19-1922 (LEAD), -1923, -1925, -1926 (MEMBER CASES)

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

UNILOC 2017 LLC, UNILOC USA, INC., AND UNILOC LUXEMBOURG, S.A.,

Plaintiffs-Appellants,

v.

APPLE INC.,

Defendant-Appellee,

ELECTRONIC FRONTIER FOUNDATION,

Intervenor-Appellee.

Appeal from the United States District Court for the Northern District of California in Case No. 3:18-cv-00360-WHA before Judge William H. Alsup

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

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August 15, 2019

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CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4, counsel of record for Plaintiff-Appellants Uniloc 2017 LLC, Uniloc USA, Inc., and Uniloc Luxembourg, S.A. (collectively "Uniloc") certifies as follows:

1. The full name of every party represented by us is:

Uniloc 2017 LLC.

Uniloc USA, Inc.

Uniloc Luxembourg, S.A.

2. The names of the real parties in interest represented by us are:

Uniloc 2017 LLC.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the parties represented by us are:

Uniloc 2017 LLC:	Uniloc Corporation Pt. Ltd.
Uniloc USA, Inc.	None.
Uniloc Luxembourg, S.A.	CF Uniloc Holdings LLC.

4. The names of all law firms and the partners or associates that appeared for the parties represented by us in the trial court, or are expected to appear in this Court, are:

Prince Lobel Tye LLP:

Dean Bostock	Robert R. Gilman
Michael Ercolini	Paul J. Hayes
James J. Foster	Aaron S. Jacobs
Kevin Gannon	Daniel McGonagle

Nelson Bumgardner Albritton PC:

Edward R. Nelson III	Anthony Vecchione
Shawn Latchford	

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal:

None.

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STATEMENT OF RELATED CASES

This is a collateral appeal—regarding the district court's refusal to seal certain confidential information—arising out of four patent-infringement actions between the same parties:

- *Uniloc 2017 LLC et al. v. Apple Inc.*, No. 3:18-cv-00360-WHA (N.D. Cal.) ("the -360 case")
- *Uniloc 2017 LLC et al. v. Apple Inc.*, No. 3:18-cv-00363-WHA (N.D. Cal.) ("the -363 case")
- *Uniloc 2017 LLC et al. v. Apple Inc.*, No. 3:18-cv-00365-WHA (N.D. Cal.) ("the -365 case")
- *Uniloc 2017 LLC et al. v. Apple Inc.*, No. 3:18-cv-00572-WHA (N.D. Cal.) ("the -572 case")

In each case, Appellants Uniloc 2017 LLC, Uniloc USA, Inc., and Uniloc Luxembourg, S.A. (collectively "Uniloc") are the plaintiffs, and Appellee Apple Inc. ("Apple") is the defendant. The -360, -365 and -572 cases are stayed—save for the question of subject-matter jurisdiction—in light of instituted *inter partes* reviews. The -363 case was dismissed without prejudice on August 7, 2019, based upon a motion Uniloc filed on September 5, 2018.[1]

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[1] The status of the -363 case requires a bit of explanation, although it should not impact the outcome of this appeal.

On June 15, 2018, the claims of the patent-at-issue in the -363 case were held to be drawn to patent-intelligible subject matter by the Western District of Washington in another case. *See Uniloc USA, Inc. v. HTC Am., Inc.*, No. C17-JRL, Dkt. No. 48 (W.D. WA June 15, 2018). Uniloc appealed that order to this Court on July 13, 2018. *See Uniloc USA, Inc. v. HTC AM., Inc.*, No. 18-2185 (Fed.

Similar procedural issues to the ones in this appeal also arose in *Uniloc USA, Inc. v. Motorola Mobility, LLC*, C.A. No. 17-1658 (CFC) (D. Del.).[2] But, because these issues relate to the filing of documents under seal, the law of the Third Circuit (rather than the Ninth Circuit) will control in the *Motorola* case.

PRELIMINARY STATEMENT

Uniloc respectfully submits that the district court made several mistakes of law in refusing to seal Uniloc's—and scores of third-parties'—confidential information. This information is contained in exhibits filed in the course of Apple's (denied) motion to dismiss for lack of subject matter jurisdiction. The motions to seal this information were filed by both parties, and opposed by no parties.

First, the district court made a mistake of law in its identification of the public's supposed interest in the information at issue. According to Ninth Circuit law, documents filed with courts are presumptively public so that the public can

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Cir.). To avoid staying the -363 case pending the process of that appeal, Uniloc moved to dismiss the -363 case without prejudice on September 5, 2018. *See* Appx70, Dkt. No. 118. However, the district court below did not rule upon Uniloc's motion until August 7, 2019. *See* Appx76, Dkt. No. 193. The motions at issue in the current appeal were all filed and ruled upon in the intervening eleven months.

[2] Motorola copied verbatim much of Apple's substantive motion. Indeed, there are instances where Motorola forgot to change some of the text it copied from Apple's briefing to account for the different parties and production numbers.

monitor the reasoning of the court in a given case as to a given ruling. But, the district court explicitly acknowledged that the public did *not* need the information in question to confirm that court's substantive ruling was correct. Rather, the district court improperly focused on the public's supposed interest in the details of the information itself.

Second, even assuming the district court had identified the correct public interest, the district court abused its discretion in refusing to seal this information because it undervalued Uniloc and scores of third-parties' overwhelming, compelling interests in their protectable trade secrets. The materials the district court refused to seal include, *inter alia*, confidential details from 109 of Uniloc's patent licenses, details of Uniloc's financial agreements with its lender, Uniloc's income, and irrelevant information regarding third-parties. A patent holder like Uniloc (or Apple, for that matter) should not be forced to give up the right to keep such—at best indirectly relevant—trade secrets confidential.

Third, the district court below made mistakes of law and fact in refusing to follow this Court's opinion in *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013) ("*Apple v. Samsung* (Fed. Cir.)"). That opinion precludes the district court's ruling, and the lower court's failure to follow this Court's opinion was reversible error.

The district court's order should therefore be reversed, and the trade secret information should be ordered sealed.

STATEMENT OF JURISDICTION

Uniloc appeals from the district court's January 17, 2019, Order Re: Sealing of Order on Motion to Dismiss and Motion to Join Party, Appx30; January 17, 2019, Order Re: Administrative Motions to File Under Seal and Motion to Intervene, Appx31-32; and May 7, 2019, Order on Motions for Leave to File a Motion for Reconsideration, to File Under Seal, and to Intervene and Order Vacating Hearing, Appx33-37.[3]

The district court's May 7 Order denied Uniloc's motion for leave to file for reconsideration as to the January 17 Orders, and gave Uniloc until May 22, 2019, to appeal or file unredacted versions of the documents on the public record. Appx36. Uniloc filed this appeal on May 21, 2019. Appx56, Dkt. No. 189.

The district court has jurisdiction over the proceedings below pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367. This Court would have jurisdiction over an appeal from a final judgment in this case under 28 U.S.C. § 1295(a)(1), because Uniloc asserted claims for patent infringement.

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[3] All relevant pleadings were filed in parallel in each of the cases below. To avoid quadruplicate entries in the Joint Appendix, all items from the record below are from the docket of the -360 case. So too, to avoid redundant citations, all citations to the record below as "Dkt. No. ###" are to the -360 case's docket.

This Court has jurisdiction over this non-final appeal because, in the Ninth Circuit, "an order denying a motion to unseal or seal documents is appealable either as a final order under 28 U.S.C. § 1291 or as a collateral order." *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (internal quotation marks and citation omitted).

STATEMENT OF ISSUES

1. Whether the district court applied the incorrect standard of law by balancing [a] the public's supposed interest in access to the particular, substantive information to be sealed against [b] Uniloc and the third-parties' interests in protecting their trade secrets; as opposed to correctly balancing [a] the public's interest in monitoring the reasoning of the court against [b] Uniloc and the third-parties' interests in protecting their trade secrets.

2. Whether the district court abused its discretion by refusing to seal discrete portions of a limited subset of Uniloc and third-party documents, which documents contain valuable and fiercely protected trade secrets.

3. Whether there is any reason to deviate from the reasoning and outcome of this Court's ruling in *Apple v. Samsung* (Fed. Cir).

STATEMENT OF THE CASE

This appeal relates to the district court's refusal to redact or seal certain documents. In particular, Uniloc seeks to lightly redact thirteen of Uniloc's most

confidential documents, as well as two memoranda of law, three declarations by the parties, one declaration by a third-party, and excerpts of two depositions. Uniloc also seeks to file under seal seven confidential declarations submitted by third-parties. These requests are targeted towards financial information, Uniloc's proprietary systems and/or the confidential information of third-parties. As detailed in Attachment A to this Brief, Uniloc already agreed to unseal upwards of 90% of the materials originally filed under seal or redacted by the parties, including fourteen documents that were previously sealed in their entirety. *See* Attachment A.

To understand why the few remaining materials should be redacted or filed under seal, some background is required. As is relevant to the immediate appeal, Uniloc USA and Uniloc Luxembourg sued Apple for patent infringement in four separate cases in the Eastern District of Texas. Apple moved to transfer these cases—along with several others between the parties—to the Northern District of California, which motion was granted in December 2017. The four cases on appeal transferred in January 2018 and were assigned to Judge Alsup.

In mid-2018, a number of Uniloc-related entities entered into a series of corporate transactions which resulted in a new entity, Uniloc 2017, as the assignee

of the patents-in-suit.[4] So, the Uniloc parties filed a Rule 25 motion to join Uniloc 2017 as the patent owner on August 23, 2018. Appx50, Dkt. No. 119. Separately, on September 14, 2018, the district court stayed these cases pending IPRs, but agreed to allow Apple to file a motion challenging Uniloc's standing and subject matter issues. Appx51, Dkt. No. 131.

On October 25, 2018, Apple moved to dismiss for lack of subject matter jurisdiction. Appx262-293. Apple argued that the Uniloc entities had granted their creditor, Fortress Credit Co. LLC ("Fortress"), a license with the right to sublicense in the event of a default. Apple further argued that Uniloc had defaulted on at least one of the terms of Uniloc's loan with Fortress, specifically that the agreement required Uniloc to obtain a certain amount of licensing revenue over a certain period of time, and that Uniloc fell short. This, Apple argued, led to default and thus a license to Fortress. And so, Apple argued, Uniloc allegedly lacked the right to exclude Apple from practicing the patents.

On November 12, 2018, Uniloc opposed Apple's motion and, in the same brief, replied in support of Uniloc's Rule 25 motion. Appx423-438. Uniloc explained that Fortress never obtained a sublicense. Indeed, Fortress included a

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[4] This Court discussed the assignment to Uniloc 2017 in an unrelated appeal, *Uniloc USA, Inc. et al. v. ADP, LLC et al.*, Nos. 2018-1132, -1346, 2019 WL 2245938, at *1-4 (Fed. Cir. May 24, 2019) ("*ADP*").

declaration attesting that Fortress did not believe Uniloc was in default, and so Fortress never obtained a sublicense. Appx439-443. Apple filed its reply on November 27, 2018. Appx465-485.

On January 17, 2019, Judge Alsup denied Apple's motion. Appx505-514 (sealed order). First, he concluded that "no relevant event of default existed at the time plaintiffs filed the suits. As such, Fortress could not have exercised its right to sublicense the patents-in-suit to Apple. Accordingly, [Uniloc USA and Uniloc Luxembourg] had initial standing to sue."[5] Appx511.

Second, Judge Alsup ruled that Uniloc 2017 had standing and would be added as a plaintiff.[6] Appx512-513.

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[5] This Court's *ADP* opinion came to a similar conclusion. In the *ADP* case, several appellees filed a motion in the midst of the appeal, arguing that Uniloc lost standing when (1) Uniloc allegedly breached an agreement with IBM, a third-party; (2) the alleged breach had given IBM the right to sublicense the patents Uniloc owned; and (3) such alleged right to sublicense deprived the court of jurisdiction over an action based upon those patents. This Court disagreed:

> Movants' argument is predicated on the existence of a breach of the 2016 Uniloc-IBM Agreement. But Movants have not shown that IBM, which is not a party to this litigation, considers Uniloc to be in breach or has asserted a right to sublicense and release Movants from liability relating to the patents-at-issue. Only ADP and Movants here have asserted a breach of the 2016 Uniloc-IBM Agreement. But neither ADP nor Movants are parties to the Agreement.

ADP, 2019 WL 2245938, at *3.

[6] Again, this Court's *ADP* ruling came to a similar result. *See ADP*, 2019 WL 2245938, at *1 (recognizing that the transfer of rights from Uniloc USA and

As noted above, the substantive correctness of the district court's ruling denying Apple's motion to dismiss is not at issue in this appeal. Rather, this description is provided to understand the context of the motions to file under seal which accompanied each of the parties' briefs (and Uniloc's follow-up motion for reconsideration), to which we will now turn.

