Miscellaneous Docket No. ___

IN THE

United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:19-cv-00532-ADA, Hon. Alan D Albright

APPLE INC.'S PETITION FOR WRIT OF MANDAMUS

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FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re Apple Inc. **v.** _____

Case No. _____

CERTIFICATE OF INTEREST

Counsel for the:
■ (petitioner) ☐ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

Apple Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Apple Inc.	Apple Inc.	None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

DLA Piper LLP: Brian K. Erickson, Christine K. Corbett, Erik R. Fuehrer, Larissa Bifano, Mark D. Fowler, Michael Van Handel, Summer Torrez

Orrick, Herrington & Sutcliffe LLP: Jeffrey T. Quilici

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

None

6/15/2020
Date

/s/ Melanie L. Bostwick
Signature of counsel

Please Note: All questions must be answered

Melanie L. Bostwick
Printed name of counsel

cc: _____

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INTRODUCTION

Once again, a non-Texas plaintiff has sued Apple for patent infringement in the Waco Division of the Western District of Texas in a case having no connections to that venue. And once again, the district court has denied Apple's request to transfer under 28 U.S.C. § 1404(a) to the forum that serves "the convenience of parties and witnesses" and "the interest of justice"—the Northern District of California.

The case for transfer is especially compelling here. It's not just that Apple is headquartered in the Northern District of California, where every employee knowledgeable about the accused technology (and every relevant document) is located. Nor is it just that Uniloc itself has substantial California connections, and that even its own witnesses are located there. It's also that, but for Uniloc's strategic behavior, this case already would have been transferred to the Northern District of California.

This is one of 24 actions involving 35 patents that Uniloc has filed against Apple in the Eastern or Western District of Texas. Judge Gilstrap and Judge Yeakel transferred 21 of those cases, finding that Apple had shown the Northern District of California to be clearly more

convenient and, in the case of Judge Gilstrap, that Uniloc had misrepresented its Texas connections for venue purposes. Two cases remain in the Eastern District because they are stayed pending appeals from inter partes review proceedings.

This is the twenty-fourth case. It was originally pending before Judge Yeakel, but Uniloc voluntarily dismissed it during transfer briefing, then refiled it the following year in the Waco Division, where it was assigned to Judge Albright. Apple moved to transfer. And Uniloc (despite receiving additional venue discovery) couldn't come up with any valid reason to keep the case in Texas.

But immediately after hearing the parties' arguments, and without offering any explanation, Judge Albright stated he was denying transfer and promised to issue a written decision soon. Apple has waited over a month for that decision, and none has issued (even as the district court has held hearings and issued other written rulings in the case). There is simply no rational basis for refusing to transfer this case to the Northern District of California to be litigated with the rest of the parties' ongoing disputes and in a forum convenient for every expected party and non-party witness. The Court should grant mandamus.

RELIEF SOUGHT

Apple respectfully requests that the Court grant this petition for a writ of mandamus, vacate the district court's decision to deny Apple's transfer motion, and remand the case with instructions to transfer this action to the United States District Court for the Northern District of California.

ISSUE PRESENTED

Whether the district court clearly abused its discretion in refusing to transfer this case to the Northern District of California, where the clear weight of the § 1404(a) convenience factors points and 21 other cases between the same parties are currently pending after being transferred from Texas.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In 2017 and 2018, Texas Courts Transfer Twenty-One Uniloc Cases Against Apple to the Northern District of California.

Uniloc 2017 LLC is a Delaware company with no connection to Waco or the Western District of Texas. It is part of a web of Uniloc entities, including Uniloc Luxembourg and Uniloc USA. Appx88.

This is one of 24 patent-infringement cases that Uniloc entities filed against Apple, all in the Eastern or Western District of Texas.

Over Uniloc's objections, all of the other cases that were not stayed or voluntarily dismissed—21 total—were transferred to the Northern District of California under § 1404(a) and are pending there. *See* Appx85-87.

Uniloc's first dozen cases were filed between 2016 and 2017 in the Eastern District of Texas. Judge Gilstrap transferred ten of those cases to the Northern District of California, concluding that it would be the more convenient venue for disputes between the two parties under Fifth Circuit precedent. Appx144. Notably, after seeing the results of venue discovery, Judge Gilstrap found that Uniloc had repeatedly made "contradictory representations" about its Texas presence and, in fact, had substantial connections to California. Appx138-139. The two other cases before Judge Gilstrap were stayed pending inter partes review and therefore were not included in the transfer. Appx85-87. The Patent Trial and Appeal Board found all asserted claims unpatentable in those proceedings, and the appeals are pending before this Court. *See generally* Nos. 19-1151, 19-2389 (Fed. Cir.).

In 2018, Uniloc filed twelve more cases against Apple, this time in the Western District of Texas. Judge Yeakel transferred eleven of those

cases to the Northern District of California. Appx86-87. Uniloc had ample opportunity to challenge Apple's representations that all relevant witnesses and documents were located in the Northern District of California—including written discovery, document discovery, and the right to depose up to ten Apple employees. Uniloc could not and did not do so. Appx84.

The final case before Judge Yeakel—No. 1:18-cv-00296-LY—asserted the exact same patent and claims at issue here. Uniloc voluntarily dismissed that case during the transfer briefing, thereby escaping transfer. Appx86.

After Voluntarily Dismissing the Previous Version of This Suit to Avoid Transfer, Uniloc Refiles in the Waco Division of the Western District of Texas.

In September 2019, Uniloc refiled this suit in the Waco Division of the Western District of Texas, where Judge Albright sits as the only district judge. As in the prior version of this case, Uniloc accuses Apple of infringing claims 1-4, 6-8, 10-14, 16-18, and 20-21 of U.S. Patent No. 6,467,088, titled "Reconfiguration Manager For Controlling Upgrades of Electronic Devices," which expired on June 30, 2019. *See* Appx14-16; Appx24.

According to Uniloc, the '088 patent "describes in detail and claims in various ways inventions in systems and devices for improved management and control of reconfiguring electronic devices." Appx15. Uniloc asserts various Apple products that run the iOS or macOS operating systems—including iPhones, iPads, and desktop and notebook computers—infringe the '088 patent. *See* Appx15. Notably, these products directly overlap with the products accused in other Uniloc cases that were transferred to California. Appx88. Uniloc's infringement contentions target the software update functionality in iOS and macOS, "for example, the installation or update of an App Store application on the device." Appx16.

Apple Seeks Transfer to the Northern District of California.

Because of the strong connections between this case and the Northern District of California, and given the lack of connections to the Western District of Texas, Apple promptly moved to transfer under 28 U.S.C. § 1404(a). Appx78-104. Apple also moved to stay all case activity pending a decision on its motion to transfer. Appx166-173. The district court denied the stay. Appx7.

Apple supported its transfer motion with documentation and with a sworn declaration from Michael Jaynes, a Senior Finance Manager at Apple. Appx105. That evidence showed that nearly all the sources of proof regarding the accused products and the accused technology are in the Northern District of California. Appx92-94; Appx110-111; Appx115-116; Appx119. Apple also showed that all of the Apple employees likely to be witnesses in this case are located in that district. Appx96-98; Appx116-119; Appx108. And several third-party witnesses would be subject to compulsory process in the Northern District of California as well. Appx95-96; Appx152-154. Finally, Apple demonstrated that the Northern District of California has a strong local interest in this matter because it is the location of Apple's headquarters, where the accused products were designed and developed, and where all of Apple's relevant employees are based. Appx101-102; Appx107-108; Appx110-111; Appx115-119.

Uniloc opposed. Rather than relying on evidence, however, Uniloc relied on speculation and irrelevant arguments that had already been rejected by courts in the Eastern and Western Districts of Texas. As described in more detail below (at 18-24), Uniloc was unable to identify

any relevant witnesses in the district or show any other connection between the Western District of Texas and this dispute—despite having two rounds of document discovery, two rounds of written discovery, depositions of Austin-based Apple employees in January 2019, and a deposition of Apple's witness, Mr. Jaynes, in January 2020. Appx84; Appx210. Instead, Uniloc relied on attorney argument and speculation about potential witnesses that have no relevance to the case.

For instance, Uniloc suggested that certain Apple employees working in Austin might be trial witnesses; but Apple demonstrated that its employees in Austin do not have any relevant knowledge. Appx99; Appx107-108. Uniloc also relied on the fact that a third-party in Austin physically assembles the Mac Pro desktop computer—but Uniloc failed to show why those manufacturing employees would have any knowledge about the accused software functionality. Appx203. In addition, Uniloc did not (nor could it) dispute that all the likely trial witnesses from both Apple and Uniloc are in California. Appx88-90; Appx95-98; Appx107-108; Appx116-119; Appx204-207.

The District Court Denies Apple's Transfer Motion.

The district court conducted a telephonic hearing on the transfer motion on May 12, 2020. Appx10. At the hearing, it discounted arguments about the convenience of party witnesses, even though that is a significant factor in the § 1404(a) analysis, and instead showed deference to Uniloc's choice of venue, which is not a factor. *See* Appx250; Appx252. The district court also emphasized that its default scheduling order aims to get cases to trial "in a more expeditious manner" than other districts, and suggested that its docket-management practices distinguish this case from the 21 similar cases in which Judges Gilstrap and Yeakel determined that the Northern District of California is clearly more convenient. Appx245-246.

At the end of the hearing, the district court stated without explanation that it would be denying the transfer motion and that it would issue a written order "as soon as we can." Appx296. Over a month has passed, but the district court's order has not issued. During that time, the court has held a *Markman* hearing, issued claim constructions (a few weeks after the hearing), held a discovery hearing, and issued a decision on a protective order (two days after the hearing),

but has yet to issue an order explaining its rationale for refusing to transfer. Appx11.

Given the rapid progression of this case, Apple cannot wait any longer for a written order before seeking mandamus to prevent the case from moving forward in an inconvenient venue. Under the governing law and based on the facts presented to the district court, there is no rationale for denying transfer that would amount to anything other than a clear abuse of discretion.

REASONS FOR ISSUING THE WRIT

A petitioner seeking mandamus relief must (1) show a "clear and indisputable" right to the writ; (2) have "no other adequate means to attain the relief he desires"; and (3) demonstrate that "the writ is appropriate under the circumstances." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc) ("*Volkswagen II*") (quoting *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004)).[1] The first and third prongs are satisfied where a district court reaches a "patently

[1] In reviewing issues related to § 1404(a), "this court applies the laws of the regional circuit in which the district court sits, in this case the Fifth Circuit." *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

erroneous result" by relying on clearly erroneous factual findings, erroneous conclusions of law, or misapplications of law to fact. *Id.* at 310-12, 318-19. The second prong is necessarily satisfied where a district court improperly denies transfer under § 1404(a). *See id.* at 319; *see also In re Radmax, Ltd.*, 720 F.3d 285, 287 n.2 (5th Cir. 2013).

This case meets that high standard. Everyone recognizes that this case "featur[es] most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff," which means that "the trial court should grant a motion to transfer." *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009). But the district court denied Apple's transfer motion—and Apple has been waiting more than a month for the district court to explain why. For the reasons explained below, there is no possible analysis of the § 1404(a) factors that could support the district court's outcome. And the district court's steadfast refusal to transfer patent cases out of the Western District of Texas—even when another forum is unquestionably and significantly more convenient—is inviting plaintiffs to do exactly what Uniloc did here: intentionally file in a venue that has no connection to the case but which guarantees assignment to a judge

that the plaintiff views as desirable. That is judge-shopping plain and simple, and this Court should not permit it to continue.

I. Mandamus Is Warranted Because Transfer Under § 1404(a) Has Become Effectively Unavailable In The Waco Division Of The Western District Of Texas, Allowing Unabashed Forum- And Judge-Shopping.

This case is part of a trend. In his nearly two years on the bench, Judge Albright has never granted a § 1404(a) transfer motion that would send a patent case outside of the Western District of Texas. The only transfer motions he has granted were for intradistrict transfer to the Austin Division, where the cases remain on Judge Albright's docket. *See* Appx482.

This track record does not reflect a lack of merit in the transfer motions the district court has entertained. Apple's own cases illustrate the increasing extremity of circumstances in which the court is denying interdistrict transfer. In each case, the district court has denied transfer to the Northern District of California even though virtually all evidence and witnesses are located there. In the first case, the court inflated the plaintiffs' Texas presence and deferred to implausible allegations—contradicted by sworn testimony—suggesting that Apple and third-party employees in Austin would have relevant information.

Fintiv, Inc. v. Apple Inc., No. 6:18-cv-00372-ADA, 2019 WL 4743678 (W.D. Tex. Sept. 13, 2019); *see* Petition at 22-40, Dkt. 2, *In re Apple Inc.*, No. 20-104 (Fed. Cir. Oct. 16, 2019) (Appx377-395). In the second, the plaintiff had no Texas connection, and the district court deferred to mere speculation that a non-party trade organization headquartered in Austin—as opposed to the chipmaker headquartered in California—would have information relevant to infringement. Order, Dkt. 59, *STC.UNM v. Apple Inc.*, No. 1:20-cv-00351-ADA (W.D. Tex. Apr. 1, 2020) (Appx400-416); *see* Petition at 16-39, Dkt. 2-1, *In re Apple Inc.*, No. 20-127 (Fed. Cir. May 14, 2020) (Appx441-464).

Now, in this latest case, there is not even an arguable Texas connection to the dispute. Uniloc had every opportunity to show one, and it could not. *See infra* 18-24. Two other Texas district judges have recognized that similarly situated patent-infringement disputes between these parties have no connection to Texas and have transferred 21 other cases to the Northern District of California because it is "clearly a more convenient forum for the parties and witnesses." *Uniloc USA, Inc. v. Apple Inc.*, No. A-18-CV-990-LY, 2019 WL 2066121, at *4 (W.D. Tex. Apr. 8, 2019); *see also* Appx144. Yet the district court

announced at the conclusion of the transfer hearing that it was "going to deny the motion to transfer," Appx296—and Apple continues to wait for the district court's explanation.

