr’s analysis remains relevant, the Court rules as set forth herein.

- The Court **GRANTS-IN-PART** and **DENIES-IN-PART** Uniloc's Fifth Emergency Motion to Compel (Docket No. 520). Consistent with the Court's instructions at the hearing, the Court **ORDERS** EA to produce worldwide financial data for EA Origin within **one week** from the date of this Order. The Court **DENIES** Uniloc's request for reasonable expenses and fees.
- The Court **DENIES AS MOOT** Blizzard's Motion for Leave to File a Sur-surreply to its Motion for Summary Judgment (Docket No. 551).

So **ORDERED** and **SIGNED** this 18th day of November, 2014.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS**  
**UNITED STATES DISTRICT JUDGE**