The Northern District of California's Civil Local Rule 79-5 sets forth the procedures for filing documents under seal. *See* N.D. Cal. Civil L.R. 79-5(a) ("L.R."). In particular, per L.R. 79-5(d), a party must file "an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11," accompanied by a declaration, proposed order, redacted version of the document to be sealed and unredacted version of that document. L.R. 79-5(d)(1). If the document was designated as confidential by the opposing party or a non-party pursuant to a protective order, then the "Designating Party" must submit a declaration within *four days* "establishing that all of the designated material is sealable." L.R. 79-5(e)(1).

Apple filed its motion to dismiss around 10:30 p.m. ET on Friday, October 25, 2018. The motion included a 25-page memorandum, Appx262-293; a four-page declaration, Appx294-298; a two-page appendix, Appx411-412; and more

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Uniloc Luxembourg "to Uniloc 2017 did not divest this court of jurisdiction or the ability to substitute or join a successor-in-interest").

than 100 pages of documents that Uniloc had designated as confidential pursuant to Judge Alsup's Protective Order, Appx299-410; *see also* Appx1-29. Apple concurrently filed an administrative motion to redact the memorandum and declaration, and to seal Uniloc's documents and the appendix. Appx255-258. Uniloc had no advanced notice of Apple's particular arguments and the documents upon which Apple would rely. So—in addition to preparing its opposition to the substantive motion—Uniloc spent the ensuing Saturday through Tuesday reviewing the materials and preparing a declaration detailing how the to-be-sealed documents contained confidential information, comprising trade secrets. Appx413-416.

Uniloc's opposition to Apple's motion included a memorandum, Appx423-438; a declaration, Appx439-443; and an exhibit, Appx444-457. Uniloc filed an administrative motion to redact the opposition and seal the accompanying documents. Appx417-422.

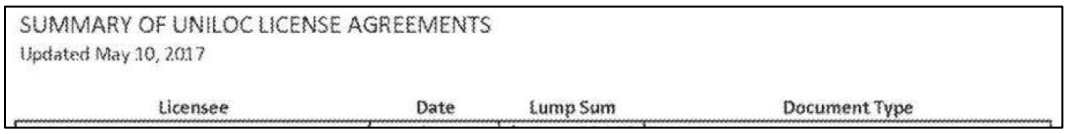
Apple's reply included a redacted 15-page memorandum, Appx465-485; a redacted declaration, Appx486-488; and another 13 pages of sealed exhibits, Appx489-501. Apple filed an administrative motion to file under seal, Appx458-461, and Uniloc filed a declaration in support, Appx502-504.

On January 9, 2019, just one day before oral arguments on Apple's motion to dismiss, third-party Electronic Frontier Foundation ("EFF") moved to intervene in order to oppose the parties' motions to seal. Appx53, Dkt. No. 152.

On January 17, 2019, four days before Uniloc's deadline to respond to EFF's motion to intervene, the district court denied Apple's motion to dismiss and granted Uniloc's motion to join Uniloc 2017 as a party. Appx505-514 (sealed Order on Motion to Dismiss). The district court granted EFF's motion to intervene as to appellate review only. Appx31-32 ("Order on Motions to File Under Seal"). As is most relevant to the instant appeal, the district court denied Uniloc and Apple's motions to seal with respect to the motion to dismiss. *Id.* Finally, the district court issued an order sealing the Order on Motion to Dismiss for two weeks, pending appellate review. Appx30 ("Order re Sealing of Order").

Uniloc filed an unopposed motion to stay the deadlines of the Order re Sealing of Order, which the district court granted. Appx515-516. The district court agreed that the materials subject to the parties' motions to seal would remain under seal through (at least) February 16, 2019, to give Uniloc time to move for leave to file a motion reconsideration under L.R. 7-9 or seek appellate review. The court further ordered that these materials would remain under seal until the completion of this process, including appeal. *Id.*

The documents for which Uniloc still seeks confidentiality will be addressed in detail below. *See infra*, §§ II.C.1-II.C.12. But, one deserves particular attention. Exhibit A accompanying Apple's motion to dismiss is a revenue sharing, note and warrant purchase agreement between some Uniloc entities and Fortress. Appx299-324 (Dkt. No 135-2).[7] While the entire agreement includes a significant amount of confidential information, the most important information (for present purposes) is at the end. The last three pages include a table of the 109 of licenses Uniloc entered into between 2010 and mid-2017. Appx322-324. This list identifies the licensee, the date of the license, the amount paid and the license type for each license:



SUMMARY OF UNILOC LICENSE AGREEMENTS
Updated May 10, 2017

Licensee	Date	Lump Sum	Document Type

[7] Most of the documents still at issue were originally attached to the Winnard Declarations accompanying Apple's motion to dismiss and reply brief. Appx294-298, Appx486-488. As will be discussed below, Uniloc's proposed revised redactions to those exhibits were attached as exhibits to the Jacobs Declaration accompanying Uniloc's motion for leave to file a motion for reconsideration. Appx571-585. Unfortunately, the Winnard and Jacobs exhibit numbers could not line up. Thus, for example, "Exhibit A" to the Winnard Declaration, referenced in the text above, *see* Appx299-324, is "Exhibit B" to the Jacobs Declaration, *see* Appx619-645. Attachment A includes cross-reference information.

For the sake of consistency, exhibits will be referred to by the designations used in the Winnard Declarations.

Each such set of information is covered by a separate license agreement. Appx573, ¶ 4. Almost every one of these license agreements includes a confidentiality provision, wherein Uniloc and the third-party licensee state that the information contained therein is proprietary and confidential. *Id.* And, the vast majority of these agreements were entered into under the auspices of protective orders signed by district court judges. *See, e.g.*, Appx851-872 *Uniloc USA, Inc. v. Microsoft Corp*., No. 03-CV-440 (WES) (D.R.I. Apr. 30, 2014) (Protective Order).

This bears repeating: More than one-hundred entities signed license agreements with Uniloc, under which those third-parties expected to have their information remain confidential pursuant to court-issued protective orders. The court below vitiated *all* those agreements and court-issued protective orders.

Between the district court's initial refusal to seal the documents and information, and the district court's (new) deadline to file for reconsideration or appeal, Uniloc and third-party Fortress undertook another line-by-line review of each document. And, Uniloc's counsel reached out to all of the licensees whose information was disclosed in Exhibit A. Appx537-538, ¶¶ 13-17; Appx573-581, ¶¶ 5-10.

Following these efforts, on February 15, 2019, Uniloc filed a motion for leave to file a motion for reconsideration. Appx545-552; *see* N.D. Cal. Civil L.R. 7-9(a) (requiring a party to move for leave before filing a motion for

reconsideration). The substantive motion for reconsideration that Uniloc proposed to file was included as an exhibit. Appx553-570. Therein, Uniloc retrenched the proposed redactions and documents to be filed under seal, such that upwards of 90% of the previously confidential materials would be made public. *See* Attachment A.

Uniloc's motion for leave was accompanied by a fifteen-page declaration detailing, on a word-by-word basis, the individual grounds for redacting or sealing the remaining 10%. *See* Appx571-585. Some of the exhibits accompanying Uniloc's motion for leave were the subject of one last motion to file under seal. Appx527-533. These sealed exhibits included, *inter alia*, declarations from seven third-parties. Appx659-683. Another twenty-four third-parties asked Uniloc to relay specific, sealed statements or requests to the court. Appx574-581, ¶¶ 8-10.w.i.

Apple did not oppose Uniloc's motions.

On March 11, 2019, EFF filed a "Second Motion to Intervene for Limited Purpose of Opposing Uniloc's Motion for Reconsideration." Appx55, Dkt. No. 177. The hearing date on EFF's motion was set for April 18, 2019, which the district court pushed back to May 9, 2019, Appx55, Dkt. No. 182.

On May 2, 2019, counsel for Uniloc reached out to counsel for Apple and EFF to note the following:

- Since February 15, several more licensees contacted Uniloc to insist that their information remain confidential.
- Uniloc and Microsoft agreed to thinly redact—rather than seal—Exhibit DD to Apple's motion. *See* Appx772.
- Uniloc and Fortress agreed to thinly redact—rather than seal—Exhibit GG to Apple's motion. *See* Appx775.

Appx765. EFF and Apple indicated that they did not object to Uniloc supplementing the record. Appx780. As there is no procedure in the Northern District of California to submit such revised redactions to the court, Uniloc's counsel intended to inform the district court at the May 9 oral arguments.

On May 7, 2019, the district court issued its Order on Motions for Leave to File a Motion for Reconsideration, to File Under Seal, and to Intervene and Order Vacating Hearing. *See* Appx33-37. This Order began by stating that "compelling reasons supported by factual findings that outweigh the general history of access and the public policies favoring disclosure" are required to justify sealing documents. Appx34.

Despite the painstaking details laid out in Uniloc's fifteen-page, 5000-plus word declaration, *see* Appx571-585; despite twelve declarations from third-parties, *see* Appx646-683; Appx757-758; and despite explicit requests from twenty-two other third-parties that their information remain under seal, *see* Appx574-581, ¶¶ 8-10.w.i; the district court concluded:

> This order reiterates the prior order denying plaintiffs' initial request to seal: generalized assertions of potential competitive harm fail to outweigh the public's right to learn of the ownership of the patents-in-suit, which patents grant said owner the right to publicly exclude others (Dkt. No. 159 at 2).

Appx34.

Continuing, the district court weighed [a] the public's interest in the substantive information disclosed in Uniloc's documents against [b] Uniloc's (and the third-parties') interest in maintaining their confidentiality:

> [T]he public has an especially strong interest in learning the machinations that bear on the issue of standing in the patent context. Furthermore, the United States government bestows entities such as Uniloc the right to control the use of the purported inventions at issue. Because Uniloc's rights flow directly from this government-conferred power to exclude, the public in turn has a strong interest in knowing the full extent of the terms and conditions involved in Uniloc's exercise of its patent rights and in seeing the extent to which Uniloc's exercise of the government grant affects commerce.
>
> The impact of a patent on commerce is an important consideration of public interest. One consideration is the issue of marking by licensees. Another is recognition of the validity (or not) of the inventions. Another is in setting a reasonable royalty. In the latter context, patent holders tend to demand in litigation a vastly bloated figure in "reasonably royalties" compared to what they have earned in actual licenses of the same or comparable patents. There is a public need to police this litigation gimmick via more public access. We should never forget that every license has force and effect only because, in the first place, a patent constitutes a public grant of exclusive rights.

Id.

The district court did not attempt to weigh [a] the public's need to see the documents to understand the district court's substantive ruling on Apple's motion to dismiss against [b] Uniloc's (and the third-parties') interest in maintaining their confidentiality. Rather, the district court admitted that this balance would tip in Uniloc, Fortress and the third-parties' favor: "Apple's motion to dismiss for lack of standing did not directly depend upon information regarding the specific dollar amounts, financial terms, and names of the licensees in the various agreements (with Fortress or third-party licensees) . . . ." Appx35.

The district court then distinguished this Court's ruling in *Apple v. Samsung* (Fed. Cir.), by stating that "the parties there sought to seal product-specific financial information (such as costs, sales, profits, and profit margins), as opposed to the licensing-specific financial information at issue here." Appx35.

Finally, the district court denied EFF's motion to intervene other than "for the purpose of opposing plaintiffs if they appeal the instant order." Appx36.

Uniloc filed this appeal on May 21, 2019. Appx55, Dkt. No. 189.

STATEMENT OF FACTS

In the course of its motion for reconsideration, Uniloc agreed to make public about 90% of the previously redacted or sealed materials. Attachment A to this Brief is a table which lists every document that was filed under seal or redacted at any point in the briefing, with cross-references to the Joint Appendix. The

following table sets forth the few remaining documents and information that are the subject of this appeal:

Document	Description
Apple's Motion to Dismiss	Redactions to financial terms. Appx586-618; *compare id. with* Appx262-293 (redacted by Apple).
Declaration of Doug Winnard in Support of Defendant Apple Inc.'s Motion to Dismiss	Redactions covering confidential information. Appx294-298 (redacted by Apple).
Winnard MtD Decl. Ex. A: Conformed Revenue Sharing and Note and Warrant Purchase Agreement	Redactions to financial terms and table of licenses. Appx619-645; *compare id. with* Appx299-324 (sealed).
Winnard MtD Decl. Ex. C: Revenue Sharing and Note and Warrant Purchase Agreement	Redactions to financial terms. Appx684-688; *compare id. with* Appx322-335 (sealed).
Winnard MtD Decl. Ex. D: Deposition transcript of Levy	Redactions to financial terms and third-parties. Appx689-697; *compare id. with* Appx336-343 (sealed).
Winnard MtD Decl. Ex. E: Deposition transcript of Turner	Redactions to financial terms and third-parties. Appx698-706; *compare id. with* Appx344-351 (sealed).
Winnard MtD Decl. Ex. G: Uniloc Luxembourg and Uniloc USA's Disclosure Schedules	Redactions to financial terms. Appx707-711; *compare id. with* Appx355-358 (sealed).
Winnard MtD Decl. Ex. P: License Agreement between Uniloc 2017 LLC and Uniloc Licensing USA	Redactions to information regarding proprietary software platform. Appx712-717; *compare id. with* Appx380-384 (sealed).
Winnard MtD Decl. Ex. S: Note Purchase and Security Agreement between Uniloc 2017 and CF Uniloc Holdings	Redactions to financial terms. Appx718-726; *compare id. with* Appx392-399 (sealed).