As Apple and others have demonstrated to this Court, the district court's transfer rulings turn on clear legal errors and unjustifiable factual analyses that warp the § 1404(a) analysis and do not serve "the convenience of parties and witnesses" or "the interest of justice." *See generally* Nos. 20-104 (Apple), -126 (Adobe), -127 (Apple), -130 (Dropbox), -132 (Dropbox) (Fed. Cir.). Left unchecked, the district court's flawed approach will encourage and reward forum- and judge-shopping by plaintiffs eager to litigate in a venue that has nothing to do with the lawsuit, but which they view (rightly or wrongly) as favorable to their side.

Because Texas has no divisional venue rules, plaintiffs are free to file in the Waco Division of the Western District—guaranteeing that Judge Albright, the only Waco Division district judge, will be assigned to their case. *See* Alex Botoman, Note, *Divisional Judge-Shopping*, 49 Colum. Hum. Rts. L. Rev. 297, 298 (2018) (describing ability to judge-shop within Texas). Judge Albright has publicly invited plaintiffs to file

their patent cases in Waco. *See, e.g.*, Michelle Casady, *Waco's New Judge Primes District for Patent Growth*, Law360 (Feb. 12, 2019), https://tinyurl.com/Law360Waco. And plaintiffs have heeded the call. *See, e.g.*, Mark Curriden, *"User friendly" approach means Texas has new high-stakes patent litigation hotspot*, Dallas Bus. J., 2019 WLNR 35169859 (Nov. 21, 2019) ("Prior to Judge Albright taking the federal bench in September 2018, less than a dozen patent infringement cases had been filed in Waco. Ever. More than 250 patent lawsuits have been filed there during the past 14 months.").

Encouraging patent litigation in a particular district is not objectionable. Encouraging that litigation, and then misapplying the law to prevent § 1404(a) transfer where it is clearly warranted, is an invitation to judge-shopping. This case is a stark example. Uniloc originally filed this very case in the Austin Division, where it was assigned to Judge Yeakel. *See supra* 5. During the transfer briefing—and while Judge Albright's confirmation was pending—Uniloc voluntarily dismissed, then refiled the same case in the Waco Division after the others had been transferred and after Judge Albright had been confirmed. *Id.*

The maneuver worked. Where Judge Yeakel had recognized that transfer to the Northern District of California was clearly warranted, Judge Albright (for unstated reasons) decided to keep this case in the Western District of Texas. The district court's clear aversion to interdistrict transfer will encourage plaintiffs like Uniloc to continue filing lawsuits in the Waco Division; even with zero ties to the forum, they can be sure their case will remain before Judge Albright.

"The Supreme Court has long urged courts to ensure that the purposes of jurisdictional and venue laws are not frustrated by a party's attempt at manipulation." *In re Microsoft Corp.*, 630 F.3d 1361, 1364 (Fed. Cir. 2011); *see also* Jonas Anderson, *Judge Shopping in the Eastern District of Texas*, 48 Loy. U. Chi. L.J. 539, 543 (2016) ("Should the concentration of almost one-third of the nation's patent decision making be in one man's hands, regardless of how skilled that judge is?") (focusing on Judge Gilstrap). This Court should grant mandamus to correct the clear abuse of discretion in the denial of transfer here, and to discourage plaintiffs from continuing to engage in blatant forum- and judge-shopping that defeats the purpose of § 1404(a).

II. Any Analysis Of The § 1404(a) Factors That Leads To A Denial Of Transfer Would Be Patently Erroneous.

The § 1404(a) factors weigh strongly in favor of transfer to the Northern District of California. It is not even a close call—there is a "stark contrast in relevance, convenience, and fairness between the two venues." *Nintendo*, 589 F.3d at 1198.

The Fifth Circuit conducts the § 1404(a) transfer analysis using well-established private- and public-interest factors. The private-interest factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Volkswagen II*, 545 F.3d at 315.

The public-interest factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law." *Id.* (alteration in original).

The district court has not yet provided its assessment of how those factors apply in this case. But any fair weighing of them must lead to the conclusion that the Northern District of California is clearly more convenient.

A. The private-interest factors all favor transfer.

1. All likely trial witnesses are in California and none are in Texas.

The convenience for willing witnesses is the most important factor in the § 1404(a) analysis. *See, e.g.*, *In re Google Inc.*, No. 2017-107, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017); *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009). Apple made a strong showing here, equivalent to the one that two other Texas courts found weighed "strongly" in favor of transfer. *Uniloc*, 2019 WL 2066121, at *4; *see* Appx142. Because Apple identified numerous witnesses in the Northern District of California and there are no identified witnesses in the Western District of Texas, this factor strongly favors transfer in this case as well. *See In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *3 (Fed. Cir. Sept. 25, 2018).

Every identified potential witness is in California—most in the Northern District. Apple worked to identify which of its employees

would have relevant information about the accused technology; all are in the Northern District of California. And Apple carefully explained the relevance of each person's testimony in a sworn declaration. Appx107-108; Appx118-119. Numerous likely Uniloc witnesses also live and work in California, including several managers of Uniloc 2017, who are based in San Francisco; a software engineer, Mr. Ford, who lives and works in Northern California; Uniloc's CEO, Mr. Etchegoyen, who maintains a residence in Newport Beach, California; and Uniloc's CFO, Mr. Turner, who resides and works in California. Appx152-153; Appx156-159; Appx163; Appx127.

Meanwhile, Uniloc identified no likely witnesses in the Western District of Texas. The most it could do was speculate about possible witnesses with some connection to Texas. For example, it relied on the presence of Flextronics, a third party based in Austin, which assembles the Mac Pro desktop computer. As an initial matter, the Mac Pro is just one of various accused Apple products, which include iPhones, iPads, and desktop and notebook computers. Appx15. More importantly, the information Uniloc purports to seek from Flextronics is irrelevant to its infringement claim. This case concerns software functionality, not any

manufacturing processes. So the fact that Flextronics employees are involved in assembling Mac Pro computers in Texas does not mean they have any knowledge about the issues to be tried. Uniloc made no effort to show otherwise; it declined to pursue discovery on whether any Flextronics witnesses have relevant knowledge, and it never identified any specific Flextronics witnesses it might call.

The district court appeared to incorrectly weigh Apple's general presence in Austin against transfer. The court remarked at the hearing that "Apple now has its … essentially second headquarters and is about to add 15,000 employees" in the Western District of Texas. Appx250. But Apple's employees in Austin do not have any relevant knowledge and will not be witnesses in this case. Appx107-108. Again, Uniloc made no contrary showing, despite having every opportunity to do so through venue discovery in both the prior and current iterations of this case.

For example, Uniloc referred to potential witnesses from Apple who have responsibility for content delivery network (CDN) servers and who have "CDN" in their job title. Appx185. But Uniloc's infringement contentions—for good reason—do not mention CDN servers. Appx32-

77. This is because CDNs have no bearing on determining infringement in this case, and Uniloc made no showing otherwise. Appx205. Generously read, the claimed technology relates to logic for determining the compatibility of applications, operating systems, and hardware; it has nothing to do with CDNs that optimize how to geographically distribute software, without any role in determining what compatible software to deliver.

Uniloc also cited an unspecified and equally irrelevant Apple server node in Dallas, but a server is not a witness, and discovery revealed no Apple employees there (which, in any case, is in Dallas, in the *Northern* District of Texas). Appx217; Appx219. Apple's witness confirmed in deposition that all the team members who work on the accused technology are in the Northern District of California. Appx213; Appx215; Appx218-219. Uniloc also pointed to an employee in the Austin AppleCare department, which provides customer service and technical support. Appx261-262. Customer service is not an issue in this case, and it is implausible to suggest that people who respond to the customer support line are likely to testify at a patent-infringement trial.

There can be no dispute that the California-based witnesses, whether they be Apple or Uniloc witnesses, will be less inconvenienced by traveling to trial in San Francisco or San Jose than they would be traveling to Texas. The district court even acknowledged that California was more convenient for Uniloc's witnesses: "[I]f Uniloc was concerned about the convenience of its party witnesses, they would not have filed here. *They would have filed originally in the Northern District of California for purposes of convenience*." Appx252 (emphasis added).

But the court avoided this fact by suggesting (contrary to Fifth Circuit law) that it was irrelevant: "Why would a court take into consideration the convenience of the plaintiff's witnesses who—when they clearly made the decision to file in this court. I just—I couldn't find a case and it doesn't make sense to me." Appx250 ("Apple appeared to rely somewhat substantially on the fact that the Uniloc folks are in the Northern District of California, and I'm wondering why that should matter.").

Disregarding the convenience of party witnesses runs contrary to Fifth and Federal Circuit precedent, which recognizes the significance

of convenience to party and nonparty witnesses alike and indicates no difference between them. For example, in *In re Acer America Corp.*, this Court's analysis depended on the location of "[a] substantial number of *party witnesses*" and the expense and loss of productivity entailed in requiring those party employees to travel for trial. 626 F.3d 1252, 1255 (Fed. Cir. 2010) (emphasis added). And the Court specifically called out the convenience of the *plaintiff's* employee witnesses. *Id.* at 1255 n.2; *see also In re Apple, Inc.*, 581 F. App'x 886, 889 (Fed. Cir. 2014).

The district court here clearly erred in suggesting that the convenience of plaintiff's witnesses should not be considered. Indeed, the rationale underlying the witness-convenience factor strongly supports considering the venue that will be most convenient for all party witnesses. As the Fifth Circuit explained, "[a]dditional distance means additional travel time; additional travel time increases the probability for meal and lodging expenses; and additional travel time with overnight stays increases the time which these fact witnesses must be away from their regular employment." *In re Volkswagen AG*, 371 F.3d 201, 205 (5th Cir. 2004) ("*Volkswagen I*").

That is why the Fifth Circuit has established its "100-mile rule," which applies to *all* witnesses. "Because it generally becomes more inconvenient and costly for witnesses to attend trial the further they are away from home," the 100-mile rule requires that "[w]hen the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *TS Tech*, 551 F.3d at 1320 (quoting *Volkswagen I*, 371 F.3d at 204-05); *Apple*, 581 F. App'x at 889 (same).

In this case, there is no evidence of a single relevant witness within 100 miles of the Western District of Texas, and most of the likely witnesses live more than 1,700 miles from Waco, Texas. For every identified witness, a trial in the Western District of Texas would mean multiple long flights, extended hotel stays, days apart from their families, and time spent away from their ordinary jobs. The district court was wrong to discount these costs simply because some of those witnesses are affiliated with a company (Uniloc) that chose to file suit in Texas.

2. Plaintiff's choice of forum is not a distinct factor.

"Fifth Circuit precedent clearly forbids treating the plaintiff's choice of venue as a distinct factor in the § 1404(a) analysis." *TS Tech*, 551 F.3d at 1320. Nevertheless, the district court appeared to weigh Uniloc's choice of venue as a strong factor against transfer and afford its choice considerable deference. At the hearing, the court asked: "[I]f a plaintiff wants to say, as opposed to being in the Northern District of California, I'm going to make an argument to a judge in a division that has a set practice that is getting my case to court in an efficient manner and will get it there in a more expeditious manner than I believe can be done in the Northern District of California … *why wouldn't a plaintiff do that*?" Appx245-246 (emphasis added).

A plaintiff certainly may choose to file in any appropriate venue under the general venue statute, and its choice should be given "some weight." *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 62 n.6 (2013). But the Fifth Circuit affords that weight by requiring a defendant to show that the transferee venue is "clearly more convenient"; it forbids a district court from giving "inordinate weight" to the plaintiff's choice. *Volkswagen II*, 545 F.3d at 313. It also recognizes

that "§ 1404(a) tempers the effects of the [plaintiff's] exercise of this privilege." *Id.* "The underlying premise of § 1404(a) is that courts should prevent plaintiffs from abusing their privilege under § 1391 by subjecting defendants to venues that are inconvenient under the terms of § 1404(a)." *Id.* By apparently considering Uniloc's choice of venue as a factor against transfer and giving substantial deference to that choice, "the court erred in giving inordinate weight to the plaintiff's choice of venue." *TS Tech.*, 551 F.3d at 1320.

3. Compulsory process for critical witnesses is available only in California.

Because compulsory process for critical third-party witnesses is available only in the Northern District of California, this factor clearly favors transfer. Indeed, at the transfer hearing, the district court agreed, telling Apple: "Yeah … I'm with you on that one for sure." Appx254.

Apple identified several third-party witnesses in the Northern District of California, including employees from the investment firm

Fortress, who serve as Uniloc's Board of Directors.[2] Appx85; Appx95-96; Appx189; Appx254. The Northern District of California therefore would have subpoena power over those individuals, whereas the Western District of Texas would not. Appx95-96. Although Uniloc incorrectly argued that its board members were not relevant to this factor, it conceded that "those folks geographically live closer to particularly the Northern District of California." Appx278. Meanwhile, Uniloc has not identified *any* likely third-party witness who would be within the subpoena power of the Western District of Texas, and Apple is not aware of any. Appx204.

Uniloc argued that this factor does not favor transfer because its board members have provided statements that they are willing to appear at trial in Texas. That these witnesses may be willing to accept inconvenience, however, does not make the Western District of Texas an

[2] As one district court recently explained, "Fortress Investment Group is a Northern California entity that incorporated and formed both Uniloc and Uniloc's parent, CF Uniloc Holdings LLC, funded Uniloc's patent assertion strategies, and appointed its own employees as officers and board members of Uniloc and CF Uniloc, many of whom reside and work in the Northern District." *Uniloc 2017 LLC v. Google LLC*, No. 2:18-cv-00504-JRG-RSP, 2020 WL 3064460, at *2 n.5 (E.D. Tex. June 8, 2020) (transferring venue to Northern District of California).

affirmatively convenient forum, and therefore does not weigh against transfer. Nor does it change the fact that no third-party witnesses are within the subpoena power of the Western District of Texas. *See, e.g. Genentech*, 566 F.3d at 1345 (concluding that compulsory-process factor "weighs in favor of transfer" where "there is a substantial number of witnesses within the subpoena power of the Northern District of California and no witness who can be compelled to appear in the Eastern District of Texas").

Likewise, the geographic diversity of third-party witnesses does not weigh against transfer. Uniloc argued that some potential third-party witnesses were located farther from California than Texas. Appx276 (citing inventors and prosecuting attorneys in New York, and original patent owner in Netherlands and Massachusetts).