Document	Description
Apple Inc.'s Reply in Support of Motion to Dismiss	Redactions to financial terms. Appx727-748; *compare id. with* Appx465-485 (redacted by Apple).
Declaration of Doug Winnard in Support of Apple Inc.'s Reply	Redactions to financial terms. Appx749-752; *compare id. with* Appx486-488 (redacted by Apple).
Winnard MtD Reply Decl. Ex. DD: Settlement and License Agreement between Microsoft and Uniloc	Redactions to financial terms. Appx772-774; *compare id. with* Appx494-496 (sealed).
Winnard MtD Reply Decl. Ex. GG: Heads of Agreement between Fortress and Crag S. Uniloc's CEO	Redactions to financial terms. Appx775-779; *compare id. with* Appx497-501 (sealed).
Order on Motion to Dismiss and Join Party	Redactions to financial terms. Appx517-526; *compare id. with* Appx505-514 (sealed).
Declaration of Aaron S. Jacobs in Support of Plaintiff's Motion for Reconsideration	Redactions to financial terms and information regarding third-parties. Appx571-585.
Jacobs Decl. re Revised Redactions Ex. G: [Sealed] Declaration	Sealed declaration from a third-party. Appx659-662.
Jacobs Decl. re Revised Redactions Ex. H: [Sealed] Declaration	Sealed declaration from a third-party. Appx663-665.
Jacobs Decl. re Revised Redactions Ex. I: [Redacted] Declaration	Redacted declaration from a third-party. Appx666-669.
Jacobs Decl. re Revised Redactions Ex. J: [Sealed] Declaration	Sealed declaration from a third-party. Appx670-672.
Jacobs Decl. re Revised Redactions Ex. K: [Sealed] Declaration	Sealed declaration from a third-party. Appx673-675.
Jacobs Decl. re Revised Redactions Ex. L: [Sealed] Declaration	Sealed declaration from a third-party. Appx676-677.

Document	Description
Jacobs Decl. re Revised Redactions Ex. M: [Sealed] Declaration	Sealed declaration from a third-party. Appx678-680.
Jacobs Decl. re Revised Redactions Ex. N: [Sealed] Declaration	Sealed declaration from a third-party. Appx681-683.

SUMMARY OF THE ARGUMENT

The district court's orders are flawed in three respects.

First, the district court made a mistake of law in balancing [a] the public's supposed interest in access to the particular, substantive information against [b] Uniloc and the third-parties' interest in their trade secrets. Instead, under Ninth Circuit law, the court was supposed to weigh [a] the public's interest in the monitoring the decisions of the court against [b] Uniloc and the third-parties' interest in their trade secrets.

Second, even ignoring the district court's mistake of law, and even assuming the pubic did have an interest in the particular information disclosed in the documents at issue, the district court abused its discretion by refusing to seal Uniloc and the third-parties' trade secrets. Financial and licensing information indisputably qualify as trade secrets. Disclosure of this detailed information would give Uniloc's future licensing partners an unfair, asymmetric advantage in negotiations. It would identically disadvantage the third-parties. The district court

made a mistake of law by failing to give the appropriate weight to these compelling interests.

Third, contrary to the district court's statement, the current situation is a near-perfect match to this Court's *Apple v. Samsung* ruling. The district court's attempt to distinguish that case involved a clear mistake of fact, and the district court's failure to adhere to that case was a clear mistake of law.

STANDARD OF REVIEW

As this appeal does not involve substantive issues of patent law, this Court applies the law of the regional circuit in which the district court sits, *i.e.*, the Ninth Circuit. *Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1220. When reviewing a district court's order sealing or unsealing judicial records, the Ninth Circuit reviews *de novo* whether the district court used the correct legal standard. *In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012).

The district court's decision to seal or unseal judicial records is reviewed for abuse of discretion, provided the district court applied the correct law. *Id.* Relying upon an erroneous legal standard vitiates the abuse of discretion standard of review. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) ("*If* the district court conscientiously balances the competing interests and

articulates compelling reasons supported by specific factual findings, its decision will be reviewed only for an abuse of discretion.") (emphasis added).

A district court abuses its discretion if it "bases its decision on an erroneous legal standard or clearly erroneous findings of fact," *Earth Island Inst. v. Carlton*, 626 F.3d 462, 468 (9th Cir. 2010), or if the reviewing court "has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors," *Smith v. Jackson*, 84 F.3d 1213, 1221 (9th Cir. 1996).

ARGUMENT

I. The district court made a mistake of law by balancing Uniloc and the third-parties' interests in their trade secrets against the public's supposed interest in the contents of those trade secrets, rather than against the public's interest in the accountability of the court.

Although the cases below have garnered some outside attention—sufficient to induce a third-party, EFF, to intervene—the public interest in *the district court's reasoning* should not be confused with the public's interest in examining the *specific substance* contained within the exhibits that the district court ordered unsealed. The former is relevant; the latter is not.

Uniloc and the more than 100 third-parties' interests in avoiding the loss of their trade secrets is a compelling reason to avoid public disclosure, as will be discussed in more detail below. *See infra* § II. And, there is no countervailing justification for the disclosure of the particular materials at issue, as even the

district court admitted that the substance of those materials is not directly dispositive to its ruling. If anything, the public's interest rests in protecting valuable trade secrets, rather than promoting disclosure for its own sake.

A. Documents filed with courts are presumed to be publicly accessible so the public may hold the courts accountable for their decisions.

Documents filed with courts are presumed to be accessible to the public to allow the public to hold courts accountable for their reasoning. In short, the public should presumptively be able to confirm *in the given case* that the court came to the right conclusion *as to the particular decision*. There is no generalized right to access documents just because the information contained in them is interesting.

Access to judicial records is adjunct to several foundational principles of the American justice system, including open courts, public trials, and judicial accountability. *See Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 606 (1982) ("Public scrutiny . . . enhances the quality and safeguards the integrity of the factfinding process, with benefits to . . . society as a whole. Moreover, public access . . . fosters an appearance of fairness, thereby heightening public respect for the judicial process. And in the broadest terms, public access . . . permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government."). As the Ninth

Circuit explained in *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016):

> "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Commnc'ns, Inc.*, 435 U.S. 589, 597 (1978). Following the Supreme Court's lead, "we start with a strong presumption in favor of access to court records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir.2003).

Continuing—and this is key—the Ninth Circuit explained the touchstone of the public's interest: "The presumption of access is 'based on the need for federal courts, although independent—indeed, particularly because they are independent—to have a measure of accountability and for the public to have confidence in the administration of justice.'" *Id.* (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir.1995)); *see also, e.g., Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002) ("[T]he public policy reasons behind a presumption of access to judicial documents [are] judicial accountability [and] education about the judicial process . . . .").

B. The district court focused on the public's supposed interest in the substance of the documents, rather than whether the information to be disclosed was necessary to understand the court's decision.

The district court below did *not* order the documents unsealed "to have a measure of accountability and for the public to have confidence in the administration of justice." *Center for Auto Safety*, 809 F.3d at 1096. As discussed below, *see infra* §§ II.C, all of the previously sealed information that the parties

cited or upon which the district court relied was already made public. Thus, the district court's rationales for unsealing the remaining information had nothing to do with anything actually still under seal, because none of it is needed to hold the district court to account. Instead, the district court enumerated the following rationales:

- "[T]he public's right to learn of the ownership of the patents-in-suit, which patents grant said owner the right to publicly exclude others."
- "[T]he public has an especially strong interest in learning the machinations that bear on the issue of standing in the patent context."
- "[T]he United States government bestows entities such as Uniloc the right to control the use of the purported inventions at issue. Because Uniloc's rights flow directly from this government-conferred power to exclude, the public in turn has a strong interest in knowing the full extent of the terms and conditions involved in Uniloc's exercise of its patent rights and in seeing the extent to which Uniloc's exercise of the government grant affects commerce."
- "The impact of a patent on commerce is an important consideration of public interest."
- "One consideration is the issue of marking by licensees."
- "Another [consideration] is recognition of the validity (or not) of the inventions."
- "Another [consideration] is in setting a reasonable royalty."

Appx34. Whatever the public's interest in any or all of these things, the sealed and redacted information is irrelevant to all of them. And so, these rationales are irrelevant to the balancing test that the court is supposed to use. *See, e.g.*, *Pintos v.*

Pac. Creditors Ass'n, 605 F.3d 665, 679 (9th Cir. 2010) (recognizing that the "[r]elevant factors" include the "public interest in understanding the judicial process and whether disclosure of the material could result in improper use of the material for scandalous or libelous purposes or infringement upon trade secrets.") (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). Instead, the district court was supposed to consider whether the specific information was necessary to the public's understanding of the court's reasoning.

C. The to-be-unsealed information is irrelevant to understanding the district court's reasoning.

As the district court acknowledged, "Apple's motion to dismiss for lack of standing did not directly depend upon information regarding the specific dollar amounts, financial terms, and names of the licensees in the various agreements (with Fortress or third-party licensees) . . . ." Appx35. This is eminently sensible. The crux of Apple's motion was the argument that "Uniloc Lux and Uniloc USA failed to meet the revenue covenant of Section 6.2.2 of the Revenue Sharing Agreement." Appx595. In short, Uniloc was allegedly required to license its patents for at least a certain amount of money by a certain deadline, which Uniloc allegedly did not do. It does not matter whether the threshold was $10,000,000 or $10. Neither does it matter whether Uniloc's actual income was $9,999,999 or $9.

What mattered to Apple's argument was that by the given date (whatever it was), the threshold (whatever it was) was higher than Uniloc's income (whatever it was):

By [Date]: [Threshold] > [Income]

Without attempting to beat a dead horse, *the district court stated that "specific dollar amounts, financial terms, and names of the licensees in the various agreements (with Fortress or third-party licensees)" did not matter to the district court's reasoning*. Appx35. So, the public has no recognized interest in the disclosure of that information. *See, e.g., Hagestad*, 49 F.3d at 1434; *EEOC v. Erection Co., Inc.*, 900 F.2d 168, 170 (9th Cir.1990); *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL 841274, at *3 (N.D. Cal. Mar. 10, 2010) (sealing material that would "do little to aid the public's understanding of the judicial process, but have the potential to cause significant harm to [a party's] competitive and financial position within its industry").

The district court thus committed a mistake of law and should be reversed. Indeed, by failing to balance the proper factors, the district court's decision is no longer subject to the heightened "abuse of discretion" standard. *Foltz*, 331 F.3d at 1135. To avoid further delay and the possibility of yet another appeal, Uniloc respectfully requests that this Court confirm that the redactions and sealed documents should remain confidential, as discussed below.

II. The district court abused its discretion by refusing to seal or redact discrete portions of a limited subset of documents which contain Uniloc and many third-parties' invaluable and fiercely protected trade secrets.

Even assuming the district court below had weighed the correct public interest; even assuming the documents at issue were essential to understanding the district court's reasoning; and even assuming the abuse of discretion standard still applied, it was still a mistake of law to unseal these documents. They disclose some of Uniloc and the one-hundred-plus licensees' most valuable trade secrets, as well as irrelevant information about other third-parties, all of which should remain confidential. Thus, even if the public did have an interest in seeing the documents, Uniloc and the third-parties have an overwhelming, compelling interest in favor of sealing them.

A. The presumption of public access to court documents is rebuttable, including specifically where public access would disclose valuable trade secrets.

"[T]he right to inspect and copy judicial records is not absolute." *Nixon*, 435 U.S. at 598. Rather, "'the common-law right of inspection has bowed before the power of a court to insure that its records' are not . . . sources of business information that might harm a litigant's competitive standing." *Id.* (quoting *In re Casewell*, 18 R.I. 835, 836, 29 A. 259 (1893)). In the Ninth Circuit, the question is whether there are "compelling reasons" to maintain the documents under seal. *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). In other words, even if the public has a legally cognizable interest in access to a given

document, the presumption of public access is rebutted where the document's owner establishes a compelling reason to keep it sealed.