As an initial matter, "[a]ttorney argument is not evidence," and therefore should not be considered. *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017). In any event, because none of these potential witnesses are in either the Western District of Texas or the Northern District of California, they are not relevant to the analysis. *See HP Inc.*, 2018 WL 4692486, at *3 ("[T]he

comparison between the transferor and transferee forums is not altered by the presence of other witnesses ... in places outside both forums.") (quoting *In re Toyota Motor Corp.*, 747 F.3d 1338, 1340 (Fed. Cir. 2014)); *Genentech*, 566 F.3d at 1344-45 (rejecting district court's reliance on geographic diversity of witnesses in denying transfer).

4. All relevant sources of proof are in or around the Northern District of California.

Because all relevant documentary evidence and party witnesses in this case are in or around the Northern District of California, this factor also strongly favors transfer. First, as the accused infringer, Apple will have the bulk of the relevant documents. *See Genentech*, 566 F.3d at 1345. The district court recently recognized in another Apple case that this fact favors transfer. *See Fintiv*, 2019 WL 4743678, at *3 ("[B]ecause Apple is the accused infringer, it is likely that it will have the bulk of the documents that are relevant in this case.").

There is no dispute that all the relevant Apple documents are in the Northern District of California. The accused technology was designed and developed by Apple employees there; the primary research, design, development, facilities, and engineers for the accused products are there; and Apple's records related to the research and

design of the accused products are there. Appx92. All the documents concerning the marketing, sales, and financial information for the accused products also are in the Northern District of California, as is the relevant source code. Appx92; Appx204.

Uniloc also has numerous sources of proof in California, including several managers and a software engineer, all of whom are based in Northern California. Appx152-153; Appx156-159; Appx163. Uniloc maintains an office in Newport Beach, California, that hosted "around 100 top-level strategy meetings" during a three-year period, and Uniloc Luxembourg's CEO holds monthly meetings in California with Uniloc's CFO. Appx129. In addition, Uniloc's CEO has maintained a residence in Newport Beach, California, since 2010, and Uniloc's CFO resides and works in California. Appx127.

By contrast, there are no relevant sources of proof in the Western District of Texas. Uniloc has no physical presence in the district, and Apple is not aware of any likely third-party witnesses who reside there. Appx93; Appx203. Apple has no relevant employees and does not maintain any relevant documents in the district. Appx93; Appx204-205.

Although the parties may be able to access certain documents remotely, this does not mitigate the convenience of accessing them from the place where they are physically located (and where the employees who routinely work with the documents are). The district court questioned whether relying on the capability for "remote access of relevant documents [would] require us to sort of stretch Fifth Circuit precedent." Appx273. It would.

The Fifth Circuit and this Court have repeatedly confirmed that the location of documentary evidence remains a relevant factor notwithstanding the technical capability for remote electronic access. *See Volkswagen II*, 545 F.3d at 316; *TS Tech*, 551 F.3d at 1321. The fact "[t]hat access to some sources of proof presents a lesser inconvenience now than it might have absent recent developments does not render this factor superfluous." *Volkswagen II*, 545 F.3d at 316. And the fact that an employee in Apple's Austin office could theoretically access electronic files that employee knows nothing about does not change the fact that it is far more convenient for the California-based employees who actually work with those files to do so.

5. Judicial economy strongly favors transfer.

This factor is about "practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). Here, because all identifiable witnesses and evidence are in California, a trial there will be much easier and more efficient than a trial in Texas.

In addition, 21 Uniloc patent cases against Apple have already been transferred from Texas to the Northern District of California and are currently being litigated there. *See supra* 3-5; Appx85-87. This case involves many of the same accused products at issue in those cases. *See supra* 5-6; Appx88. The parties overlap, so the Northern District of California will already have developed an understanding of their respective business activities, including licensing, marketing, and sales issues. Appx100. And judges in the Northern District of California are already familiar with the background of the dispute between Uniloc and Apple and have considered and coordinated on overlapping issues, such as jurisdiction, assignments, licensing, motions to compel, motions for protective orders, and confidentiality claims, among others. Appx100; Appx207; *see e.g.*, Appx475-476; Appx417; Appx299-327; Appx328-342.

It would be highly inefficient to litigate 21 patent cases between Uniloc and Apple in the Northern District of California and a single case in the Western District of Texas.[3]

Even Uniloc conceded that "judicial economy could potentially be served if there was some guarantee that this case would end up in front of the same judge." Appx285. While there is no guarantee of getting a particular judge in the Northern District of California, there would be efficiency gains even if the cases are not assigned to the same judge. For example, transfer would enable coordinated mediation, since all of the Apple-Uniloc cases in the Northern District of California have been referred to Chief Magistrate Judge Joseph C. Spero for mediation purposes. Appx207; Appx343-346. The parties attended a settlement conference on January 29, 2020, and the next one is scheduled for October 8, 2020. *See, e.g.*, *Uniloc 2017 LLC v. Apple Inc.*, No. 19-cv-1905, Dkt. 97, 99 (N.D. Cal. Feb. 6, 2020) (Appx340).

[3] Such efficiency does not carry the same weight where plaintiffs have filed multiple suits against multiple parties in the same district. There, this Court has cautioned against allowing "co-pending litigation to dominate the analysis," because it "would automatically tip the balance in non-movant's favor." *Google*, 2017 WL 977038, at *2.

B. The public-interest factors clearly favor transfer.

The parties agree that two of the public-interest factors—familiarity with the governing law and conflicts of law—are neutral in this case. Appx102; Appx198. The other two public-interest factors either weigh in favor of transfer or, at the very least, cannot weigh against it. The district court could not properly have relied on those factors to deny transfer, particularly since public-interest factors should "rarely" operate to "defeat a transfer motion." *Atl. Marine*, 571 U.S. at 64.

1. The interest of the district where the accused technology was designed and developed is self-evidently stronger than that of a district with no tie to this case.

The first public-interest factor considers the "local interest in having localized interests decided at home." *Volkswagen II*, 545 F.3d at 317. For this factor to apply, there must be "significant connections between a particular venue and the events that gave rise to a suit." *Acer*, 626 F.3d at 1256. Here, the local interest of the Northern District of California is "self-evident," since Apple's headquarters are in that district, the accused technology was "developed and tested" entirely within that district, and the suit "calls into question the work and

reputation of several individuals residing" in that district. *In re Hoffmann-La Roche Inc.*, 587 F.3d 1333, 1336, 1338 (Fed. Cir. 2009).

Any finding that the local-interest factor weighs against transfer would require legal error. Courts that come to that conclusion do so based on a genuine connection between the dispute and the forum, such as the residence of the patent inventor. *See, e.g., In re Telebrands Corp.*, 773 F. App'x 600, 604 (Fed. Cir. 2016). No such connection exists here. As explained above (at 3, 18-24, 26-28), Uniloc is a Delaware company with no presence in the Western District of Texas; the inventors of the '088 patent appear to be in New York; and Apple's presence in the district is irrelevant to the "local interest" analysis, since its Austin activities are entirely unrelated to "the events that gave rise to [this] suit." *Acer*, 626 F.3d at 1256.

Uniloc's "local interest" arguments simply rehashed the private-interest factors, including witness convenience and the parties' general presence in Texas. Appx197. As explained above (at 18-24), Uniloc's contentions regarding those factors are wrong and unsupported by the record. Moreover, premising the local-interest factor on the same considerations as the private-interest factors would be contrary to law.

See Hoffmann-La Roche, 587 F.3d at 1338 (faulting district court for "essentially render[ing] this factor meaningless" by reducing it to be redundant with private-interest factors).

Uniloc also relied on Flextronics' assembly of the Mac Pro in Austin, suggesting that this is an act of infringement creating a local interest in the district. Appx197. But Uniloc's infringement allegations have nothing to do with the hardware assembly of the Mac Pro (or, for that matter, the hardware assembly of the other accused products, which does not take place in Texas). They relate to Apple's design of software functionalities common across all the accused products. Appx15-17. That design took place exclusively in the Northern District of California—and that is where the local interest lies. *See, e.g.*, *DataQuill, Ltd. v. Apple Inc.*, No. 13-CA-706-SS, 2014 WL 2722201, at *4 (W.D. Tex. June 13, 2014) (recognizing that local interest weighed in favor of transfer notwithstanding Apple's Austin presence because "this case is about Apple's actions in designing and developing [the accused products], all of which happened in Cupertino").

Even accepting every speculation by Uniloc, the local interest factor would at most be neutral. This factor focuses on relative

interests, *Volkswagen II*, 545 F.3d at 318, and it is simply not plausible that tenuous Apple connections to the Western District of Texas render that forum's interest in the outcome of this specific case greater than the interest of the Northern District of California, where Apple is headquartered and where all of the employees with an actual connection to the alleged infringement work.

2. The district court's speculation about its untested trial plan cannot outweigh the factors heavily favoring transfer.

The final factor, court congestion, cannot possibly preclude transfer. Patent cases in the Northern District of California have a slightly shorter time to trial than in the Western District of Texas—since 2008, a median of 2.39 versus 2.62 years. Appx484; Appx101. The district court's default scheduling order aims to accelerate that historical timeline and move patent cases from case management conference to trial in approximately 18 months.[4] *See* Appx197. But the district court's decision to set an unusually aggressive pace does not mean that every other district court in the country is "congested" for

[4] *See Order Governing Proceedings – Patent Case,* U.S. District Court for the Western District of Texas (Feb. 26, 2020), https://tinyurl.com/ybcamrwe.

purposes of the § 1404(a) analysis. That would treat this factor as a pure race-to-the-finish, when it is actually designed to account for "administrative difficulties flowing from court congestion." *Volkswagen II*, 545 F.3d at 315. And here, there is simply no evidence of administrative difficulties or court congestion in the Northern District of California.

Moreover, the district court's scheduling order has yet to be followed through to trial, so there is no actual data to compare against the time-to-trial statistics from the California court. This Court has cautioned that case congestion analysis can sometimes tip into "speculat[ion]." *See Genentech*, 566 F.3d at 1347. And here, it is entirely speculative—indeed, unrealistic—to assume that all of the patent cases pending in Waco will proceed to trial on the default scheduling order's ambitious pace.

That is particularly true given the large (and rapidly increasing) number of patent cases currently pending in the division. Judge Albright presently has 355 patent cases pending before him, with 260 filed just this year. Appx479; Appx486. In contrast, judges in the Northern District of California, including those presiding over Uniloc

cases, have far fewer. Judge Davila has 16 active cases, two of which were filed this year. Appx479-480; Appx500. Judge Alsup has 16 active cases, three of which were filed this year. Appx479; Appx498. If anything, this shows that the Northern District of California is not "congested" but that the Waco Division of the Western District of Texas is rapidly becoming so.[5] *See also* Appx248-249. Counting the court-congestion factor as a reason to deny transfer would get things exactly backward and would be an abuse of discretion.

At a minimum, even if it were true that the Northern District of California were "congested," that alone cannot tip the balance against transfer since "several relevant factors weigh in favor of transfer and

[5] Notably, Judge Albright stated during the transfer hearing that "[t]he heaviest [patent] docket … we all would agree, would be in Delaware. [B]y numbers, that's impossible to debate. Each of those judges has three or four times … the number of cases most other judges in America have by a lot." Appx245.

In fact, Judge Albright now has more active patent cases than any judge in the District of Delaware. Judge Stark, who has the heaviest patent docket in Delaware, has 306 compared to Judge Albright's 355. Appx480; Appx502-512; *see also Q1 2020 Patent Dispute Report*, Unified Patents (Mar. 31, 2020), https://tinyurl.com/y7md9go5 (noting that, as of March 31, 2020, the number of patent disputes in the Western District of Texas has increased 700% in the past four years and is set to overtake Delaware).

others are neutral." *Genentech,* 566 F.3d at 1347. That is particularly true because relative times to trial are not "of particular significance" in cases like this, where the plaintiff "does not make or sell any product that practices the claimed invention." *In re Morgan Stanley*, 417 F. App'x 947, 950 (Fed. Cir. 2011). Uniloc is a non-practicing entity, the asserted patent is expired, and there is no particular reason why speed would be critical, so the court congestion factor should not be "assigned significant weight." *Id.* Indeed, if speed were critical, then presumably Uniloc would not have voluntarily dismissed the previous incarnation of this case to avoid transfer back in 2018.

CONCLUSION

The Court should grant the petition, vacate the district court's decision denying Apple's motion to transfer, and direct the district court to transfer the case to the Northern District of California.

June 15, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on June 15, 2020.

A copy of the foregoing was served upon the following counsel of record and district court judge via UPS:

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CERTIFICATE OF COMPLIANCE

The petition complies with the type-volume limitation of Fed. R. App. P. 21(d)(1) because this petition contains 7726 words.

This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Century Schoolbook 14-point font.

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Miscellaneous Docket No. ___

IN THE

United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:19-cv-00532-ADA, Hon. Alan D Albright

NON-CONFIDENTIAL APPENDIX TO APPLE INC.'S PETITION FOR WRIT OF MANDAMUS

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Statement Regarding Confidential Material Omitted

Pursuant to Federal Circuit Rule 30(h)(1)(A), docket number 38 has been omitted from the nonconfidential version of the Appendix, pursuant to the Protective Order issued in the district court on June 5, 2020. The omitted materials contain the confidential business information of Petitioner Apple Inc. and Respondent Uniloc 2017 LLC.

PATENT

U.S. District Court [LIVE]
Western District of Texas (Waco)
CIVIL DOCKET FOR CASE #: 6:19-cv-00532-ADA

Uniloc 2017 LLC v. Apple Inc.
Assigned to: Judge Alan D Albright
Cause: 35:271 Patent Infringement

Date Filed: 09/10/2019
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
09/10/2019	1	COMPLAINT (Filing fee $ 400 receipt number 0542-12588647), filed by Uniloc 2017 LLC. (Attachments: # 1 Exhibit A - US Patent No 6,467,088, # 2 Civil Cover Sheet Civil Cover Sheet)(Davis, William) (Entered: 09/10/2019)
09/10/2019	2	REQUEST FOR ISSUANCE OF SUMMONS by Uniloc 2017 LLC. (Davis, William) (Entered: 09/10/2019)
09/10/2019	3	RULE 7 DISCLOSURE STATEMENT filed by Uniloc 2017 LLC. (Davis, William) (Entered: 09/10/2019)
09/10/2019	4	NOTICE *Filing of Patent* by Uniloc 2017 LLC (Davis, William) (Entered: 09/10/2019)
09/10/2019		Case assigned to Judge Alan D Albright. CM WILL NOW REFLECT THE JUDGE INITIALS AS PART OF THE CASE NUMBER. PLEASE APPEND THESE JUDGE INITIALS TO THE CASE NUMBER ON EACH DOCUMENT THAT YOU FILE IN THIS CASE. (am) (Entered: 09/11/2019)
09/10/2019	5	Summons Issued as to Apple Inc.. (am) (Entered: 09/11/2019)
09/10/2019	7	Report on Patent/Trademark sent to U.S. Patent and Trademark Office. (am) (Entered: 09/11/2019)
09/11/2019	6	Pro Hac Vice Letter to Ty Wilson. (lad) (Entered: 09/11/2019)
09/16/2019	8	SUMMONS Returned Executed by Uniloc 2017 LLC. Apple Inc. served on 9/12/2019, answer due 10/3/2019. (Davis, William) (Entered: 09/16/2019)
10/03/2019	9	ANSWER to 1 Complaint with Jury Demand . Attorney John Michael Guaragna added to party Apple Inc.(pty:dft) by Apple Inc..(Guaragna, John) (Entered: 10/03/2019)
10/03/2019	10	RULE 7 DISCLOSURE STATEMENT filed by Apple Inc.. (Guaragna, John) (Entered: 10/03/2019)
10/04/2019	11	ORDER GOVERNING PROCEEDINGS PATENT CASE, Telephone Conference set for 10/30/2019 10:20 AM before Judge Alan D Albright. Signed by Judge Alan D Albright. (am) (Entered: 10/04/2019)
10/07/2019	12	NOTICE *Notice of Readiness for Initial Case Management Conference* by Uniloc 2017 LLC (Davis, William) (Entered: 10/07/2019)
10/30/2019	13	Minute Entry for proceedings held before Judge Alan D Albright. Telephone Conference held on 10/30/2019. Case called for telephonic scheduling conference. Parties had reached an agreed date for the Markman Hearing of April 24, 2020. The Court is available so Markman Hearing is set on 4/24/20 at 9:30 a.m. in Austin. Court briefly reviewed his Markman Hearing procedures and asked counsel to confer and reach an agreed scheduling order. Court answered any questions posed by counsel. (Minute entry documents are not available electronically.) (Court Reporter Kristie Davis.)(bw) (Entered: 10/30/2019)
10/30/2019	14	ORDER SETTING MARKMAN HEARING. Markman Hearing set for 4/24/2020 09:30 AM in Austin before Judge Alan D Albright. Signed by Judge Alan D Albright. (bw) (Entered: 10/30/2019)
11/12/2019	15	MOTION to Change Venue *Pursuant to 28 U.S.C. Sec. 1404(a)* by Apple Inc.. (Attachments: # 1 Suppl. Jaynes Declaration, # 2 Exhibit A to Suppl. Jaynes Decl., # 3 Guaragna Declaration, # 4 Exhibit 1, # 5 Exhibit 2, # 6 Exhibit 3, # 7 Exhibit 4, # 8 Exhibit 5, # 9 Proposed Order)(Guaragna, John) (Entered: 11/12/2019)
11/12/2019	16	Unopposed MOTION for Leave to Exceed Page Limitation *on Motion to Change Venue* by Apple Inc.. (Attachments: # 1 Proposed Order)(Guaragna, John) (Entered: 11/12/2019)

11/13/2019		Text Order GRANTING 16 Motion for Leave to File Excess Pages entered by Judge Alan D Albright. Came on for consideration Apple Inc.'s Unopposed Motion for Leave of Court to File its Motion to Transfer Venue in excess of the 10-page limit by an additional 10 pages, and the Court having considered the Motion and any response thereto, finds that the Motion should be GRANTED. It is therefore ORDERED that Apple is granted leave to file its Motion to Transfer Venue in excess of the page limit, for a total of up to 20 pages. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 11/13/2019)
11/13/2019	17	Proposed Scheduling Order *Agreed* by Uniloc 2017 LLC. (Davis, William) (Entered: 11/13/2019)
11/14/2019	18	SCHEDULING ORDER: Markman Hearing set for 4/24/2020 09:30 AM before Judge Alan D Albright. Amended Pleadings due by 7/17/2020. Joinder of Parties due by 6/5/2019. Motions due by 12/18/2020. Pretrial Conference set for 2/19/2021 09:00 AM before Judge Alan D Albright. Jury Selection and Jury Trial set for 2/26/2021 09:00 AM before Judge Alan D Albright.. Signed by Judge Alan D Albright. (am) (Entered: 11/14/2019)
11/18/2019	19	MOTION to Appear Pro Hac Vice by John Michael Guaragna *on behalf of Mark D. Fowler* (Filing fee $ 100 receipt number 0542-12858223) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 11/18/2019)
11/18/2019	20	MOTION to Appear Pro Hac Vice by John Michael Guaragna *on behalf of Christine K. Corbett* (Filing fee $ 100 receipt number 0542-12859341) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 11/18/2019)
11/19/2019	21	MOTION to Appear Pro Hac Vice by John Michael Guaragna *on behalf of Summer Torrez* (Filing fee $ 100 receipt number 0542-12864064) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 11/19/2019)
11/19/2019	22	Unopposed MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Change Venue *Pursuant to 28 U.S.C. Sec. 1404(a)* by Uniloc 2017 LLC. (Attachments: # 1 Proposed Order)(Davis, William) (Entered: 11/19/2019)
11/19/2019		Text Order GRANTING 22 Motion for Extension of Time to File Response/Reply entered by Judge Alan D Albright. Came on for consideration is Plaintiff 's Motion. Noting that it is unopposed, the Court GRANTS the Motion. Plaintiff shall have up to and including November 22, 2019 to respond/reply. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 11/19/2019)
11/19/2019		Text Order GRANTING 19 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT-I (f)(2). IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall apply for admission to the bar of this court in compliance with Local Rule AT-1(f)(1). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 11/19/2019)
11/19/2019		Text Order GRANTING 20 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it

		should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT-I (f)(2). IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall apply for admission to the bar of this court in compliance with Local Rule AT-1(f)(1). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 11/19/2019)
11/19/2019		Text Order GRANTING 21 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT-I (f)(2). IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall apply for admission to the bar of this court in compliance with Local Rule AT-1(f)(1). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 11/19/2019)
11/22/2019	23	Agreed MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Change Venue *Pursuant to 28 U.S.C. Sec. 1404(a)* by Uniloc 2017 LLC. (Attachments: # 1 Proposed Order)(Davis, William) (Entered: 11/22/2019)
11/23/2019		Text Order GRANTING 23 Motion for Extension of Time to File Response/Reply entered by Judge Alan D Albright. Came on for consideration is the Parties' Joint Motion. Noting that it is agreed, the Court GRANTS the Motion. Defendant shall have up to and including December 6, 2019 to respond/reply. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 11/23/2019)
12/06/2019	24	Agreed MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Change Venue *Pursuant to 28 U.S.C. Sec. 1404(a)* by Uniloc 2017 LLC. (Attachments: # 1 Proposed Order)(Davis, William) (Entered: 12/06/2019)
12/07/2019		Text Order GRANTING 24 Motion for Extension of Time to File Response/Reply entered by Judge Alan D Albright. Came on for consideration is the Parties' Joint Motion. Noting that it is agreed, the Court GRANTS the Motion. Plaintiff shall have up to and including December 20, 2019 to respond/reply. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 12/07/2019)
12/19/2019	25	Agreed MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Change Venue *Pursuant to 28 U.S.C. Sec. 1404(a)* by Uniloc 2017 LLC. (Attachments: # 1 Proposed Order)(Davis, William) (Entered: 12/19/2019)
12/20/2019		Text Order GRANTING 25 Motion for Extension of Time to File Response/Reply entered by Judge Alan D Albright. Came on for consideration is the Parties' Joint Motion. Noting that it is agreed, the Court GRANTS the Motion. Plaintiff shall have up to and including February 7, 2020 to respond/reply. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 12/20/2019)
01/03/2020	26	Unopposed MOTION *for Issuance of Letter of Request to Examine Persons and Inspect*

		Documents Pursuant to Hague Convention by Apple Inc.. (Attachments: # 1 Exhibit A, # 2 Proposed Order)(Guaragna, John) (Entered: 01/03/2020)
01/06/2020	27	ORDER GRANTING 26 Motion Issuance of Letter of Request to Examine Persons and Inspect Documents Pursuant to Hague Convention. Signed by Judge Alan D Albright. (am) (Entered: 01/06/2020)
01/07/2020	28	Clerk's Copy of 27 Signed Letter of Request to Examine Persons and Inspect Documents Pursuant to Hague Convention. Copy of Request mailed to Christine K. Corbett, DLA Piper LLP, 2000 University Avenue, East Palo Alto, CA 940303. (Attachments: # 1 Exemplification Certificate) (am) (Entered: 01/07/2020)
01/08/2020	29	MOTION to Appear Pro Hac Vice by John Michael Guaragna *on behalf of Erik R. Fuehrer* (Filing fee $ 100 receipt number 0542-13046296) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 01/08/2020)
01/09/2020	30	MOTION to Stay Case *Pending Transfer* by Apple Inc.. (Attachments: # 1 Guaragna Decl., # 2 Exhibit A, # 3 Exhibit B, # 4 Proposed Order)(Guaragna, John) (Entered: 01/09/2020)
01/12/2020		Text Order GRANTING 29 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT-I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 01/12/2020)
01/12/2020		Text Order DENYING 30 Motion to Stay Case entered by Judge Alan D Albright. Before the Court is Apple's Motion to Stay. The Court DENIES the Motion. The Court will provide a ruling on Apple's motion to transfer as quickly as the Court's docket allows. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 01/12/2020)
01/16/2020	31	Joint MOTION *For Leave to Conduct Venue Discovery* by Uniloc 2017 LLC. (Attachments: # 1 Proposed Order)(Davis, William) (Entered: 01/16/2020)
01/17/2020		Text Order GRANTING 31 Motion entered by Judge Alan D Albright. Before the Court is the parties' Joint Motion for Leave to Conduct Venue Discovery. The Court GRANTS the Motion. It is therefore ORDERED that the parties may engage in the requested venue discovery. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 01/17/2020)
02/05/2020	32	ORDER SETTING TELEPHONIC DISCOVERY HEARING, Telephone Conference set for 2/7/2020 10:00 AM before Judge Alan D Albright. Signed by Judge Alan D Albright. (am) (Entered: 02/05/2020)
02/05/2020	33	BRIEF: OPENING CLAIM CONSTRUCTION by Apple Inc.. (Attachments: # 1 Guaragna Decl., # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I)(Guaragna, John) Modified on 2/5/2020 (am). (Entered: 02/05/2020)
02/05/2020	34	OPENING CLAIM CONSTRUCTION BRIEF by Uniloc 2017 LLC. (Hurt, Christian) Modified on 2/5/2020 (am). (Entered: 02/05/2020)

02/05/2020	35	Unopposed MOTION *Plaintiff's Unopposed Motion for Leave to Exceed Page Limits* by Uniloc 2017 LLC. (Attachments: # 1 Proposed Order)(Chin, Edward) (Entered: 02/05/2020)
02/06/2020		Text Order GRANTING 35 Motion entered by Judge Alan D Albright. Before the Court is Plaintiff Uniloc 2017 LLC's Unopposed Motion for Leave of Court to File its Response to Defendant Apple Inc.'s Motion to Transfer Venue in excess of the 10-page limit by an additional 10 pages, and the Court having considered the Motion, finds that the Motion should be GRANTED. It is therefore ORDERED that Uniloc is granted leave to file its Response to Apple's Motion to Transfer Venue in excess of the page limit for a total of up to 20 pages. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 02/06/2020)
02/07/2020	36	Minute Entry for proceedings held before Judge Alan D Albright: Case called for telephonic discovery conference. The Court listened so parties discovery issues and determined that the parties should confer and see if they can reach any agreement by the end of next week. If there are issues remaining unagreed, the parties should draft a combined letter brief and provide to the Law Clerk. The Court will then schedule a telephonic conference as it's earliest convenience. (Minute entry documents are not available electronically.). (Court Reporter Kristie Davis.)(am) (Entered: 02/07/2020)
02/07/2020	37	Motion for leave to File Sealed Document (Attachments: # 1 Proposed Order Proposed Order re Motion to Seal, # 2 Sealed Document Plaintiff Uniloc's Response in Opposition to Apple's Motion to Transfer Venue, # 3 Affidavit Declaration of Ed Chin, # 4 Exhibit 1, # 5 Exhibit 2, # 6 Exhibit 3, # 7 Exhibit 4, # 8 Sealed Document Exhibit 5, # 9 Exhibit 6, # 10 Sealed Document Exhibit 7, # 11 Exhibit 8, # 12 Sealed Document Exhibit 9, # 13 Exhibit 10, # 14 Exhibit 11, # 15 Exhibit 12, # 16 Exhibit 13, # 17 Exhibit 14, # 18 Exhibit 15, # 19 Exhibit 16, # 20 Exhibit 17, # 21 Exhibit 18, # 22 Exhibit 19, # 23 Exhibit 20, # 24 Exhibit 21, # 25 Exhibit 22, # 26 Exhibit 23, # 27 Exhibit 24, # 28 Exhibit 25, # 29 Exhibit 26, # 30 Exhibit 27, # 31 Sealed Document Sealed 28, # 32 Exhibit 29, # 33 Exhibit 30, # 34 Exhibit 31, # 35 Exhibit 32, # 36 Exhibit 33, # 37 Proposed Order) (Davis, William) (Entered: 02/07/2020)
02/08/2020		Text Order GRANTING 37 Motion for Leave to File Sealed Document entered by Judge Alan D Albright. Before the Court is Plaintiff Uniloc 2017 LLC's Motion to Seal. The Court GRANTS the motion. The Clerk's Office is directed to file Uniloc's Response in Opposition to Defendant's Motion to Transfer Venue and Exhibits 5, 7, 9 and 28 under seal. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 02/08/2020)
02/10/2020	38	Sealed Document Plaintiff Uniloc's Response in Opposition to Apple's Motion to Transfer Venue (Attachments: # 1 Affidavit Affidavit Declaration of Ed Chin, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Sealed Document Exhibit 5, # 7 Exhibit 6, # 8 Sealed Document Exhibit 7, # 9 Exhibit 8, # 10 Sealed Document Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18, # 20 Exhibit 19, # 21 Exhibit 20, # 22 Exhibit 21, # 23 Exhibit 22, # 24 Exhibit 23, # 25 Exhibit 24, # 26 Exhibit 25, # 27 Exhibit 26, # 28 Exhibit 27, # 29 Sealed Document 28, # 30 Exhibit 29, # 31 Exhibit 30, # 32 Exhibit 31, # 33 Exhibit 32, # 34 Exhibit 33) (am) (Entered: 02/10/2020)
02/13/2020	39	Unopposed MOTION for Extension of Time to File Response/Reply *in Support of its Motion to Transfer Venue* by Apple Inc.. (Attachments: # 1 Proposed Order)(Guaragna, John) (Entered: 02/13/2020)
02/14/2020		Text Order GRANTING 39 Motion for Extension of Time to File Response/Reply entered by Judge Alan D Albright. Came on for consideration is Defendant's Motion. Noting that it is unopposed, the Court GRANTS the Motion. Defendant shall have up to and including