The Ninth Circuit has held there are compelling reasons to seal where the release of particular "'court files *might have become* a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or *release trade secrets*." *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 598) (emphasis added); *see also, e.g., Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1221-28 (applying Ninth Circuit law) (reversing the district court; ordering sealed "market research reports [that] contain information that Apple's competitors could not obtain anywhere else"); *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) ("publication of materials that could result in infringement upon trade secrets has long been a factor that would overcome" presumption of public access).

"The most commonly accepted definition of trade secrets," *Aronson v. Quick Point Pencil Co.*, 440 U.S. 257, 266 (1979), which the Ninth Circuit has applied in the sealing context, is found in comment (b) to section 757 of the first Restatement of Torts. *See, e.g., In re Elec. Arts, Inc.*, 298 Fed. App'x 568, 569 (9th Cir. 2008). The Restatement defines "trade secret" as "any formula, pattern, device or compilation of information which is used in one's business, and which gives him *an opportunity* to obtain an advantage over competitors who do not know or use

it." Restatement of Torts § 757, cmt. b (1939) (emphasis added); *see also id.* (listing factors).[8]

The irreparable harm that would result from disclosure of trade secrets is as undeniable as it is obvious. *See, e.g.*, *Am. Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 741 (Fed. Cir. 1987) (recognizing harms of disclosure of confidential business information to competitors and collecting cases). "A trade secret once lost is, of course, lost forever." *North Atl. Instruments, Inc. v. Haber*, 188 F.3d 38, 49 (2d Cir. 1999) (quotation omitted).

Congress endorsed limitations on public access to trade secrets in judicial proceedings. For example, in bankruptcy proceedings, Congress mandated that judges "shall," upon a party's motion, deviate from the default rule that court filings are "public records . . . open to examination" in order to "protect an entity with

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[8] Though it differs in certain respects, the more recent Restatement (Third) of Unfair Competition § 39 (1995) is consistent with the first Restatement regarding the basic definition of "trade secret": "A trade secret is any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable and secret to afford an actual or potential economic advantage over others." The third Restatement further contemplates that "[a] trade secret can also relate to other aspects of business operations such as pricing and marketing techniques or the identity and requirements of customers." *Id.* cmt. d. A trade secret warrants protection so long as it "provide[s] an actual *or potential* economic advantage over others who do not possess the information. *The advantage, however, need not be great.*" *Id.* cmt. e (emphasis added).

respect to a trade secret or confidential research, development, or commercial information." 11 U.S.C. § 107.

Similarly, Exemption 4 of the Freedom of Information Act permits a federal agency to refuse disclosure of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4); *Food Mktg. Inst. v. Argus Leader Media*, No. 18-481, __ U.S. __, 2019 WL 2570624, at *7 (June 24, 2019) ("[W]here commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4.").

In fact, Congress imposed criminal penalties on government officials who disclose trade secret information without authorization. *See* 18 U.S.C. § 1905. So too, state law provides broad protections against disclosure of trade secrets, and at least 20 states even criminalize the misappropriation of trade secrets.[9]

[9] *See* Ala. Code § 13A-8-10.4 (West); Ark. Code Ann. § 5-36-107 (West); Cal. Penal Code § 499c (West); Colo. Rev. Stat. Ann. § 18-4-408 (West); Fla. Stat. Ann. § 812.081 (West); Ga. Code Ann. § 16-8-13 (West); La. Rev. Stat. Ann. §§ 14:73.1, 14:73.2 (West); Me. Rev. Stat. Ann. tit. 17-A, §§ 352, 353 (West); Mass. Gen. Laws Ann. ch. 266, § 30(4) (West); Minn. Stat. Ann. § 609.52 (West); N.H. Rev. Stat. Ann. §§ 637:2 (West); N.J. Stat. Ann. §§ 2c:20-1, 2c:20-3 (West); N.Y. Penal Law §§ 155.00, 155.05 (McKinney); Ohio Rev. Code Ann. § 6111.045 (West); Okla. Stat. Ann. tit. 21, § 1732 (West); 18 Pa. Cons. Stat. Ann. § 3930 (West); Tenn. Code Ann. § 39-14-138 (West); Tex. Penal Code Ann. § 31.05 (West); Wis. Stat. Ann. § 943.205 (West); Wyo. Stat. § 6-3-502 (West).

B. Sealable trade secrets include competitive business information, such as financial records, royalty rates and licensing information.

Courts within the Ninth Circuit regularly find compelling reasons to seal documents containing valuable, competitive business information, because they are trade secrets. For example, in *In re Electronic Arts*, the Ninth Circuit reversed a district court's denial of a request to seal "pricing terms, royalty rates, and guaranteed minimum payment terms found in a license agreement which were plainly within the definition of 'trade secrets.'" *In re Elec. Arts*, 298 Fed. App'x. at 569-70; *see also, e.g., Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1222.

Other non-public information regarding pricing strategy, business decision-making and financial records also constitute trade secrets that may be sealed. *Rodman v. Safeway, Inc.*, No. 11-cv-03003, 2014 WL 12787874, at *2 (N.D. Cal. Aug. 22, 2014); *see, e.g., Arista Networks, Inc. v. Cisco Sys., Inc.*, No. 16-cv-00923-BLF, 2018 WL 2010622, at *2-3 (N.D. Cal. Apr. 30, 2018) (sealing, *inter alia*, "highly confidential and sensitive information relating to Cisco's financial information and internal development strategies," "highly confidential and sensitive information relating to Arista's financial and customer information," and "confidential settlement terms between Cisco and third-party, Huawei Technologies"); *Juicero, Inc. v. iTaste Co.*, No. 17-cv-01921-BLF, 2017 WL 8294276, at *2 (N.D. Cal. Jun. 28, 2017) (sealing, *inter alia*, "confidential financial and business information"); *Van v. Language Line Servs., Inc.*, No. 14-

CV-03791-LHK, 2016 WL 3566980, at *2 (N.D. Cal. Jun. 6, 2016) (ordering sealed "the identities of Defendants' clients, billing rates, billing amounts, and the subject matter of calls"); *Transperfect Global, Inc. v. MotionPoint Corp.*, No. C 10-2590-CW, 2014 WL 4950082, at *1 (N.D. Cal. Sept. 25, 2014) (sealing, *inter alia*, "confidential financial and marketing information"); *see also, e.g.*, *McDonnell v. Southwest Airlines Co.*, 292 F. App'x 679, 680 (9th Cir. 2008) (affirming finding that "compelling reasons" supported denying public access to "documents contain[ing] trade secrets and confidential procedures and communications").

In the Northern District of California, licensing information in patent cases is routinely sealed "because disclosure could create an asymmetry of information in the negotiation of future licensing deals." *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-CV-01846-LHK, 2012 WL 4933287, at *2 (N.D. Cal. Oct. 16, 2012) ("*Apple v. Samsung* (N.D. Cal. October Order)"). Indeed, licensing information is almost a *per se* basis upon which to seal. *See, e.g.*, *In re Elec. Arts*, 298 F. App'x at 569-570; *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-cv-01846-LHK, 2012 WL 5988570, at *4 (N.D. Cal. Nov. 29, 2012) ("*Apple v. Samsung* (N.D. Cal. November Order)") ("The Ninth Circuit has held, and [the Northern District of California] has previously ruled, that pricing terms, royalty rates, and minimum payment terms of licensing agreements *plainly constitute trade secrets and thus are sealable.*") (emphasis added). As such, it should come as no surprise that the

judges of the Northern District of California, including, *inter alia*, Judges Chen,[10] Davila,[11] Freeman,[12] Gilliam,[13] Hixson,[14] Illston,[15] Koh,[16] LaPorte,[17] Orrick,[18] Tigar,[19] White,[20] and Wilken,[21] routinely seal licenses and licensing information.

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[10] *See, e.g.*, Appx824, *Abbvie Inc. v. Novartis Vaccines & Diagnostics, Inc.*, No. 17-cv-1815-EMC, slip op. at 1 (July 11, 2017).

[11] *See, e.g.*, Appx819, *PersonalWeb Techs LLC v. IBM Corp.*, No. 5:16-cv-01226-EJD, slip op. at 4 (N.D. Cal. July 27, 2017) (sealing pleadings and exhibits that "contain[] confidential business information, confidential financial information related to [the defendant] and third-parties, and confidential settlement and license terms relating to third-parties").

[12] *See, e.g.*, Appx816, *Finjan v. Blue Coat Sys., LLC*, No. 5:15-cv-03295-BLF, slip op. at 2 (N.D. Cal. Oct. 31, 2017) (sealing "information relating to [plaintiff's] confidential business and licensing practices").

[13] *See, e.g.*, *Synchronoss Techs., Inc. v. Dropbox, Inc.*, No. 16-cv-00119-HSG, 2018 WL 6002319, at *3 (N.D. Cal. Nov. 15, 2018) (sealing documents that "contain highly confidential, trade secret, and sensitive business information and practices of [plaintiff] and third-parties . . . including specific terms of confidential license and settlement agreements between [plaintiff] and third-party entities").

[14] *See, e.g.*, Appx788, *Finjan, Inc. v. Juniper Networks, Inc.*, No. 17-cv-05659-WHA (TSH), slip op. (N.D. Cal. July 1, 2019) (granting redactions regarding licenses) ("*Juniper Networks*").

Magistrate Judge Hixson's ruling in the *Juniper Networks* case is noteworthy for several reasons. First, the case was assigned to Judge Alsup and referred to Judge Hixson for discovery matters. Second, just as in the present case, the defendant filed the plaintiff's documents under seal. *See* Appx793, *id.*, Dkt. No. 542 (defendant's motion). Third, those sealed documents included information regarding plaintiff's licenses and licensing discussions. *See* Appx790, *id.*, Dkt. No. 552 (plaintiff's declaration). And, fourth, Judge Hixson initially refused to seal the documents in their entirety. *See* Appx789, *id.*, slip op. (N.D. Cal. June 25, 2019). But, Judge Hixson (on behalf of Judge Alsup) noted that at least some of the information—*including licensing information*—warranted protection, and so he instructed the plaintiff to come back with more targeted

redactions. The plaintiff did so, and Judge Hixson then granted the motion as to the retrenched redactions. *See* Appx788, *Juniper Networks*.

[15] *See, e.g.*, Appx845, *Bluestone Innovations LLC v. Nichia Corp.*, No. 3:12-cv-00059-SI, slip op. at 2 (N.D. Cal. Apr. 15, 2013) (sealing "documents [that] discuss confidential information, such as explicit details regarding negotiations in licencing [sic] agreements and internal decision-making processes").

[16] *See, e.g.*, *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-cv-01846-LHK, 2012 WL 3283478, at *6 (N.D. Cal. Aug. 9, 2012) ("*Apple v. Samsung* (N.D. Cal. August Order") ("[T]he Court will follow the Ninth Circuit's guidance and seal all information related to the payment terms of Apple's licensing agreements.").

[17] *See, e.g.*, *Dodocase VR, Inc. v. MerchSource, LLC*, No. 17-cv-07088, 2018 WL 5619799, at *1 n.1 (N.D. Cal. May 22, 2018) (sealing documents "containing confidential settlement information in the form of sensitive pricing information that could be used to Plaintiff's disadvantage by existing or potential licensees").

[18] *See, e.g.*, *Huawei Techs., Co., Ltd. v. Samsung Elecs. Co., Ltd.*, No. 3:16-cv-02787-WHO, 2018 WL 1784065, at *12 (N.D. Cal. Apr. 13, 2018) (sealing pleadings and exhibits related to licensing); Appx808, *Autodesk, Inc. v. Alter*, No. 3:16-cv-04722-WHO, slip op. at 2 (N.D. Cal. Sept. 5, 2017) (sealing in its entirety a license agreement between plaintiff and Walt Disney Pictures ("WDP") because "publication of these terms would put WDP at a notable negotiating disadvantage in future licensing negotiations. In addition, WDP is not a party."); *see also, generally*, Appx801, *id.*, slip op. (July 19, 2018) (sealing licensing information).

[19] *See, e.g.*, Appx830, *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, No. 12-cv-3844-JST, slip op. at 5 (Mar. 4, 2015) ("This exhibit contains information about assignments, and consulting and license agreements between a third party consultant and Specialized. The Court is satisfied that release of this information would result in an invasion of the third party's privacy, that Specialized would suffer competitive harm if this material were made public, and that there are therefore compelling reasons to file this exhibit in its entirety under seal. . . . More specifically, the Court is satisfied that disclosing the terms of these agreements would put Specialized at a disadvantage in future negotiations for similar agreements.") (citations omitted).

[20] *See, e.g.*, Appx827, *ChriMar Sys. Inc. v. Cisco Sys. Inc.*, No. 4:13-cv-01300-JSW, slip op at 3 (Aug. 12, 2016) (sealing entire license agreement).