		February 20, 2020 to respond/reply. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 02/14/2020)
02/20/2020	40	REPLY to Response to Motion, filed by Apple Inc., re 15 MOTION to Change Venue *Pursuant to 28 U.S.C. Sec. 1404(a)* filed by Defendant Apple Inc. (Attachments: # 1 Guaragna Decl., # 2 Exhibit 6, # 3 Exhibit 7 (Filed under seal))(Guaragna, John) (Attachment 3 slip sheet replaced with sealed doc on 2/21/2020) (lad). (Entered: 02/20/2020)
02/20/2020	41	Unopposed Motion for leave to File Sealed Document (Attachments: # 1 Proposed Order, # 2 Sealed Document Exhibit 7) (Guaragna, John) (Entered: 02/20/2020)
02/21/2020		Text Order GRANTING 41 Motion for Leave to File Sealed Document entered by Judge Alan D Albright. Came on for consideration Apple Inc.'s Motion to Seal. The Court GRANTS the motion. The Clerk's Office is directed to file Exhibit 7 to Apple's Reply in Support of Motion under seal. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 02/21/2020)
02/25/2020	42	Agreed MOTION to Extend Scheduling Order Deadlines *Agreed Motion to Extend Time to File Responsive Claim Construction Briefs, Reply Claim Construction Briefs, and Joint Claim Construction Statement* by Uniloc 2017 LLC. (Attachments: # 1 Proposed Order) (Davis, William) (Entered: 02/25/2020)
02/26/2020		Text Order GRANTING 42 Motion to Extend Scheduling Order Deadlines entered by Judge Alan D Albright. Before the Court is the Parties' Agreed Motion to Extend Time to File Responsive Claim Construction Briefs, Reply Claim Construction Briefs, and Joint Claim Construction Statement by two days. Having considered the motion. The Court GRANTS the motion. It is therefore ORDERED that the claim construction briefing schedule is follows: 1. *Responsive Claim Construction Briefs*: February 28, 2020 2. *Reply Claim Construction Briefs*: March 13, 2020 3. *Joint Claim Construction Statement*: March 20, 2020 (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 02/26/2020)
02/28/2020	43	BRIEF regarding 33 Brief, by Uniloc 2017 LLC. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Hurt, Christian) (Entered: 02/28/2020)
02/28/2020	44	BRIEF regarding 34 Brief by Apple Inc.. (Attachments: # 1 Guaragna Decl., # 2 Exhibit J) (Guaragna, John) (Entered: 02/28/2020)
03/05/2020	45	ORDER SETTING MARKMAN HEARING, Markman Hearing set for 4/17/2020 01:30 PM in Courtroom 5, on the Sixth Floor, United States Courthouse, 501 West Fifth Street, Austin, TX, before Judge Alan D Albright. Signed by Judge Alan D Albright. (am) (Entered: 03/05/2020)
03/10/2020	46	MOTION to Appear Pro Hac Vice by John Michael Guaragna *on behalf of Larissa Bifano* (Filing fee $ 100 receipt number 0542-13321618) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 03/10/2020)
03/11/2020		Text Order GRANTING 46 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT-I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby

		granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 03/11/2020)
03/13/2020	47	BRIEF regarding 33 Brief, by Apple Inc.. (Guaragna, John) (Entered: 03/13/2020)
03/13/2020	48	BRIEF regarding 44 Brief by Uniloc 2017 LLC. (Hurt, Christian) (Entered: 03/13/2020)
03/20/2020	49	NOTICE *of Filing Joint Claim Construction Statement* by Uniloc 2017 LLC (Davis, William) (Entered: 03/20/2020)
03/23/2020	50	Remark: Thumb Drive containing Apple Inc.'s Technology Tutorial received. (am) (Entered: 03/23/2020)
03/24/2020	51	STANDING ORDER from U.S. District Judge Alan D. Albright regarding scheduled civil hearings. (tada) (Entered: 03/25/2020)
04/09/2020	52	STANDING ORDER WITH RESPECT TO ALL CASES WITH UPCOMING MARKMAN HEARING. Signed by Judge Alan D Albright. (am) (Entered: 04/09/2020)
04/10/2020	53	MOTION to Appear Pro Hac Vice by John Michael Guaragna *on behalf of Michael Van Handel* (Filing fee $ 100 receipt number 0542-13446751) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 04/10/2020)
04/11/2020		Text Order GRANTING 53 Motion to Appear Pro Hac Vice. Before the Court is the Motion for Admission Pro Hac Vice. The Court, having reviewed the Motion, finds it should be GRANTED and therefore orders as follows: IT IS ORDERED the Motion for Admission Pro Hac Vice is GRANTED. IT IS FURTHER ORDERED that Applicant, if he/she has not already done so, shall immediately tender the amount of $100.00, made payable to: Clerk, U.S. District Court, in compliance with Local Rule AT-I (f)(2). Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. entered by Judge Alan D Albright. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jy) (Entered: 04/11/2020)
04/13/2020	54	ORDER setting Telephonic Markman Hearing for 5/15/2020 01:30 PM before Judge Alan D Albright. Signed by Judge Alan D Albright. (lad) (Entered: 04/13/2020)
04/17/2020	55	NOTICE *of Supplemental Authority in Support of its Proposed Claim Construction* by Apple Inc. (Attachments: # 1 Exhibit A)(Guaragna, John) (Entered: 04/17/2020)
05/06/2020	56	ORDER SETTING TELEPHONIC MOTION HEARING, Telephone Conference set for 5/12/2020 09:00 AM before Judge Alan D Albright. Signed by Judge Alan D Albright. (am) (Entered: 05/06/2020)
05/07/2020	57	ORDER SETTING TELEPHONIC MARKMAN HEARING, Telephone Conference set for 5/15/2020 01:30 PM before Judge Alan D Albright. Signed by Judge Alan D Albright. (am) (Entered: 05/07/2020)
05/12/2020	58	Minute Entry for proceedings held before Judge Alan D Albright: Case called for telephonic motion hearing. Parties gave argument regarding request to transfer case to different venue. The Court will deny the motion to transfer. A written order will be forthcoming. (Minute entry documents are not available electronically.). (Court Reporter Lily Reznik.)(am) (Entered: 05/12/2020)
05/13/2020	59	NOTICE of Attorney Appearance by Jeffrey T. Quilici on behalf of Apple Inc. (Quilici, Jeffrey) (Entered: 05/13/2020)

05/15/2020	60	Minute Entry for proceedings held before Judge Alan D Albright: Case called for telephonic Markman Hearing. Plaintiff is agreeable to all of the preliminary claims constructions done by the Court. The Defendant gave argument as to what changes that they feel need to be done on the preliminary constructions. After hearing arguments the Court will maintain his preliminary constructions. The Court asked parties to confer to decide 3/22/21 or 3/29/21 for the Jury Selection and Trial. The Court also explained his normal trial information. Parties will let the law clerk know about jury trial date. (Minute entry documents are not available electronically.). (Court Reporter Lily Reznik.)(am) (Entered: 05/15/2020)
05/27/2020	61	Transcript filed of Proceedings held on May 12, 2020, Proceedings Transcribed: Telephonic Motion Hearing. Court Reporter/Transcriber: Lily I. Reznik, Telephone number: 512-391-8792 or Lily_Reznik@txwd.uscourts.gov. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed Redaction Request due 6/17/2020, Redacted Transcript Deadline set for 6/29/2020, Release of Transcript Restriction set for 8/25/2020, (lr) (Entered: 05/27/2020)
06/01/2020	62	ORDER, Telephone Conference set for 6/1/2020 11:00 AM before Judge Alan D Albright. Signed by Judge Alan D Albright. (am) (Entered: 06/01/2020)
06/01/2020	63	Minute Entry for proceedings held before Judge Alan D Albright: Telephone Conference held on 6/1/2020. Case called for telephonic discovery hearing. Defendant's counsel expressed issue regarding protective order in this case. Defendant suggests a patent acquisition bar. Plaintiff's counsel does not agree to the patent acquisition bar provision. There was also argument on the competition decision maker provision. The Court will confer with his law clerk and will issue an Order within the next couple of days. (Minute entry documents are not available electronically.). (Court Reporter Kristie Davis.)(am) (Entered: 06/01/2020)
06/01/2020	64	Proposed Scheduling Order *Proposed Amended Agreed Scheduling Order* by Uniloc 2017 LLC. (Davis, William) (Entered: 06/01/2020)
06/03/2020	65	ORDER ADOPTING PLAINTIFF UNILOCS PROPOSED PROTECTIVE ORDER PROVISIONS. Signed by Judge Alan D Albright. (am) (Entered: 06/03/2020)
06/03/2020	66	SCHEDULING ORDER: Joinder of Parties due by 6/29/2020. Amended Pleadings due by 8/14/2020. Motions due by 1/15/2021. Jury Selection and Jury Trial set for 3/22/2021 09:00 AM before Judge Alan D Albright. Signed by Judge Alan D Albright. (am) (Entered: 06/03/2020)
06/03/2020	67	NOTICE *Proposed Protective Order Regarding the Disclosure and Use of Discovery Materials* by Uniloc 2017 LLC re 65 Order (Davis, William) (Entered: 06/03/2020)
06/05/2020	68	PROTECTIVE ORDER REGARDING THE DISCLOSURE AND USE OF DISCOVERY MATERIALS. Signed by Judge Alan D Albright. (am) (Entered: 06/05/2020)
06/08/2020	69	CLAIM CONSTRUCTION ORDER. Signed by Judge Alan D Albright. (am) (Entered: 06/08/2020)

United States District Court
Western District of Texas
Waco Division

Uniloc 2017 LLC	§	
	§	
Plaintiff	§	
	§	
v.	§	Case No. 6:19-cv-532
	§	
Apple Inc.,	§	
	§	
Defendant	§	Jury Trial Demanded
	§	
	§	

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Uniloc 2017 LLC ("Uniloc"), for its complaint against defendant, Apple Inc. ("Apple"), allege as follows:

THE PARTIES

1. Uniloc 2017 LLC is a Delaware company having addresses including 102 N. College Avenue, Suite 303, Tyler, Texas 75702.

2. Apple is a California corporation having regular and established places of business at 12535 Riata Vista Circle and 5501 West Parmer Lane, Austin, Texas. Apple designs, manufactures, uses, imports into the United States, sells, and/or offers for sale in the United States smartphones, tablets, iPods, desktop computers, and notebook computers running iOS or macOS operating systems, which include an App Store for iOS devices and Mac App Store for macOS devices. Apple markets, sells, and offers to sell its products and/or services, including those accused herein of infringement, to actual and potential customers and end-users located in Texas and in the judicial Western District of Texas such as at the Barton Creek Mall (2901 S. Capital of Texas Hwy) and in the Domain (3121 Palm Way, Austin, TX 78758) in Austin, Texas. Apple may

be served with process through its registered agent for service in Texas: CT Corporation System, 1999 Bryant Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. Uniloc brings this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271, et seq. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332(a) and 1338(a).

4. The amount in controversy exceeds $75,000.

5. Venue is proper in this judicial district per 28 U.S.C. §§ 1391 and 1400(b). Apple has committed acts of infringement in this judicial district and maintains regular and established places of business in this district, as set forth above. Apple has continuous and systematic business contacts with the State of Texas. Apple, directly or through subsidiaries or intermediaries (including distributors, retailers, contract manufacturers, and others), conducts its business extensively throughout Texas, by shipping, manufacturing, distributing, offering for sale, selling, and advertising (including the provision of interactive web pages) its products and services in the State of Texas and the Western District of Texas. Apple, directly or through subsidiaries or intermediaries (including distributors, retailers, contract manufacturers, and others), has purposefully and voluntarily placed its infringing products and services into this District and into the stream of commerce with the intention and expectation that they will be purchased and used by consumers in this District. Apple has offered and sold and continues to offer and sell these infringing products and services in this District, including at physical Apple stores located within this District. Apple has committed acts of infringement in this judicial district and has a regular and established place of business in this judicial district. Austin, where Apple employs over 5,000

employees and has several corporate campuses, is Apple's largest corporate hub outside of its headquarters in Cupertino, California.

Apple's Mac Pro computers, which are among the accused infringing devices, are and have been manufactured, via contract manufacturer Flextronics, in Austin since 2013 as indicated by Apple CEO Tim Cook's Twitter message shown above.

INFRINGEMENT OF U.S. PATENT NO. 6,467,088

6. Uniloc incorporates paragraphs 1-7 above by reference as though fully set forth herein.

7. Uniloc is the owner, by assignment, of U.S. Patent No. 6,467,088 ("the '088 Patent"), entitled RECONFIGURATION MANAGER FOR CONTROLLING UPGRADES OF ELECTRONIC DEVICES, which issued on October 15, 2002. A copy of the '088 Patent is attached as Exhibit A.