Judge Alsup himself recognized that that disclosure of patent licensing information "would cause great and undue harm" to the both litigants and third-parties. Appx849, *Oracle Am., Inc. v. Google Inc.*, No. 3:10-cv-03561-WHA, slip op. at 2 (N.D. Cal. Jan. 10, 2012). Indeed, Judge Alsup acknowledged as much when he ordered sealed a license in another patent case *just one week* after denying Uniloc's motion for reconsideration:

> [Plaintiff Finjan sought to seal Exhibit 7. Defendant] Juniper declares that Exhibit 7, which consists of a confidential license agreement, constitutes a trade secret (*id.* ¶ 10). *See In re Elec. Arts, Inc.*, 298 F. App'x 568, 569 (9th Cir. 2008). . . . Compelling reasons having been shown, Finjan's motion to seal Exhibit 7 in its entirety . . . is GRANTED.

Appx795, *Finjan, Inc. v. Juniper Networks, Inc.*, No. 3:17-cv-05659-WHA, slip op. at 2 (N.D. Cal. May 22, 2019).

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[21] *See, e.g.*, *Digital Reg of Texas, LLC v. Adobe Sys., Inc.*, No. C 12-1971 CW, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014) ("[T]he redacted portions disclose details of Digital Reg's patent licenses and that public disclosure of this information would harm Digital Reg by placing it at a disadvantage in future licensing negotiations. The Court finds good cause to grant the motion."); Appx847, *Tessera, Inc. v. Advanced Micro Devices, Inc.*, No. 4:05-cv-04063-CW, slip op. at 2 (N.D. Cal. Aug. 10, 2012) (sealing "royalty reports with financial information about payments"); *Powertech Tech., Inc., v. Tessera, Inc.*, No. C 11-6121-CW, 2012 WL 1969039, at *1-2 (N.D. Cal. May 31, 2012) (granting motion to seal details of license agreement).

C. The district court ignored precedent and abused its discretion in ordering disclosure of Uniloc and third-parties' trade secrets.

The district court in this case acted contrary to this established precedent by ordering free access to many of Uniloc and the one-hundred-plus third-parties' most carefully guarded trade secrets. This was an abuse of discretion.

Uniloc's request for relief is confined to a limited set of documents concerning licenses, financial terms between Uniloc and its lender, and/or irrelevant information about third-parties. Each document discussed below contains trade secrets, the disclosure of which would do significant and irreparable damage to Uniloc and/or the third-parties' competitive standing. These constitute "compelling reasons" to seal these documents. Conversely, as the district court acknowledged, its ruling (and Apple's motion) did not depend upon "the specific dollar amounts, financial terms, and names of the licensees in the various agreements," Appx35, and so the redacted information "is irrelevant to the public's understanding of the judicial proceedings," *Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1228.

Thus, even if the public had a cognizable interest in the content of the sealed or redacted information, the balance of interests weighs heavily in favor of sealing the trade-secret information.

1. Exhibit A: Conformed Revenue Sharing and Note and Warrant Purchase Agreement.

Exhibit A relates to the financial relationship between Uniloc and its lender, non-party Fortress. *See* Appx619-645. Uniloc proposes a total of seven redactions across the first twenty-three pages. Appx625-626, Appx630, Appx633; *compare id. with* Appx299-324 (sealed). Each such redaction is a single dollar figure or percentage. This information is highly confidential and sensitive financial information of Uniloc and Fortress, the disclosure of which would prove to be a competitive harm to them. Appx572-573, ¶¶ 3-3.f; *see, e.g.*, *Arista Networks*, 2018 WL 2010622, at *2-3; Appx819, *PersonalWeb Techs*, slip op. at 4; *Juicero*, 2017 WL 8294276, at *2.

The greater complexity and concern associated with this document is found over the last three pages. In particular, Appx643-645 includes a table listing 109 of Uniloc's licenses. Each row discloses the licensee's name, the date of the license and the amount paid for the license. Each such set of information is covered by a separate license agreement. The vast majority of these license agreements include express confidentiality provisions. Appx573, ¶ 4. And, these confidentiality provisions are in almost every instance founded upon court-issued protective orders.

The above bears repeating: Disclosure of these three pages would make public the confidential financial and business information of more than one-

hundred third-parties. *In re Elec. Arts, Inc.*, 298 Fed. App'x. at 569-70 (ordering sealed "pricing terms, royalty rates, and guaranteed minimum payment terms found in a license agreement"); *see, e.g.*, *supra* nn.11-21 (citing orders from the Northern District of California sealing licensing information).

Uniloc's counsel reached out to the licensees to ask for their positions as to publication of this information. Approximately one-third responded. Appx573, ¶ 5; *see also* Appx765. Some of the responses were preliminary or not sufficiently definite to categorize; indeed, responses continued to roll in after Uniloc filed its motion for leave to file a motion for reconsideration.

Just two of the more than 100 licensees agreed to the disclosure of their information. *See* Appx573-574, ¶¶ 7-7.b.

Eight of the licensees offered to disclose their identities, but insisted on maintaining the confidentiality of their license payments. *See* Appx574-576, ¶¶ 8-8.h; *see also* Appx646-658 (declarations from Allscripts Healthcare Solutions, Inc., Avid Technology, Inc., Cerner Health Services, Inc., and NEC Corporation of America), 757-758 (declaration from Microsoft Corp.).

Twenty-three of the licensees insisted that all information about them remain confidential. Appx576-581, ¶¶ 9-9.w.i; Appx659-662 (confidential declaration); Appx663-665 (confidential declaration); Appx666-669 (redacted declaration); Appx670-672 (confidential declaration); Appx673-675 (confidential letter);

Appx676-677 (confidential declaration); Appx678-680 (confidential declaration); Appx681-683 (confidential declaration); *see, e.g., Huawei Techs., Co, Ltd v. Samsung Elecs. Co, Ltd.*, 340 F. Supp. 3d 934, 1004 (N.D. Cal. 2018) ("Percentages of royalties sought or secured in negotiations or resulting licensing agreements may remain under seal at this juncture, if those terms are not otherwise publicly known. *This includes references to the identities of third-parties to those agreements, assuming the existence of the agreement itself is not otherwise publicly known*.") (emphasis added).

These entities explained that confidentiality, including of their identities, was important to the license negotiations. They further asserted that the disclosure of their identities and the existence and terms of the licenses would cause competitive harm. Appx576-581, ¶¶ 9-9.w.i.

Uniloc is obliged to similarly redact the information of any entity that did not respond or whose response was not sufficiently definite. Appx573, ¶ 6; *see, e.g., Finjan, Inc. v. Sophos, Inc.*, No. 14-CV-01197-WHO, 2016 WL 7911365, at *1 (N.D. Cal. Aug. 30, 2016) (granting patentee's request to protect the identity of its licensees during trial by using codenames when referring to the licensee and redacting the licensee's name from the license agreements submitted as evidence in the trial).

Beyond these third-parties' interests in maintaining confidentiality, information about the licenses into which Uniloc enters is perhaps the most valuable information maintained by Uniloc. Appx581, ¶ 10; *see also* Appx414. For Uniloc, it is akin to Apple's source code. Disclosure of this information to the world—including, *inter alia*, to entities with which it is currently engaged in litigation—would indelibly harm Uniloc and its disrupt its ability to negotiate future licenses. *See, e.g.*, *Apple v. Samsung* (N.D. Cal. October Order), 2012 WL 4933287, at *2.

Finally, because the identity of any given third-party and the terms of its license agreement are not relevant to the issues considered by the district court, the public's interest in this information is substantially outweighed by the third-party's (and Uniloc's) interest in maintaining its confidentiality. *See Foltz*, 331 F.3d at 1135.

With all due respect to the district court, in light of the thirteen third-party declarations and the more than 3500 words of the Uniloc declaration which address this document in particular, it is difficult to discern how the court below could characterize these attestations as "generalized assertions of potential competitive harm . . . ." Appx34. More to the point, "[t]he Ninth Circuit has held, and [the Northern District of California] has previously ruled, that pricing terms, royalty rates, and minimum payment terms of licensing agreements *plainly constitute trade*

secrets and thus are sealable." *Apple v. Samsung* (N.D. Cal. November Order), 2012 WL 5988570, at *4 (emphasis added). As such, even if every other document is made public, it was an abuse of discretion to unseal this document in particular.

2. Exhibit C: Revenue Sharing and Note and Warrant Purchase Agreement

Exhibit C relates to the financial relationship between Uniloc and non-party Fortress. Appx684-688. Uniloc proposes seventeen redactions. Appx686-688; *compare id. with* Appx332-335 (sealed). Each such redaction is a single dollar figure, percentage or multiplier, or the name of a non-party. This information is highly confidential and sensitive financial information of Uniloc, Fortress, and/or the third-party, the disclosure of which would prove to be a competitive harm to them. Appx581, ¶¶ 11-11.b; *see also* Appx414, ¶¶ 3-5; *see, e.g.*, *Arista Networks*, 2018 WL 2010622, at *2-3; Appx819, *PersonalWeb Techs*, slip op. at 4; *Juicero*, 2017 WL 8294276, at *2.

3. Exhibits D and E: Deposition transcripts.

Mr. Levy is an employee of Fortress. Appx689-697. Mr. Turner is an employee of Uniloc. Appx698-706. During their depositions, they testified about non-parties, as well as financial terms relating to the agreements between Uniloc and Fortress. Uniloc and Fortress propose to redact just the names of non-parties and financial terms. Appx694-695 (Levy); *compare id. with* Appx336-343

(sealed); Appx702, Appx704 (Turner); *compare id. with* Appx344-351 (sealed). This is highly confidential and sensitive financial information of Uniloc, Fortress, and/or third-parties, the disclosure of which would prove to be a competitive harm to them. Appx581-583, ¶¶ 12-13.i; *see also* Appx414, ¶ 6; *see, e.g.*, *Arista Networks*, 2018 WL 2010622, at *2-3; Appx819, *PersonalWeb Techs*, slip op. at 4; *Juicero*, 2017 WL 8294276, at *2.

4. Exhibit G: Uniloc Luxembourg and Uniloc USA's Disclosure Schedules.

Exhibit G discloses Uniloc Luxembourg's income over several years. Uniloc Luxembourg is a private company. The individual amounts are financial records, the disclosure of which would cause competitive harm to Uniloc. Appx707-711; *compare id. with* Appx355-358 (sealed); *see* Appx583, ¶ 14; *see also* Appx414, ¶ 7; *see, e.g.*, *Rodman*, 2014 WL 12787874, at *2.

5. Exhibit P: License Agreement between Uniloc 2017 LLC and Uniloc Licensing USA

Exhibit P is a license agreement between Uniloc 2017 and Uniloc Licensing USA. Appx712-717. The only proposed redactions relate to a confidential, proprietary—and irrelevant—software platform that is not mentioned anywhere in Apple's motion. *Compare id. with* Appx380-384 (sealed). The disclosure of this platform would be a competitive harm for Uniloc. Appx583, ¶¶ 15-15.b; *see also* Appx415, ¶ 9; *see Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1222.

6. Exhibit S: Note Purchase and Security Agreement between Uniloc 2017 and CF Uniloc Holdings.

Exhibit S is a note purchase and security agreement between two Uniloc entities. Appx718-726. The only proposed redaction is to the aggregate principal amount paid for the note purchase. Appx720; *compare id. with* Appx392-399 (sealed). This financial information is highly confidential and sensitive, the disclosure of which would prove to be a competitive harm for Uniloc. Appx583, ¶ 16; *see also* Appx415, ¶ 10; *see, e.g.*, *Arista Networks*, 2018 WL 2010622, at *2-3; Appx819, *PersonalWeb Techs*, slip op. at 4; *Juicero*, 2017 WL 8294276, at *2.

7. Exhibit DD: Settlement and License Agreement between Microsoft and Uniloc.

Exhibit DD is a two-page excerpt from a confidential settlement and license agreement between third-party Microsoft and Uniloc. Appx772-774. Uniloc's counsel contacted Microsoft to discern Microsoft's preferences with respect to these specific pages. Microsoft originally responded that it did not want any of the agreement disclosed and Microsoft's Assistant General Counsel signed a declaration to this effect. *See* Appx757-758; Appx584-585, ¶¶ 19-21; *see also* Appx503, ¶ 6.

After Uniloc filed its motion for leave to file a motion for reconsideration, but before the district court ruled on it, Uniloc again reached out to Microsoft. Uniloc and Microsoft then agreed to disclose all of the excerpt save for the financial terms, which remain extremely sensitive financial and licensing

information. Appx765; Appx772-774; *compare id. with* Appx494-496 (sealed); *see, e.g.*, *Apple v. Samsung* (N.D. Cal. November Order), 2012 WL 5988570, at *4.

8. Exhibit GG: Heads of Agreement between Fortress and Uniloc's CEO.

Exhibit GG is a four page excerpts from the Heads of Agreement. Appx775-779. It describes, *inter alia*, Uniloc's CEO's responsibilities and is in this respect akin to an employment agreement. It also refers to a number of third-parties. Uniloc originally proposed that it remain sealed in its entirety, as it is confidential to Uniloc's CEO. Appx585, ¶ 22; *see also* Appx503-504, ¶ 7; *see, e.g.*, *Rodman*, 2014 WL 12787874, at *2. After Uniloc filed its motion for leave to file a motion for reconsideration, but before the district court ruled on it, Uniloc and Uniloc's CEO conferred again and agreed to disclose all of the document, save for the information relating to third-parties. Appx765; Appx775-779; *compare id. with* Appx497-501 (sealed).

9. Order on Motion to Dismiss and Join Party.

The district court initially sealed its entire Order on Motion to Dismiss and Motion to Join Party. *See* Appx505-514 (sealed order). Within two weeks, Uniloc publicly filed a version of the district court's order which only redacted four monetary figures. Appx517-526. These specific figures are irrelevant to the district court's ruling, as the court acknowledged. All that matters is that a given

number is larger, or smaller, than another given number. Conversely, the numbers are important trade secrets of Uniloc and Fortress.

10. The third-parties' declarations in support of motion for reconsideration.

Eight of Uniloc's licensees submitted sealed or redacted declarations in support of Uniloc's motion for leave to file a motion for reconsideration. Appx659-683. These entities sought to maintain the confidentiality they contracted for in their licenses, which confidentiality was backed by protective orders in their individual cases.

There is no reasonable argument that the individual details of any of the underlying licenses has anything to do with Apple's substantive motion. Whether it was "Acme Corporation" or "Peppercorn Incorporated" does not impact whether Uniloc complied with its alleged obligation to Fortress. Similarly, whether Acme Corporation paid $10,000,000 or $10 for its license is irrelevant to whether Uniloc exceeded an aggregate threshold by a certain date. *See, e.g.*, *Huawei Techs.*, 340 F. Supp. 3d at 1004; *Sophos*, 2016 WL 7911365, at *1.

11. The parties' memoranda.

The parties' memoranda relating to Apple's motion to dismiss were each redacted by the respective parties. These redactions were significantly reduced (or simply eliminated) by Uniloc. Uniloc proposes to redact just eight phrases from Apple's motion to dismiss. *See* Appx586-618; *compare id. with* Appx262-293

(heavily redacted by Apple). Each one-to-three-word phrase includes highly confidential and sensitive financial information of Uniloc and/or Fortress, the disclosure of which would cause competitive harm to them. Appx572, ¶¶ 2-2.e.

Uniloc's opposition was originally (lightly) redacted, *see* Appx423-438, but Uniloc already agreed to file the document publicly.

Uniloc proposes to redact just nine phrases from Apple's reply brief. *See* Appx727-748; *compare id. with* Appx465-485 (heavily redacted by Apple). Each one-to-four-word phrase includes highly confidential and sensitive financial information, the disclosure of which would prove to be a competitive harm to Uniloc and/or Fortress. Appx583-584, ¶¶ 17-17.e; *see, e.g.*, *Arista Networks*, 2018 WL 2010622, at *2-3; Appx819, *PersonalWeb Techs*, slip op. at 4; *Juicero*, 2017 WL 8294276, at *2.

The context around the redacted phrases in Apple's briefs is sufficient to permit the public to understand the impact of the financial terms—*i.e.*, one figure is larger or smaller than another—even if not the specific amounts.

12. The parties' declarations.

The parties submitted several redacted or sealed declarations in support of their memoranda. The Declaration of Doug Winnard in Support of Defendant Apple Inc.'s Motion to Dismiss remains as-is; each redaction relates to information covered by one of the above-identified categories of still-to-be-sealed information.

Appx294-298. The Declaration of Doug Winnard in Support of Apple Inc.'s Reply was also redacted. Appx486-488 (redacted by Apple). Uniloc revised those redactions to cover just Apple's calculation of Uniloc's licensing revenue. Appx749-752. This is highly confidential and sensitive financial information, the disclosure of which would prove to be a competitive harm for Uniloc. Appx584, ¶ 18; *see, e.g.*, *Arista Networks*, 2018 WL 2010622, at *2-3; Appx819, *PersonalWeb Techs*, slip op. at 4; *Juicero*, 2017 WL 8294276, at *2.

Finally, Uniloc submitted the Declaration of Aaron S. Jacobs in Support of Plaintiff's Motion for Reconsideration. This declaration was redacted to cover the financial terms and information regarding third-parties. Appx576-581. For the reasons stated therein, and as detailed above, the redacted information should remain under seal.

III. The district court below improperly ignored this Court's ruling in *Apple v. Samsung*.

This Court's ruling in *Apple v. Samsung* is at least instructive, if not dispositive, and the district court's refusal to follow it involved reversible mistakes of fact and law. As such, a detailed summary of that case is warranted.

In April 2011, Apple sued Samsung in the Northern District of California for infringement of a number of Apple's patents and trade dress. Samsung counterclaimed, alleging that Apple infringed a number of Samsung patents. *Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1217. In the months leading up to trial, both

parties filed a raft of pre-trial motions, along with sealed exhibits. *Id.* at 1218. Each such filing was accompanied by an administrative motion to have the confidential information sealed. Neither party opposed the other party's motions to seal, but nonparty Reuters America LLC intervened and did oppose. The district court thereafter denied the pending motions to seal without prejudice. *Id.* The parties filed renewed motions on July 24, 2012; the court held a hearing on July 27, 2012; and the parties filed *yet another* set of renewed motions on July 30, 2012.[22] *Id.*; *see also id.* at 1218-19 (summarizing categories of documents).

On August 9, 2012, the district court granted-in-part and denied-in-part the parties' motions to seal. Specifically, Judge Koh granted the motions as to information regarding production and supply capacities, source code, third-party

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[22] Giving litigants a second (and third) chance to address the court's concerns regarding motions to seal is the usual practice of the Northern District of California. *See e.g.*, Appx789, *Juniper Networks*, slip op. (N.D. Cal. June 25, 2019) (Hixson, M.J.); Appx798, *MLC Intellectual Property LLC v. Micron Tech., Inc.*, No. 14-cv-03657-SI, slip op. (N.D. Cal. Mar. 27, 2019) (Illston, J.); Appx800, *F5 Networks, Inc. v. Radware, Inc.*, No. 17-cv-03166-VC, slip op. (N.D. Cal. Nov. 19, 2018) (Chabria, J.); Appx811, *Huawei Techs.*, slip op. (Orrick, J.); Appx815, *Broadband iTV, Inc. v. OpenTV, Inc.*, No. 17-cv-06647-SK, slip op. (N.D. Cal. Dec. 13, 2017) ("Despite admonishing Broadband iTV that failure to timely file the required declaration would result in a denial of the motion to seal, Broadband iTV did not file any response. The Court is providing Broadband iTV with one last opportunity to demonstrate that these materials or portions of these materials should be sealed.") (Kim, M.J.).

Judge Alsup did not give Uniloc this opportunity. Appx34-35.

market research reports, and—significantly—terms of licensing agreements. As to the licensing agreements, the district court explained:

> Apple moves to seal terms of licensing agreements that it has entered into with various third-parties. It argues that disclosing the terms of these licensing agreements will put it at a disadvantage in negotiations for future licensing deals. The Court agrees with respect to pricing terms, royalty rates, and minimum payment terms of the licensing agreements, as set forth in *Electronic Arts*, 298 Fed. App'x at 569. Disclosing this information to the public will create an asymmetry of information for Apple in the negotiation of future licensing deals. *See id*. (finding "pricing terms, royalty rates, and guaranteed minimum payment terms" of a license agreement to "plainly fall [ ] within the definition of 'trade secrets'"). *Accordingly the Court will follow the Ninth Circuit's guidance and seal all information related to the payment terms of Apple's licensing agreements.*

Apple v. Samsung (N.D. Cal. August Order), 2012 WL 3283478, at *6 (emphasis added).

However, the district court also ordered unsealed documents disclosing the parties' product-specific profits, profit margins, unit sales, revenues, and costs, as well as Apple's proprietary market research reports and customer surveys. *See generally id.*

The parties tried the case to a jury starting on July 30, 2012, with Apple coming away (mostly) victorious. Apple thereafter moved for a permanent injunction and enhanced damages. Along with its opposition, Samsung filed a number of Apple's confidential documents, accompanied by an administrative motion to file under seal. On November 29, 2012, the district court largely denied

the motion to seal. But—significantly—the district court again agreed to redactions to Apple's license agreements:

> Apple also seeks to seal Exhibits 12–1 and 12–2 to the Pierce PI Declaration. These two exhibits consist of full, unredacted license agreements between Apple and third-parties, including payment and royalty terms. *The Ninth Circuit has held, and this Court has previously ruled, that pricing terms, royalty rates, and minimum payment terms of licensing agreements plainly constitute trade secrets, and thus are sealable.* Accordingly, these limited terms are sealable, and the motion is GRANTED as to the pricing, royalty, and payment terms of Exhibits 12–1 and 12–2.

Apple v. Samsung (N.D. Cal. November Order), 2012 WL 5988570, at *4 (citations omitted) (emphasis added).

Apple and Samsung appealed the August and November Orders to this Court, seeking to redact product-specific financial information, including costs, sales, profits, and profit margins, as well as market research. *Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1223. Of course, they did not appeal any order regarding licensing information, as the district court had recognized that it "plainly constitute[s] trade secrets, and thus [is] sealable."

Reuters did not participate in the appeal, but this Court accepted amicus curiae briefs from the First Amendment Coalition and the Reporters Committee for Freedom of the Press in opposition to Apple and Samsung. *Id.* at 1220. And, interestingly, EFF—the intervenor in the current appeal—filed a declaration in support of the amici. *Id.* at 1225.

Focusing first on the August Order, this Court stated that "it seems clear that if Apple's and Samsung's suppliers have access to their profit, cost, and margin data, it could give the suppliers an advantage in contract negotiations, which they could use to extract price increases for components." *Id.* at 1225. Apple and Samsung therefore had compelling reasons to keep it confidential.

The Court then turned to the public's supposed interest in this detailed financial information and found it lacking:

> [T]he financial information at issue was not considered by the jury and *is not essential to the public's understanding* of the jury's damages award. *Nor is there any indication that this information was essential to the district court's rulings* on any of the parties' pre-trial motions. In light of all of these considerations, we conclude that the particular financial information at issue in these appeals is not necessary to the public's understanding of the case, and that *the public therefore has minimal interest in this information.*

Id. at 1226 (emphasis added).

EFF argued that the financial data surrounding the "development, sale, and production" of smartphones and tablets by Apple and Samsung "provide powerful tools to many groups, including EFF, who work diligently to ensure those consumer's interests are taken into account in manufacturing and pricing decisions." *Id.* at 1225. But, this Court explained that EFF focused on the wrong public interest:

> [The] statements by Reuters and EFF representatives to demonstrate public interest is misplaced. The presumption in favor of public access to court documents is based on "promoting the public's

> understanding of the judicial process and of significant public events." Shareholders' interests in determining financial risks and consumers' interests in manufacturing and pricing decisions *simply are not relevant to the balancing test*.

Id. at 1226 (quoting *Valley Broad. Co. v. U.S. Dist. Court for Dist. of Nev.*, 798 F.2d 1289, 1294 (9th Cir.1986)) (emphasis added). Rather, "if anything, by highlighting, for example, consumers' interests in such things as pricing decisions, it further underscores the potential harm that Apple and Samsung could face if their detailed financial information becomes public." *Id.*

The Court next turned to the November Order and again held that the district court abused its discretion, this time as to the market research documents. *Id.* at 1228. This Court agreed that Apple's proprietary research provided Apple with information that its competitors did not have, which in turn gave Apple a competitive advantage. As to the public's interest, the Court noted that Apple already agreed to unseal all information that was actually cited by the parties or district court. Thus, the information which Apple still sought to seal was "irrelevant to the public's understanding of the judicial proceedings," and it was an abuse of discretion to refuse to seal it. *Id.*

The lessons from this ruling, as applied to the current appeal, are straight-forward.

A. The district court made an obvious mistake of fact in attempting to distinguish *Apple v. Samsung*.

Uniloc (repeatedly) directed the district court's attention to *Apple v. Samsung*, including Judge Koh's orders sealing licensing information and this Court's order reversing the district court's refusal to seal other information. *See* Appx559, Appx560, Appx565, Appx566, Appx568. In its May 7 Order, the district court attempted to distinguish this Court's ruling:

> Plaintiffs' reliance on *Apple Inc. v. Samsung Electronics. Co. Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013), is unavailing, inasmuch as the parties there sought to seal product-specific financial information (such as costs, sales, profits, and profit margins), as opposed to the licensing-specific financial information at issue here. *Id.* at 1223. Plaintiffs here have no products to sell and thus their (alleged) risk of competitive harm is entirely distinguishable from that in Apple.