8. The ’088 Patent describes in detail and claims in various ways inventions in systems and devices for improved management and control of reconfiguring electronic devices developed by the inventors around 1999.

9. The ’088 Patent addresses technical problems and shortcomings in the then-existing field of the management of reconfiguring and controlling electronic devices. The Patent describes the state of computer device technology in the 1990s and shortcomings of multiple conventional techniques to update computer systems and devices. The claimed inventions in the Patent reflect technological improvements upon those conventional techniques and the state of the art at the time. The Patent claims novel and inventive technological improvements and solutions to those problems and shortcomings. The technological improvements and solutions described and claimed in the ’088 Patent were not conventional or generic at the time of their respective inventions. The inventions of the claims involved novel and nonobvious approaches to the problems and shortcomings prevalent in the art at the time. The inventions claimed in the ’088 Patent involve and cover more than just the performance of well-understood, routine, and/or conventional activities known to the industry prior to the invention of the methods, systems, and devices by the ’088 Patent inventors.

10. Apple has imported/exported into/from the United States, manufactured, used, marketed, offered for sale, and/or sold in the United States smartphones (e.g., iPhones), tablets (e.g., iPads), iPods, desktop computers (e.g., iMacs, Mac Pro, Mac mini), and notebook computers (e.g., MacBooks) running iOS or macOS operating systems, including the App Store or Mac App Store and their associated servers implementing iOS/macOS update functionality (collectively “Accused Infringing Devices”) that infringe one or more claims of the ’088 Patent.

11. Apple has infringed, and continues to infringe, claims of the '088 Patent in the United States, including claims 1-4 and 6-8, 10-14, 16-18 and 20-21, by making, using, offering for sale, selling and/or importing into the United States the Accused Infringing Devices in violation of 35 U.S.C. § 271(a).

12. The Accused Infringing Devices infringe by, for example, performing processor-implemented management and control of the reconfiguration of the device. For example, the iOS update functionality controls the reconfiguration of the device, such as, for example, the installation or update of an App Store application on the device. Similarly, the macOS update functionality controls the reconfiguration of the device, such as, for example, the installation or update of a Mac App Store application on the device.

13. Using claims 1 and 21 merely as an illustrative example of Apple's infringement, the Accused Infringing Devices include functionality for meeting all the elements of each of those claims. The Accused Infringing Devices include functionality that receives information representative of a reconfiguration request relating to the end-user device (*e.g.*, smartphone, tablet, desktop, or laptop), namely a request for installation of an updated application via the App Store and/or Mac App Store.

14. When an updated application is requested, functionality in the Accused Infringing Devices determines whether a component is required for the update. As one example, functionality in the Accused Infringing Devices determines that the requested update requires a certain version of the operating system to be installed (*e.g.*, iOS or macOS, depending on the end-user device).

15. The Accused Infringing Devices can determine the version of the operating system (*e.g.*, iOS or macOS, depending on the end-user device) running on the end-user device and compare that version to the required version. The Accused Infringing Devices generate

information indicative of an approval or denial of the reconfiguration request based at least in part on the result of the comparison. For example, if the version of the operating system is not compatible with the update requested, a message (e.g., "This application requires iOS 10.0 or later.") will be displayed on the device. However, if the version of the operating system on the requesting device is compatible, then the device will display an indicator showing approval of the update (such as a download progress indicator).

16. Apple has also infringed, and continues to infringe, claims 1-4 and 6-8, 10-14, 16-18 and 20-21 of the '088 Patent by actively inducing others to use, make, import into the United States, offer for sale, and sell the Accused Infringing Devices. For example, Apple's customers, business partners, developers, end-users, and others directly infringe through their use of the inventions claimed in the '088 Patent. Apple induces this direct infringement through its affirmative acts of manufacturing, selling, distributing, and/or otherwise making available the Accused Infringing Devices, and providing instructions, documentation, and other information to customers, end-users, business partners, developers, and others suggesting that they use the Accused Infringing Devices in an infringing manner, including in-store technical support, online technical support, marketing, videos, demonstrations, instruction and product manuals, advertisements, and online documentation such as those located at:

a. www.apple.com

b. www.apple.com/iphone/compare/

c. https://www.apple.com/ios/app-store/

d. https://www.apple.stackexchange.com/questions/135060/

e. https://support.apple.com/en-us/

f. https://developer.apple.com/app-store/review/guidelines/

g. https://www.apple.com/iphone-*/specs/ (*= model number) (e.g., https://www.apple.com/iphone-7/specs/)

h. https://support.apple.com/en-sg/HT204204

i. www.youtube.com/user/apple

j. https://www.apple.com/ipad-pro/specs/

k. https://www.apple.com/ipad-air/specs/

l. https://www.apple.com/ipad-mini/specs/

m. https://www.apple.com/ipad-9.7/specs/

n. https://www.apple.com/macbook-air/specs/

o. https://www.apple.com/macbook-pro/specs/

p. https://www.apple.com/imac/specs/

q. https://www.apple.com/imac-pro/specs/

r. https://www.apple.com/mac-mini/specs/

17. Apple intends and knows that its customers, end-users, business partners, distributors, retailers, developers, and others to use the Accused Infringing Devices to operate using the iOS and/or macOS operating systems, as described above. Apple documentation informs users and provides recommendations for new releases and updates for iOS and/or macOS and applications used on the Accused Infringing Devices. Apple also sets minimum standards for approval to the App store and/or Mac App Store and instructs app developers, customers, end-users, and others to update their applications to ensure they remain functional and current. When the Accused Infringing Devices are used as intended by Apple, Apple intentionally induces such infringement.

18. Apple also induces infringement by others by failing to remove or diminish the infringing features of the Accused Infringing Devices. As a result of Apple's inducement, Apple's customers, end-users, business partners, distributors, retailers, developers, and others use the Accused Infringing Devices in the way Apple intends and directly infringe the '088 Patent. Apple performs these affirmative acts with knowledge of the '088 Patent and with the intent, or willful blindness, that the induced acts directly infringe the '088 Patent. Apple is thereby liable for infringement of the '088 Patent under 35 U.S.C. § 271(b).

19. Apple has also infringed, and continues to infringe, claims 1-4 and 6-8, 10-14, 16-18 and 20-21 of the '088 Patent by contributing to direct infringement committed by others, such as customers, end-users, business partners, distributors, retailers, developers, and others. Apple's affirmative acts of selling and offering to sell, in this District and elsewhere in the United States, the Accused Infringing Devices and causing the Accused Infringing Devices to be manufactured, used, sold, and offered for sale contribute to Apple's customers, end-users, business partners, distributors, retailers, and developers use of the Accused Infringing Devices, such that the '088 Patent is directly infringed. The accused components within the Accused Infringing Devices are material to the invention of the '088 Patent, have no substantial non-infringing uses, and are known by Apple to be especially made or especially adapted for use in the infringement of the '088 Patent. Apple performs these affirmative acts with knowledge of the '088 Patent and with intent or willful blindness, that they cause the direct infringement of the '088 Patent. Apple is thereby liable for infringement of the '088 Patent under 35 U.S.C. § 271(c).

20. Apple has had actual notice and knowledge of the '088 Patent and its infringement of the '088 Patent no later than the service of the complaint in Case No. 1:18-cv-00296-LY (filed April 9, 2018). Apple has known and intended (since receiving such notice) that its continued

actions would actively induce and contribute to the infringement of claims 1-4 and 6-8, 10-14, 16-18 and 20-21 of the '088 Patent.

21. Further, Apple previously filed a petition for *inter partes* review (Case IPR2019-00056) challenging the validity of the '088 Patent. Apple challenged claims 1–21 of the '088 Patent on multiple §103 grounds—including various combinations of U.S. Patent Nos. 5,752,042 ("Cole"), 6,449,723 (Elgressy); 7,062,765 (Pitzel); and PCT Application No. WO 97/30-549 ("MacInnis").

22. The Patent Trial and Appeal Board ("the Board") declined to institute review. The Board reasoned that Apple's proffered combinations did not tech limitations present in every claim—such as Cole's and Pitzel's failures to teach the claimed "list of known [un]acceptable configurations" limitations. Ultimately, the Board concluded that Apple did not show a reasonable likelihood of prevailing in Apple's assertion that the claims of the '088 Patent would have been obvious.

23. Apple may have infringed the '088 Patent through other software and devices utilizing the same or reasonably similar functionality, including other versions of the Accused Infringing Devices.

24. As a result of Apple's acts of infringement, Uniloc has suffered actual and consequential damages. Uniloc is entitled to recover from Apple the damages, at least in the form of reasonable royalties, sustained by Uniloc as a result of Apple's wrongful acts in an amount subject to proof at trial.

PRAYER FOR RELIEF

25. Uniloc requests that the Court enter judgment in Uniloc's favor ordering, finding, declaring, and/or awarding Uniloc relief as follows:

(A) declaring that Apple has infringed the ’088 Patent;

(B) awarding Uniloc its damages suffered as a result of Apple’s infringement of the ’088 Patent;

(C) awarding enhanced damages pursuant to 35 U.S.C. § 284;

(D) awarding Uniloc its costs, attorneys’ fees, expenses, and pre-judgment and post-judgment interest;

(E) declaring that this is an exceptional case and awarding Uniloc their reasonable attorneys’ fees pursuant to 35 U.S.C. § 285;

(F) granting Uniloc such other equitable relief which may be requested and to which Uniloc is entitled; and

(G) granting such further relief as the Court finds appropriate.

DEMAND FOR JURY TRIAL

26. Uniloc demands trial by jury, under Fed. R. Civ. P. 38.

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EXHIBIT A

US006467088B1

(12) **United States Patent**
alSafadi et al.

(10) **Patent No.: US 6,467,088 B1**
(45) **Date of Patent: Oct. 15, 2002**

(54) **RECONFIGURATION MANAGER FOR CONTROLLING UPGRADES OF ELECTRONIC DEVICES**

(75) Inventors: **Yasser alSafadi**, Yorktown Heights, NY (US); **J. David Schaffer**, Wappingers Falls, NY (US)

(73) Assignee: **Koninklijke Philips Electronics N.V.**, Eindhoven (NL)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **09/343,607**

(22) Filed: **Jun. 30, 1999**

(51) **Int. Cl.**[7] **G06F 9/45**
(52) **U.S. Cl.** **717/173**; 713/100
(58) **Field of Search** 717/173, 178, 717/177; 710/10; 713/100

(56) **References Cited**

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5,155,847	A	10/1992	Kirouac et al.	395/600
5,253,344	A *	10/1993	Bostick et al.	710/8
5,327,560	A *	7/1994	Hirata et al.	709/221
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5,634,075	A *	5/1997	Smith et al.	710/9
5,822,531	A *	10/1998	Gorczyca et al.	707/202
5,898,872	A *	4/1999	Richley	713/100
5,918,194	A *	6/1999	Banaska et al.	702/91
5,933,026	A *	8/1999	Larsen et al.	326/81
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6,065,068	A *	5/2000	Foote	710/10
6,167,408	A *	12/2000	Cannon et al.	707/200
6,301,707	B1 *	10/2001	Carroll et al.	717/177
6,385,668	B1 *	5/2002	Gaddess et al.	370/254

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GB	2325766	12/1998	G06F/9/44
WO	WO9015394	6/1990	G06F/15/46
WO	WO9425923	11/1994	G06F/15/21
WO	WO9632679	10/1996	G06F/13/00

OTHER PUBLICATIONS

Mitchell et al., Dynamically Reconfiguring Multimedia Components: A Model—Based Approach, Sep. 1998, ACM, p. 40–46.*

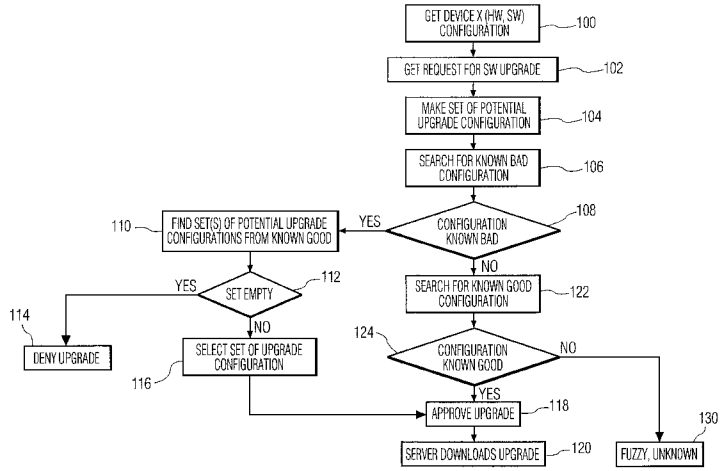
* cited by examiner

Primary Examiner—Gregory Morse
Assistant Examiner—John Q. Chavis
(74) *Attorney, Agent, or Firm*—Daniel J. Piotrowski

(57) **ABSTRACT**

A reconfiguration manager implemented on a computer or other data processing device controls the reconfiguration of software or other components of an electronic device such as a computer, personal digital assistant (PDA), set-top box, television, etc. The reconfiguration manager receives a reconfiguration request, e.g., a software upgrade request from the electronic device, and determines one or more device components that are required to implement the reconfiguration request. The reconfiguration manager also determines, e.g., from information in the request, identifiers of one or more additional components currently implemented in the electronic device. The reconfiguration manager then compares the needed and currently implemented components with previously-stored lists of known acceptable and unacceptable configurations for the electronic device. If the needed and currently implemented components correspond to a configuration on the list of acceptable configurations, the request is approved and the needed components are downloaded to the electronic device. If the needed and currently implemented components correspond to a configuration on the list of unacceptable configurations, the request is denied. Otherwise, the reconfiguration manager may indicate that the requested reconfiguration is unknown, or may take another action such as responding to the electronic device with a list of other components that would be required to implement the request.