Appx35. This was a clear mistake of fact.

It is true that licensing-specific financial information was not at issue in the *Apple v. Samsung* appeal. But, this is because Judge Koh had already recognized that the licensing-specific financial information should be sealed. *See Apple v. Samsung* (N.D. Cal. August Order), 2012 WL 3283478, at *6 ("[T]he Court will follow the Ninth Circuit's guidance and seal all information related to the payment terms of Apple's licensing agreements."); *Apple v. Samsung* (N.D. Cal. November Order), 2012 WL 5988570, at *4 (same).

Without attempting to belabor the point, in a case where this Court concluded that the district court abused its discretion by refusing to seal a certain

set of documents, even that district court agreed that as to licenses, the "pricing terms, royalty rates, and minimum payment terms of licensing agreements plainly constitute trade secrets, and thus are sealable." *Apple v. Samsung* (N.D. Cal. November Order), 2012 WL 5988570, at *4.

In sum, and with all due respect, Judge Alsup's attempt to distinguish *Apple v. Samsung* was based upon a misreading of the facts of that case.

B. The district court made a mistake of law in focusing on the public's supposed interest in the substance of the documents, rather than in monitoring the court's rulings.

As discussed *supra* in Section I, and as this Court explicitly recognized in *Apple v. Samsung*, the public's interest in documents filed with a court is in understanding the bases for the court's particular ruling. The public has, at most, a "minimal interest" in information that is not necessary to its understanding of the case. *Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1226.

EFF argued that the public has an interest in understanding the substantive information itself. But, this Court recognized that EFF had it exactly wrong: This information is "not relevant to the balancing test," and to argue otherwise highlights the harm that could come to the entities if their case-irrelevant information is disclosed. *Id.*

C. The district court made a mistake of law in refusing to recognize Uniloc and many third-parties' interests in confidentiality.

Judge Koh, in *Apple v. Samsung*, recognized that licensing information "plainly constitutes trade secrets," and thus there was a compelling reason to seal it. *Apple v. Samsung* (N.D. Cal. November Order), 2012 WL 5988570, at *4. Similarly, this Court recognized that proprietary information that *might* impact contract negotiations is a trade secret, and there is therefore a compelling reason to seal it. *See, e.g.*, *Apple v. Samsung* (Fed. Cir.), 727 F.3d at 1225. So, as discussed *supra* in Section II, the district court below made a mistake of law in devaluing these interests. *See* Appx36.

D. The outcome in this case should be the same as in ***Apple v. Samsung*.**

In closing, it is worth noting that the concluding paragraph in this Court's *Apple v. Samsung* opinion could just as easily have been written for the current appeal:

> We recognize the importance of protecting the public's interest in judicial proceedings and of facilitating its understanding of those proceedings. That interest, however, does not extend to mere curiosity about the parties' confidential information where that information is not central to a decision on the merits. While protecting the public's interest in access to the courts, we must remain mindful of the parties' right to access those same courts upon terms which will not unduly harm their competitive interest. For the reasons set forth above, we hold that the district court abused its discretion in refusing to seal the particular documents that [the parties] challenge in these appeals.

Apple v. Samsung (Fed. Cir.), 727 F.3d at 1228-29. The outcome should be the same too.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's January 17, 2019, and May 7, 2019, orders to the extent that they denied Apple and Uniloc's motions to seal. This Court should remand with instructions to seal the documents as proposed in Uniloc's February 15, 2019, motion for leave to file a motion for reconsideration. In the alternative, the Court should vacate the district court's orders as to sealing the documents and remand for further proceedings under the correct legal standards.

August 15, 2019

Respectfully submitted,

UNILOC 2017 LLC, UNILOC USA, INC. and UNILOC LUXEMBOURG, S.A.,

by their attorneys,

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ADDENDUM

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

APPLE INC.,

Defendant.
_____/

No. C 18-00360 WHA
No. C 18-00363 WHA
No. C 18-00365 WHA
No. C 18-00572 WHA

ORDER RE SEALING OF ORDER ON MOTION TO DISMISS AND MOTION TO JOIN PARTY

The order on the motion to dismiss and motion to join a new party, filed under seal today, shall remain under seal for **TWO WEEKS**, during which plaintiffs may seek appellate review of this order to obtain redactions. Thereafter, absent request for appellate review, the order on the motions will be filed on the public docket by **FEBRUARY 1 AT NOON**.

IT IS SO ORDERED.

Dated: January 17, 2019.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

APPLE INC.,

Defendant.

_____/

No. C 18-00360 WHA
No. C 18-00363 WHA
No. C 18-00365 WHA
No. C 18-00572 WHA

ORDER RE ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL AND MOTION TO INTERVENE

In connection with the motion to dismiss for lack of subject-matter jurisdiction, both sides filed administrative motions to file under seal (Dkt. Nos. 134, 141, 146).* Here, "compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure" are required to justify sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016); *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006).

Each of the aforementioned administrative motions seeks to seal information based on plaintiffs' confidentiality designations. Plaintiffs' supporting declarations claim that the documents contain "confidential and proprietary information related to financial data, licensing terms and business plans with respect to various Uniloc entities" and that disclosure of such information "would create a substantial risk of serious harm to the Uniloc entities" (*e.g.*, Dkt. No. 137 ¶ 4). This, by itself, fails to show a compelling reason to justify sealing.

* The docket numbers referenced herein relate to Case No. C 18-00360 WHA.

First, the declarations provide no further explanation regarding why or how public disclosure of this information could cause commercial harm. Plaintiffs' generalized assertion of potential competitive harm fails to outweigh the public's right to learn of the ownership of the patents-in-suit — which grant said owner the right to *publicly* exclude others. This is especially true given that the law has developed regarding standing issues, which turns on machinations such as those at issue in the instant actions. *Second*, the scope of plaintiffs' requests is astonishing. Plaintiffs seek to seal the majority of exhibits and large swaths of briefing and declarations. Even a cursory review reveals that plaintiffs' requested redactions contain non-sealable material. As one non-exhaustive example, plaintiffs seek to redact portions of defendant Apple Inc.'s motion that simply quote Federal Circuit law (*e.g.*, Dkt. No. 134-4 at 15). The requests are thus far from "narrowly tailored" as required by Civil Local Rule 79-5(b).

In short, plaintiffs' supporting declarations fail to justify sealing of the aforementioned information. Accordingly, these administrative motions are **DENIED**. Plaintiffs have **TWO WEEKS** to seek appellate review of this order to obtain redactions, failing which each movant shall file unredacted versions of their documents on the public docket by **FEBRUARY 8 AT NOON**.

* * *

In light of this order's ruling on the administrative motions to file under seal, proposed intervenor Electronic Frontier Foundation's motion to intervene (Dkt. No. 152) is **GRANTED** for the purpose of opposing plaintiffs at the United States Court of Appeals for the Federal Circuit in the event plaintiffs seek appellate review of this order. Proposed intervenor's motion is otherwise **DENIED**.

IT IS SO ORDERED.

Dated: January 17, 2019.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNILOC 2017 LLC, *et al.*,

Plaintiffs,

v.

APPLE INC.,

Defendant.

_____/

No. C 18-00360 WHA
No. C 18-00363 WHA
No. C 18-00365 WHA
No. C 18-00572 WHA

ORDER ON MOTIONS FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION, TO FILE UNDER SEAL, AND TO INTERVENE AND ORDER VACATING HEARING

Plaintiffs Uniloc 2017 LLC and Uniloc Luxembourg, S.A. move for leave to file a motion for reconsideration of the order on sealing of order on motion to dismiss and to join party and order on the administrative motions to file under seal and motion to intervene by the Electronic Frontier Foundation (Dkt. No. 168).[1] They further seek to file under seal (Dkt. No. 167). After conferring with third-party Fortress Credit Co. LLC, plaintiffs now propose the reduced number of redactions at issue.

For the reasons stated below, plaintiffs' motion for leave to file a motion for reconsideration is **DENIED**. Plaintiff's accompanying administrative motion to file under seal is **DENIED**. EFF's motion to intervene is **GRANTED** to the extent stated below and the hearing scheduled for May 9 is hereby **VACATED**.

In connection with the motion to dismiss for lack of subject-matter jurisdiction, both sides filed administrative motions to file under seal (Dkt. Nos. 134, 141, 146). Here,

[1] All docket numbers referenced herein relate to Case No. C 18-00360 WHA.

"compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure" are required to justify sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016); *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006).

This order reiterates the prior order denying plaintiffs' initial request to seal: generalized assertions of potential competitive harm fail to outweigh the public's right to learn of the ownership of the patents-in-suit, which patents grant said owner the right to *publicly* exclude others (Dkt. No. 159 at 2). It also reiterates that this is particularly true where, as here, the public has an especially strong interest in learning the machinations that bear on the issue of standing in the patent context. Furthermore, the United States government bestows entities such as Uniloc the right to control the use of the purported inventions at issue. Because Uniloc's rights flow directly from this government-conferred power to exclude, the public in turn has a strong interest in knowing the full extent of the terms and conditions involved in Uniloc's exercise of its patent rights and in seeing the extent to which Uniloc's exercise of the government grant affects commerce.

The impact of a patent on commerce is an important consideration of public interest. One consideration is the issue of marking by licensees. Another is recognition of the validity (or not) of the inventions. Another is in setting a reasonable royalty. In the latter context, patent holders tend to demand in litigation a vastly bloated figure in "reasonably royalties" compared to what they have earned in actual licenses of the same or comparable patents. There is a public need to police this litigation gimmick via more public access. We should never forget that every license has force and effect only because, in the first place, a patent constitutes a public grant of exclusive rights.

Now turning to the instant motion for leave to file a motion to reconsider, the motion is denied because the parties should have done it right from the outset rather than over-classifying and then trying to get away with whatever they can on a motion to reconsider. This simply

guarantees at least two rounds of satellite litigation. Once should be enough. Next time, the parties will be more reasonable in light of the extent to which the instant motion is denied.[2]

The second reason is that plaintiffs still fail to give sufficient justification for the majority of their requested redactions. Though Apple's motion to dismiss for lack of standing did not directly depend upon information regarding the specific dollar amounts, financial terms, and names of the licensees in the various agreements (with Fortress or third-party licensees), plaintiffs' supposed risk of (still) generalized competitive harm in future negotiations from disclosure did not and does not compellingly outweigh the public's interest in accessing this information for the reasons stated above (*see* Jacobs Decl. ¶¶ 2–4, 10–14, 16–18).

Plaintiffs' reliance on *Apple Inc. v. Samsung Electronics. Co. Ltd.*, 727 F.3d 1214 (Fed. Cir. 2013), is unavailing, inasmuch as the parties there sought to seal *product*-specific financial information (such as costs, sales, profits, and profit margins), as opposed to the *licensing*-specific financial information at issue here. *Id*. at 1223. Plaintiffs here have no products to sell and thus their (alleged) risk of competitive harm is entirely distinguishable from that in *Apple*. Moreover, *In re Electronic Arts, Inc.*, 298 Fed. Appx. 568 (9th Cir. 2008), is distinguishable, inasmuch as that case did not concern a license agreement in the patent context (which, as discussed above, implicates strong public interest). Plaintiffs have not sufficiently shown that the information at issue constitutes trade secrets.

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[2] This order notes that plaintiffs enumerate various complaints in its briefing, none of which the Court is sympathetic to. *First*, plaintiffs complain that the order on motions to seal was issued before they had a chance to respond to EFF's initial motion to intervene (Dkt. No. 168-1 at 1). That order did not rely on EFF's motion in any way and thus plaintiffs' response would have been irrelevant in any event.

Second, plaintiffs grumble that when Apple filed its motion to dismiss for lack of subject-matter jurisdiction and the corresponding administrative motion to seal, they only had four days to submit a declaration in support of Apple's motion to seal and redact "more than 150 pages that accompanied Apple's motion to dismiss" (Dkt. No. 168 at 1). The Court is unsympathetic to plaintiffs' suggestion that they lacked sufficient time to narrowly tailor the motion to seal, as they could have easily requested additional time to file their supporting declaration. Moreover, plaintiffs have no one but themselves to blame for over-designating information as confidential to begin with. They cannot now complain when confronted with an oppressive amount of information sought to be sealed as a consequence. Because of the frequently overbroad requests to seal arising in patent litigation today, the Court itself must now deal with these burdensome motions to seal on a regular basis.

Third, nor is the Court sympathetic to plaintiffs' suggestion that another district court in Delaware has accepted under seal nearly the same set of documents (*ibid*.). That district court's decision is not binding here. Nor does the United States Court of Appeals for the Third Circuit follow the same standard for sealing as our court of appeals.