21 Claims, 3 Drawing Sheets



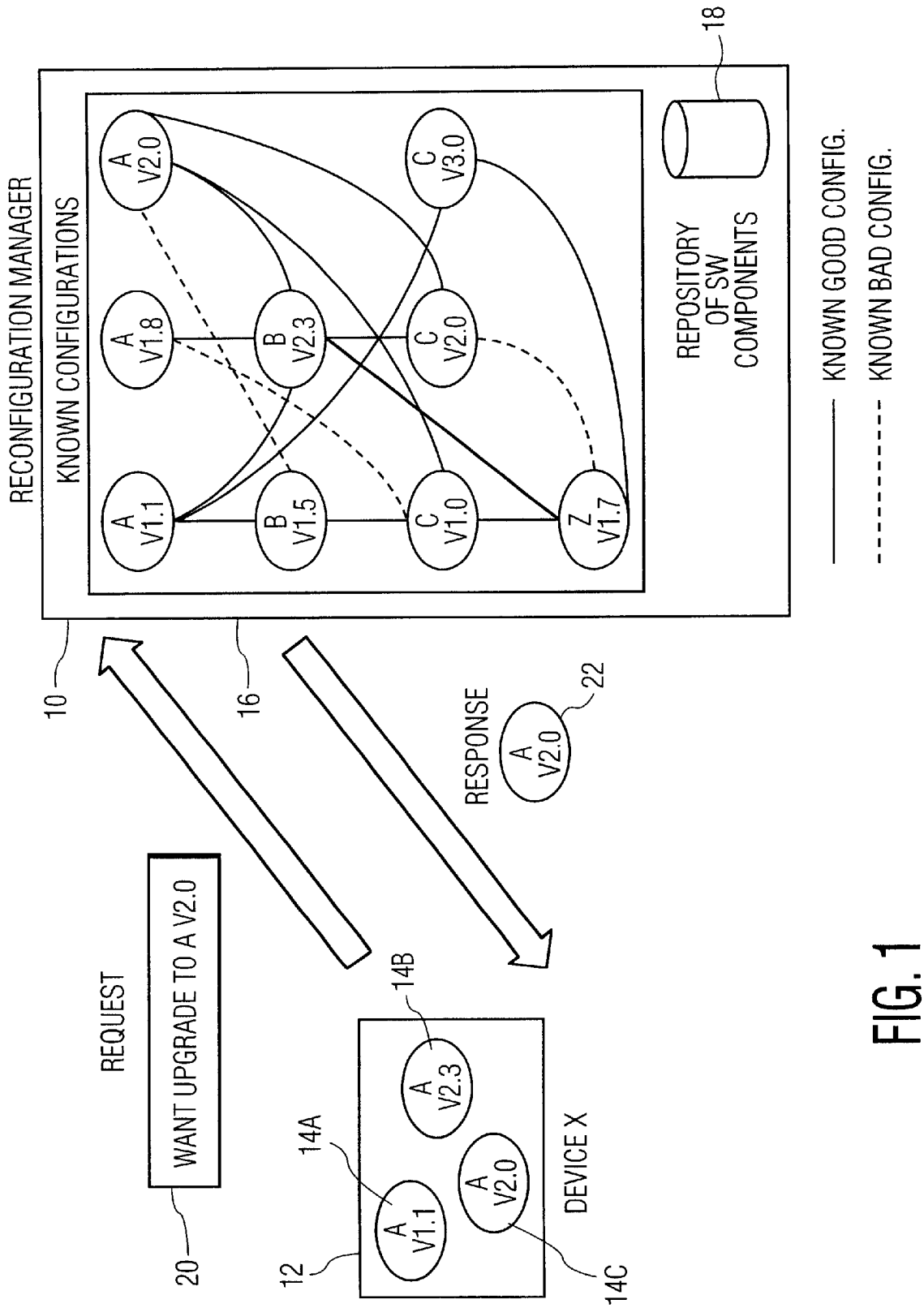

RECONFIGURATION MANAGER
KNOWN CONFIGURATIONS
A V2.0
A V1.8
A V1.1
B V2.3
B V1.5
C V3.0
C V2.0
C V1.0
Z V1.7
REPOSITORY OF SW COMPONENTS
18
KNOWN GOOD CONFIG.
KNOWN BAD CONFIG.
10
16
RESPONSE
A V2.0
22
REQUEST
WANT UPGRADE TO A V2.0
20
12
14A
A V1.1
14B
A V2.3
A V2.0
14C
DEVICE X

FIG. 1

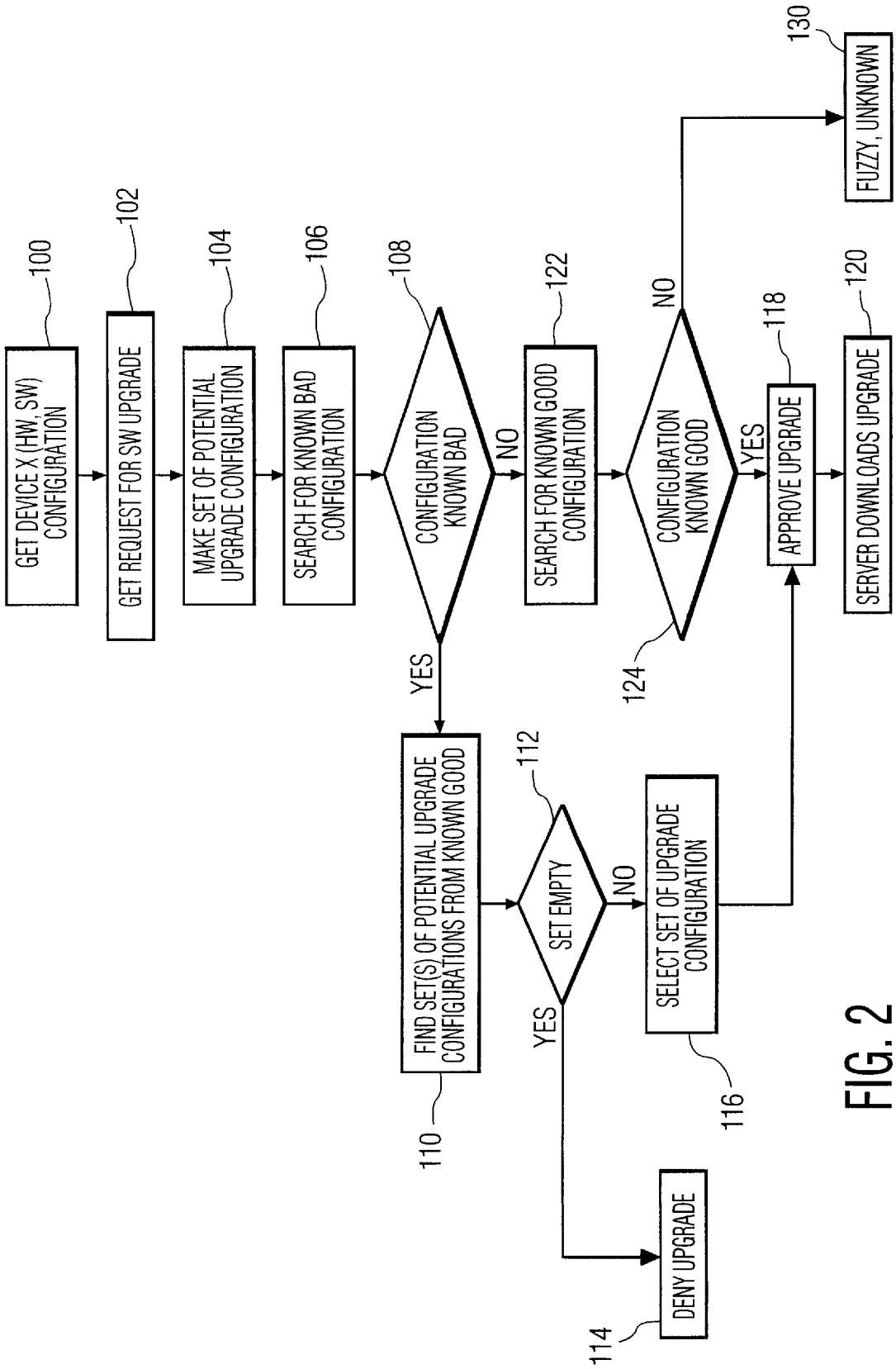

GET DEVICE X (HW, SW) CONFIGURATION
100
GET REQUEST FOR SW UPGRADE
102
MAKE SET OF POTENTIAL UPGRADE CONFIGURATION
104
SEARCH FOR KNOWN BAD CONFIGURATION
106
CONFIGURATION KNOWN BAD
108
NO
SEARCH FOR KNOWN GOOD CONFIGURATION
122
CONFIGURATION KNOWN GOOD
NO
FUZZY, UNKNOWN
130
YES
APPROVE UPGRADE
118
SERVER DOWNLOADS UPGRADE
120
124
YES
FIND SET(S) OF POTENTIAL UPGRADE CONFIGURATIONS FROM KNOWN GOOD
110
SET EMPTY
112
NO
SELECT SET OF UPGRADE CONFIGURATION
116
YES
DENY UPGRADE
114

FIG. 2

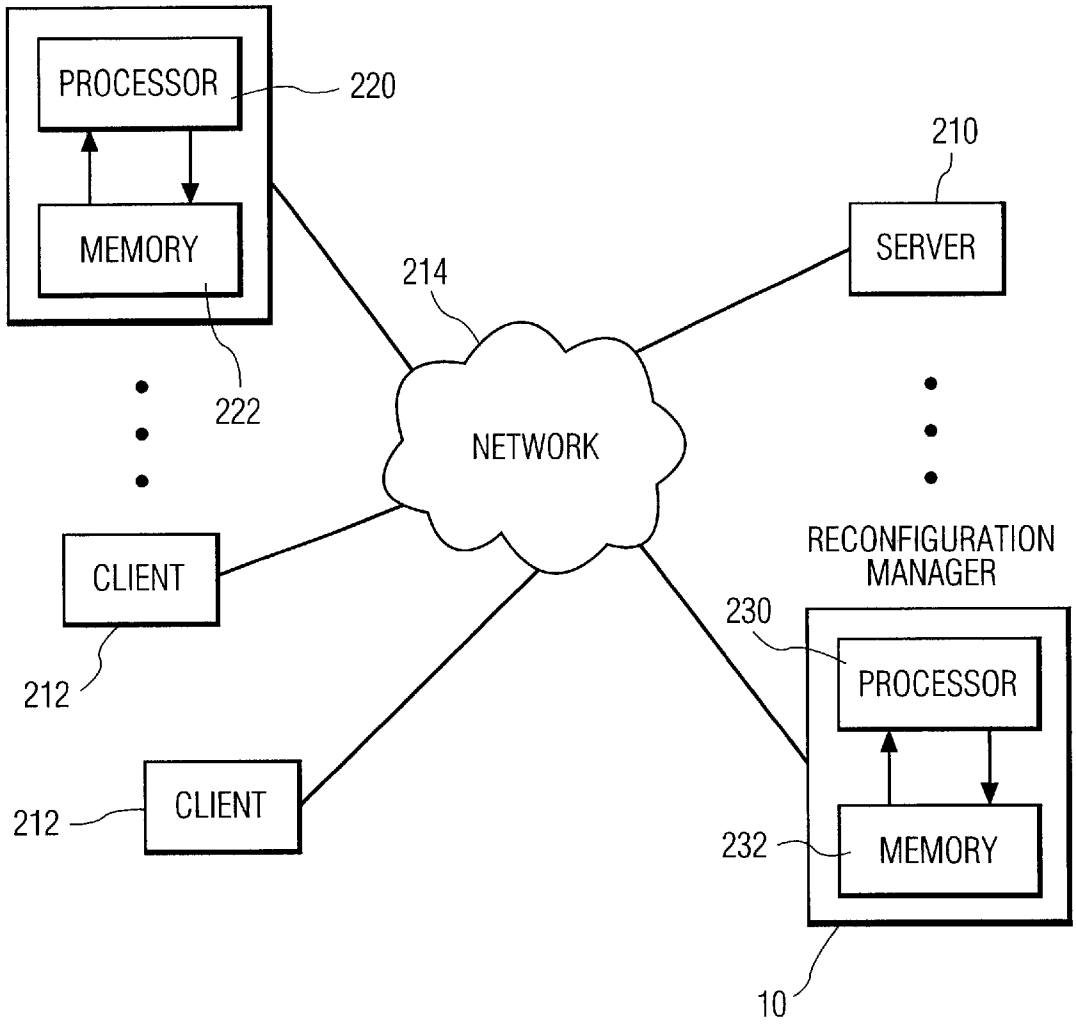

PROCESSOR
220
MEMORY
222
210
SERVER
214
NETWORK
CLIENT
212
CLIENT
212
RECONFIGURATION
MANAGER
230
PROCESSOR
232
MEMORY
10

FIG. 3

RECONFIGURATION MANAGER FOR CONTROLLING UPGRADES OF ELECTRONIC DEVICES

FIELD OF THE INVENTION

The present invention relates generally to the field of electronic devices, and more particularly to techniques for upgrading or otherwise reconfiguring software and/or hardware components in such devices.

BACKGROUND OF THE INVENTION

For many different electronic devices, such as desktop, laptop and palmtop computers, personal digital assistants (PDAs), telephones, televisions, set-top boxes and other consumer electronic processing devices, it is common for ongoing development efforts to continue to produce improvements to existing device software or hardware components, as well as new components that add to or otherwise improve device functionality. Users of such devices often prefer to upgrade their devices, incrementally, rather than discard their current devices and purchase new ones. However, for most contemplated upgrades, it is generally necessary to determine if the new or improved component is compatible with the rest of the device, and if not, what other components would need simultaneous upgrading in order to provide the desired compatibility. This compatibility determination can be particularly difficult if the range of possible device configurations is large and the interaction among device components is complex.

A number of different techniques have been developed for updating components of electronic devices. For example, U.S. Pat. No. 5,155,847 discloses a technique for updating software at remote locations. A central computer system stores the original software, and keeps track of all the software configurations for a number of remote systems. The remote system software is upgraded or otherwise changed based on patches transmitted by the central computer system. However, this technique generally requires the central computer system to keep track of the particular software configurations at each of the remote systems. Furthermore, the technique is not directly applicable to electronic devices other than computers, and cannot efficiently handle reconfiguration of hardware components, or hardware and software interdependencies.