This order recognizes that the third-party licensees themselves have some interest in redacting licensing information (including their identity) and a number of licensees have declared their own risk of competitive harm upon disclosure to that effect. While the licensees' interest is understood, it does not surmount the hurdle of showing a compelling reason to seal under these circumstances (*e.g.*, *id.* at ¶¶ 8–9; Exhs. G, X).

Plaintiffs further propose to redact information relating to a "confidential, proprietary software platform" discussed in the license agreement between Uniloc 2017 LLC and Uniloc Licensing USA (Jacobs Decl. ¶ 15). Plaintiffs claim that disclosure of this information "would be a competitive harm for Uniloc" (Jacobs Decl. ¶ 15; Exh. S). This boilerplate assertion of competitive harm fails to provide a compelling reason to seal.

Plaintiffs also seek to seal in its entirety an excerpt of the Heads of Agreement between Fortress and Mr. Etchegoyen (*id.*, Exh. Y). The document describes "Mr. Etchegoyen's responsibilities as the chief executive officer of several of the Uniloc entities, and is in this respect akin to an employment agreement" and plaintiffs therefore claim that it is "private as to him" (Dkt. No. 168-1 at 13; Jacobs Decl. ¶ 22). This fails to provide a sufficiently compelling reason supported by specific factual findings that overcome the presumption of access, especially considering that plaintiffs seek to seal the *entire* document.

Accordingly, plaintiffs' motions for leave to file a motion for reconsideration and to file under seal are **DENIED**. Plaintiffs have **TWO WEEKS** to seek appellate review of this order to obtain redactions, failing which each movant shall file unredacted versions of their documents on the public docket by **MAY 22**.

* * *

A prior order granted EFF's first motion to intervene only to the extent that EFF be allowed to oppose plaintiffs should the prior order on the parties' motions to seal be appealed (Dkt. No. 159 at 2). EFF now moves to intervene to oppose plaintiffs' motion for leave to file a motion for reconsideration. Again, the motion is **GRANTED** only for the purpose of opposing plaintiffs if they appeal the instant order. EFF's motion is otherwise **DENIED**. Pursuant to Civil

Local Rule 7-1(b), this order finds EFF's motion to intervene suitable for submission without oral argument and hereby **VACATES** the hearing scheduled for May 9.

IT IS SO ORDERED.

Dated: May 7, 2019.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on August 15, 2019, a copy of this document was filed electronically.

This filing was served electronically to all parties by operation of the Court's electronic filing system.

/s/ Aaron S. Jacobs

Aaron S. Jacobs

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a). This brief contains 13,057 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in proportionally spaced typeface using Microsoft Office Word 2013 in 14-point Times New Roman type style.

/s/ Aaron S. Jacobs

Aaron S. Jacobs

ATTACHMENT A

Document	Original	Final
Defendant Apple Inc.'s Notice of Motion and Motion to Dismiss for Lack of Subject-Matter Jurisdiction	Appx262-293 (redacted) -360 Dkt. No. 135	Appx586-618 (redacted) -360 Dkt. No. 168-3
Declaration of Doug Winnard in Support of Defendant Apple Inc.'s Motion to Dismiss for Lack Subject Matter Jurisdiction	Appx294-298 (redacted) -360 Dkt. No. 135-1	Unchanged
Winnard MtD Decl. Ex. A: Conformed Revenue Sharing and Note and Warrant Purchase Agreement between Uniloc USA, Inc., Uniloc Luxembourg S.A., Uniloc Corporation PTY Limited, D/A Investment Holdings LLC, and Fortress Credit Co LLC, dated December 30, 2014, as amended February 24, 2015, May 27, 2016 and May 15, 2017.	Appx299-324 (sealed) -360 Dkt. No. 135-2	Appx619-645 (redacted) -360 Dkt. No. 168-4
Winnard MtD Decl. Ex. B: Patent License Agreement between Uniloc Luxembourg, S.A., Uniloc USA, Inc., and Fortress Credit Co LLC, dated December 30, 2014.	Appx325-331 (sealed) -360 Dkt. No. 135-3	Unsealed

Document	Original	Final
Winnard MtD Decl. Ex. C: Revenue Sharing and Note and Warrant Purchase Agreement Between Uniloc USA, Inc., Uniloc Luxembourg S.A., Uniloc Corporation PTY Limited, D/A Investment Holdings LLC, and Fortress Credit Co LLC, dated December 30, 2014, as amended February 24, 2015, May 27, 2016 and May 15, 2017.	Appx332-335 (sealed) -360 Dkt. No. 135-4	Appx684-688 (redacted) -360 Dkt. No.168-17
Winnard MtD Decl. Ex. D: Deposition transcript of Erez Levy.	Appx336-343 (sealed) -360 Dkt. No. 135-5	Appx689-697 (redacted) -360 Dkt. No. 168-18
Winnard MtD Decl. Ex. E: Deposition transcript of Drake Turner.	Appx344-351 (sealed) -360 Dkt. No. 135-6	Appx698-706 (redacted) -360 Dkt. No. 168-19
Winnard MtD Decl. Ex. F: Security Agreement between Uniloc Luxembourg, S.A., Uniloc Corporation PTY Limited, Uniloc USA, Inc., and Fortress Credit Co LLC, dated December 30, 2014.	Appx352-354 (sealed) -360 Dkt. No. 135-7	Unsealed
Winnard MtD Decl. Ex. G: Uniloc Luxembourg, S.A. and Uniloc USA, Inc.'s Disclosure Schedules for the fourth-quarter period ending March 31, 2017.	Appx355-358 (sealed) -360 Dkt. No. 135-8	Appx707-711 (redacted) -360 Dkt. No. 168-20

Document	Original	Final
Winnard MtD Decl. Ex. J: Termination Agreement between Uniloc USA, Inc. and Uniloc Luxembourg S.A., dated May 3, 2018	Appx359-360 (sealed) -360 Dkt. No. 135-11	Unsealed
Winnard MtD Decl. Ex. K: Excerpts of Patent Sale Agreement between Hewlett Packard Enterprise Development LP, Hewlett Packard Enterprise Company, and Uniloc Luxembourg S.A., fully executed May 16, 2017.	Appx361-366 (sealed) -360 Dkt. No. 135-12	Unsealed
Winnard MtD Decl. Ex. L: License Agreement between Uniloc USA, Inc. and Uniloc Luxembourg S.A., dated May 26, 2017.	Appx367-371 (sealed) -360 Dkt. No. 135-13	Unsealed
Winnard MtD Decl. Ex. M: Asset Purchase Agreement between Uniloc 2017 LLC and Uniloc Luxembourg S.A., dated March 28, 2018.	Appx372-375 (sealed) -360 Dkt. No. 135-14	Unsealed
Winnard MtD Decl. Ex. O: License Agreement between Uniloc 2017 LLC and Uniloc USA, Inc., dated May 3, 2018	Appx376-379 (sealed) -360 Dkt. No. 135-16	Unsealed
Winnard MtD Decl. Ex. P: License Agreement between Uniloc 2017 LLC and Uniloc Licensing USA LLC, dated May 3, 2018	Appx380-384 (sealed) -360 Dkt. No. 135-17	Appx712-717 (redacted) -360 Dkt. No. 168-21

Document	Original	Final
Winnard MtD Decl. Ex. Q: Amendment No. 1, dated August 28, 2018, to the License Agreement between Uniloc 2017 LLC and Uniloc USA, Inc.	Appx385-388 (sealed) -360 Dkt. No. 135-18	Unsealed
Winnard MtD Decl. Ex. R: Amendment No. 1, dated August 28, 2018, to the License Agreement between Uniloc 2017 LLC and Uniloc Licensing USA LLC.	Appx389-391 (sealed) -360 Dkt. No. 135-19	Unsealed
Winnard MtD Decl. Ex. S: Note Purchase and Security Agreement between Uniloc 2017 LLC and CF Uniloc Holdings LLC, dated May 3, 2018.	Appx392-399 (sealed) -360 Dkt. No. 135-20	Appx718-726 (redacted) -360 Dkt. No. 168-22
Winnard MtD Decl. Ex. W: Amended and Restated Operating Agreement of Uniloc 2017 LLC, dated May 3, 2018.	Appx400-410 (sealed) -360 Dkt. No. 135-24	Unsealed
Timeline and summary Apple's counsel created of the division of rights amongst the various Uniloc entities.	Appx411-412 (sealed) -360 Dkt. No. 135-29	Unsealed
Uniloc's Opposition to Apple's Motion to Dismiss, and Reply in Support of Rule 25 Motion to Add Uniloc 2017 as a Party	Appx423-438 (redacted) -360 Dkt. No. 142	Unsealed
Palmer Declaration	Appx439-443 (sealed) -360 Dkt. No. 142-1	Unsealed

Document	Original	Final
Exhibit A to Palmer Declaration	Appx444-457 (sealed) -360 Dkt. No. 142-2	Unsealed
Defendant Apple Inc.'s Reply in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction	Appx465-485 (redacted) -360 Dkt. No. 147	Appx727-748 (redacted) -360 Dkt. No. 168-23
Declaration of Doug Winnard in Support of Defendant Apple Inc.'s Reply	Appx486-488 (redacted) -360 Dkt. No. 147-1	Appx749-752 (redacted) -360 Dkt. No.168-24
Winnard MtD Reply Decl. Ex. CC: Conformed Revenue Sharing and Note and Warrant Purchase Agreement between Uniloc USA, Inc., Uniloc Luxembourg S.A., Uniloc Corporation PTY Limited, D/A Investment Holdings LLC, and Fortress Credit Co LLC, dated December 30, 2014, as amended February 24, 2015, May 27, 2016 and May 15, 2017	Appx489-493 -360 Dkt. No. 147-3	Unsealed
Winnard MtD Reply Decl. Ex. DD: Settlement and License Agreement between Microsoft Corporation and Uniloc Australia Pty. Ltd., Uniloc U.S.A., Inc., Uniloc Singapore Private Limited and Uniloc Luxembourg S.A., dated March 3, 2012.	Appx494-496 (sealed) -360 Dkt. No. 147-4	Appx772-774 (redacted)

Document	Original	Final
Winnard MtD Reply Decl. Ex. GG: Heads of Agreement between Fortress Credit Corp. and Crag S. Etchegoyen, dated May 3, 2018.	Appx497-501 (sealed) -360 Dkt. No. 147-7	Appx775-779 (redacted)
Order on Motion to Dismiss and Join Party	Appx505-514 (sealed)	Appx517-526 (redacted) -360 Dkt. No. 164-2
Declaration of Aaron S. Jacobs ("Jacobs Revised Redactions Decl.") in Support of Plaintiff's Motion for Reconsideration of the Court's January 17, 2019, Order re Sealing of Order on Motion to Dismiss and Motion to Join Party, and Order re Administrative Motions to File Under Seal and Motion to Intervene	Appx571-585 (redacted) -360 Dkt. No. 168-2	N/A – Filed with Motion for Leave to File Motion for Reconsideration
Jacobs Decl. re Revised Redactions Ex. G: [Sealed] Declaration	Appx659-662 (sealed) -360 Dkt. No. 168-9	N/A – Filed with Motion for Leave to File Motion for Reconsideration
Jacobs Decl. re Revised Redactions Ex. H: [Sealed] Declaration	Appx663-665 (sealed) -360 Dkt. No. 168-10	N/A – Filed with Motion for Leave to File Motion for Reconsideration
Jacobs Decl. re Revised Redactions Ex. I: Declaration	Appx666-669 (redacted) -360 Dkt. No. 168-11	N/A – Filed with Motion for Leave to File Motion for Reconsideration

Document	Original	Final
Jacobs Decl. re Revised Redactions Ex. J: [Sealed] Declaration	Appx670-672 (sealed) -360 Dkt. No. 168-12	N/A – Filed with Motion for Leave to File Motion for Reconsideration
Jacobs Decl. re Revised Redactions Ex. K: [Sealed] Declaration	Appx673-675 (sealed) -360 Dkt. No. 168-13	N/A – Filed with Motion for Leave to File Motion for Reconsideration
Jacobs Decl. re Revised Redactions Ex. L: [Sealed] Declaration	Appx676-677 (sealed) -360 Dkt. No. 168-14	N/A – Filed with Motion for Leave to File Motion for Reconsideration
Jacobs Decl. re Revised Redactions Ex. M: [Sealed] Declaration	Appx678-680 (sealed) -360 Dkt. No. 168-15	N/A – Filed with Motion for Leave to File Motion for Reconsideration
Jacobs Decl. re Revised Redactions Ex. N: [Sealed] Declaration	Appx681-683 (sealed) -360 Dkt. No. 168-16	N/A – Filed with Motion for Leave to File Motion for Reconsideration