Another conventional technique, described in PCT Application No. WO 94/25923, manages the configuration of an enterprise-wide network which includes at least one centralized computer and a plurality of desktop computers. The technique attempts to ensure that each of the desktop computers has an appropriate set of resources as determined in accordance with a set of enterprise policies. However, the technique generally assumes that the resources required by each desktop computer are independent, and fails to adequately address situations in which the required resources are highly interdependent. Furthermore, this technique generally assumes that the information regarding component interactions is fully specified and built in to the system.

UK Patent Application No. GB 2,325,766 discloses a version management system for keeping files on remote devices updated to latest versions as determined by a master list maintained on a central server. The updating process in this approach generally involves adding, amending and deleting files in their entirety. A significant problem with this approach is that it apparently assumes either that the files are independent or that any potential conflicting requirements have already been resolved using other techniques. It fails to provide generalized techniques for ensuring compatibility among requested components.

A convention technique disclosed in PCT Application No. WO 96/32679 describes the remote patching of operating code in a mobile unit of a distributed system. A manager host device in the system transmits patches to the mobile unit, and the mobile unit creates patched operating code by merging the patches with current operating code and switching execution to the patched operating code. However, like the other conventional techniques described previously, this technique also fails to adequately ensure compatibility among software and hardware components for a variety of different electronic devices.

As is apparent from the above, a need exists for improved techniques for managing reconfiguration of electronic devices, such that compatibility determinations can be facilitated, particularly for large and complex device configurations.

SUMMARY OF THE INVENTION

The invention provides a reconfiguration manager that may be implemented on a computer or other data processing device to control the reconfiguration of software or other components of an electronic device such as a computer, personal digital assistant (PDA), set-top box, television, etc. In accordance with the invention, a reconfiguration manager receives a reconfiguration request, e.g., a software upgrade request from the electronic device, and determines one or more device components that are required to implement the reconfiguration request. The reconfiguration request can be received directly from the electronic device itself, or otherwise supplied to the reconfiguration manager.

The reconfiguration manager also determines, e.g., from information supplied by the electronic device as part of the request, identifiers of one or more additional components currently implemented in the electronic device. The reconfiguration manager then compares the needed and currently implemented components with previously-stored lists of known acceptable and unacceptable configurations for the electronic device. If the needed and currently implemented components correspond to a configuration on the list of acceptable configurations, the request is approved and the needed components are downloaded or otherwise supplied to the electronic device. If the needed and currently implemented components correspond to a configuration on the list of unacceptable configurations, the request is denied. Otherwise, the reconfiguration manager may indicate that the requested reconfiguration is unknown, or may take another action such as responding to the electronic device with a list of other components that would be required to implement the reconfiguration request.

Advantageously, the invention provides efficient techniques for incrementally upgrading or otherwise reconfiguring electronic devices. The invention ensures that upgrades are compatible with the configuration of a given device before they are implemented in that device, thereby avoiding problems associated with inconsistent upgrades. Although particularly well suited for use with software upgrades delivered over a network, the invention is applicable to reconfiguration of other types of device components, e.g., hardware components or combinations of hardware and software components, and to numerous other applications. These and other features and advantages of the present invention will become more apparent from the accompanying drawings and the following detailed description.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. **1** illustrates the operation of a reconfiguration manager in accordance with a preferred embodiment of the invention.

FIG. **2** is a flow diagram showing processing operations implemented in the reconfiguration manager of FIG. **1**.

FIG. **3** is a block diagram of an exemplary network-based computer system which includes a reconfiguration manager in accordance with the invention.

DETAILED DESCRIPTION OF THE INVENTION

FIG. **1** shows a preferred embodiment of the invention, in which a reconfiguration manager **10** interacts with an electronic device **12** also referred to as "Device X." The device **12** may represent a desktop, laptop or palmtop computer, a personal digital assistant (PDA), a telephone, television, set-top box or any other type of consumer electronic processing device. The device **12** includes a number of software components **14**A, **14**B and **14**C, corresponding to version 1.1 of a software component A, version 2.3 of a software component B, and version 2.0 of a software component C, respectively. The reconfiguration manager **10** may be implemented on a computer, a set of computers, or any other type of data processing system or device.

The reconfiguration manager **10** includes a listing **16** of known configurations, and a repository **18** of software components. Repository **18** may represent, e.g., a database, data warehouse, physical warehouse or any other type of storage device or element incorporated in or otherwise associated with a computer or other processing system or device on which the reconfiguration manager **10** is implemented. The repository **18** need not be co-located with the processing portions of the reconfiguration manager **10**. For example, the repository **18** could be accessed by the reconfiguration manager **10** over a suitable network connection.

The list **16** in this example is illustrated in the form of a graph indicating which of a set of software components supported by the manager **10** are known to work well together or are otherwise compatible. The list **16** includes identifiers of a number of software components, each represented by an oval, including components corresponding to versions 1.1, 1.8 and 2.0 of the software component A, versions 1.5 and 2.3 of the software component B, versions 1.0, 2.0 and 3.0 of a software component C, and version 1.7 of a software component Z. Each of at least a subset of these components of the list **16** may be stored in the software component repository **18**. Additional components not shown may also be stored in the repository **18**.

A solid line between a given pair of components in the exemplary list **16** indicates that the pair of components corresponds to a known "good" configuration, i.e., the components work well together or are otherwise compatible. The pair including version 1.1 of component A and version 1.5 of component B is an example of a known good configuration. A dashed line between a given pair of components in the list **16** indicates that the pair of components correspond to a known "bad" configuration, i.e., are not compatible. The pair including version 1.8 of component A and version 1.0 of component C is an example of a known bad configuration.

It should be understood that the list **16**, although shown in graphical form in FIG. **1**, may be implemented, e.g., as a stored table, set of tables or other type of list in a memory of the reconstruction manager **10**, as a potion of a program executed by the reconfiguration manager **10**, or in any other suitable format. Moreover, although illustrated in FIG. **1** as indicating pair-wise compatibility among components, the list in other embodiments could include information indicative of compatibility between groups of multiple components. The term "list" as used herein is therefore intended to include any stored representation of information indicative of component compatibility. A given stored list in accordance with the invention can be implemented in a straightforward manner, as will be apparent to those skilled in the art.

In operation, the reconfiguration manager **10** receives a request **20** from the device **12**. In this example, the request **20** indicates that a user of the device **12** wants to upgrade the device to include version 2.0 of software component A. The request in the illustrative embodiment also includes a list of the components currently in the device, i.e., version 1.1 of component A, version 2.0 of component C and version 2.3 of component B. The request may include additional information, such as any needed information regarding the interconnection of the components or other parameters associated with the device. The reconfiguration manager **10** processes the request, in a manner to be described in greater detail in conjunction with the flow diagram of FIG. **2**, and if appropriate delivers to device X a response **22** which includes the requested version 2.0 of software component A.

For example, the reconfiguration manager first determines whether the requested upgrade, in this case version 2.0 of component A, is compatible with other components of device X, i.e., version 2.3 of component B and version 2.0 of component C. The reconfiguration manager **10** in the embodiment of FIG. **1** makes this determination using the list **16**. In this case, list **16** indicates that version 2.0 of component A is compatible with version 2.3 of component B and version 2.0 of component C. As a result, the requested upgrade is delivered to device **12** as part of the response **22**.

FIG. **2** shows a flow diagram illustrating the operation of the reconfiguration manager **10** in greater detail. In step **100**, the reconfiguration manager **10** obtains information regarding the hardware and software configuration of device X, i.e., electronic device **12** of FIG. **1**. This information is generally included as part of the request **20** sent by the device **12** to the reconfiguration manager **10**. In other embodiments, this information may be obtained in another suitable manner, e.g., from a local database based on a serial number or other identifier of the electronic device.

In step **102**, the reconfiguration manager **10** determines that the request **20** includes a request for a software upgrade, i.e., a request to upgrade to version 2.0 of component A. It should be noted that, although described primarily in conjunction with software upgrades, the invention is also applicable to hardware upgrades, and to upgrades in combinations of hardware and software, as well as to other changes in device configuration. In the FIG. **2** example, the request is for an upgrade to a particular software component. Other types of requests which may be processed by the reconfiguration manager **10** of FIG. **1** include requests for an upgrade to a particular device feature. Such a feature upgrade may require the reconfiguration manager to upgrade several device components.

In step **104** of FIG. **2**, the reconfiguration manager **10** generates a potential upgrade configuration that will satisfy the received request. The reconfiguration manager in step **106** then searches through a set of known bad configurations. If the upgrade configuration as generated in step **104** is determined in step **108** to correspond to one of the known

bad configurations, the reconfiguration manager in step **110** attempts to find a set or sets of potential upgrade configurations from a set of known good configurations.

If the resulting set of potential upgrade configurations is determined in step **112** to be empty, the reconfiguration manager in step **114** denies the upgrade, since it is known to be incompatible with the current configuration of device X, and communicates this denial in its response to device X. If step **112** indicates that the set is not empty, a particular set of upgrade configuration is selected in step **116**, and the upgrade is approved in step **118** as compatible with the current configuration of device X. The selection in step **116** may be based at least in part on one or more established criteria, such as least expensive, maximum improvement in system operating speed, most recently modified, most energy efficient, or other suitable criteria. The reconfiguration manager or other server associated therewith then downloads the upgrade to device X in step **120**.

If step **108** determines that the upgrade configuration as generated in step **104** does not correspond to a known bad configuration, the reconfiguration manager in step **122** searches the list of known good configurations to determine if the upgrade configuration determined in step **104** is a known good configuration. If it is determined in step **124** to be a known good configuration, the upgrade is approved in step **118**, and the reconfiguration manager or other server associated therewith downloads the upgrade to device X in step **120**. If the configuration is not a known good configuration, the reconfiguration manager in step **130** returns in its response to the device X an indication that the requested upgrade is "fuzzy" or unknown, e.g., not known to be valid.

Other types of responses that may be generated by the reconfiguration manager **10** include, e.g., a response which includes a list of additional components that are prerequisites for the requested upgrade. This type of response may provide a user associated with device X with an option to download all of the components required to implement the desired upgrade.

FIG. **3** shows an example of a system **200** in which a reconfiguration manager in accordance with the invention may be implemented. The system **200** includes reconfiguration manager **10** and electronic device **12** as previously described in conjunction with FIGS. **1** and **2**. The reconfiguration manager **10** and electronic device **12** are connected with a number of server devices **210** and client devices **212** over a network **214**. As previously noted, the reconfiguration manager **10** and electronic device **12** may be implemented as computers or other electronic data processing devices. In this example, the electronic device **12** includes a processor **220** and a memory **222**, and the reconfiguration manager **10** includes a processor **230** and a memory **232**.

The processors **220** and **230** may represent, e.g., microprocessors, central processing units, computers, circuit cards, application-specific integrated circuits (ASICs), as well as portions or combinations of these and other types of processing devices. The memories **222** and **232** may represent, e.g., disk-based optical or magnetic storage units, electronic memories, as well as portions or combinations of these and other memory devices.

The functional operations associated with the reconfiguration manager **10** and electronic device **12**, as described in detail in conjunction with FIGS. **1** and **2**, may be implemented in whole or in part in one or more software programs stored in their respective memories **222**, **232** and executed by their respective processors **220**, **230**. The network **214** may represent a global computer communications network such as the Internet, a wide area network, a metropolitan area network, a local area network, a cable network, a satellite network or a telephone network, as well as portions or combinations of these and other types of networks. Reconfiguration manager **10** and device **12** may themselves be respective server and client machines coupled to the network **214**.

It should be noted that the reconfiguration manager need not receive a reconfiguration request directly from the electronic device itself. For example, it is possible for the reconfiguration manager to receive requests from an intermediary, e.g., a server or other designated machine which collects reconfiguration requests from multiple devices or users and delivers the requests in an appropriate manner to the reconfiguration manager. As another example, a help desk operator or other human or machine interface can receive reconfiguration requests from users of electronic devices. In such applications, information identifying the electronic device, e.g., the device serial number, may be supplied by the user. Information regarding the particular components in the device may be determined, e.g., by accessing a local database using the device identifying information, may be supplied directly by the user, or may be determined using combinations of these and other techniques.

The above-described embodiments of the invention are intended to be illustrative only. For example, the invention can be used to implement upgrading or other reconfiguration of any desired type of software or hardware component, as well as combinations of these and other components, for any desired type of electronic device, and in many applications other than those described herein. The invention can also be implemented at least in part in the form of one or more software programs which are stored on an otherwise conventional electronic, magnetic or optical storage medium and executed by a processing device, e.g., by the processors **220** and **230** of system **200**. These and numerous other embodiments within the scope of the following claims will be apparent to those skilled in the art.

What is claimed is:

1. A processor-implemented method for controlling the reconfiguration of an electronic device, the method comprising the steps of:

receiving information representative of a reconfiguration request relating to the electronic device;

determining at least one device component required to implement the reconfiguration request;

comparing the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device; and

generating information indicative of an approval or a denial of the reconfiguration request based at least in part on the result of the comparing step.

2. The method of claim **1** further including the step of generating information indicative of an approval of the reconfiguration request if the determined-component and the additional component are consistent with a given one of the known acceptable configurations.

3. The method of claim **1** further including the step of downloading the determined component to the electronic device if the determined component and the additional

component are consistent with a given one of the known acceptable configurations.

4. The method of claim **1** further including the steps of:

comparing the determined, component and information specifying at least one additional component currently implemented in the electronic device with the list of known unacceptable configurations for the electronic device; and

generating information indicative of a denial of the reconfiguration request if the determined component and the additional component are consistent with a given one of the known unacceptable configurations.

5. The method of claim **1** further including the steps of:

comparing the determined component and information specifying at least one additional component currently implemented in the electronic device with the list of known unacceptable configurations for the electronic device; and

generating information indicating that the requested reconfiguration is unknown if the determined component and the additional component are not consistent with a given one of the known acceptable or unacceptable configurations.

6. The method of claim **1** further including the step of transmitting in response to the reconfiguration request a list of additional components required in the electronic device in order to implement the reconfiguration.

7. The method of claim **1** wherein the information specifying at least one additional component currently implemented in the electronic device includes identifiers of each of the components in a set of components currently implemented in the electronic device.

8. The method of claim **7** wherein the identifiers of each of the components in the set of components are included in the reconfiguration request.

9. The method of claim **1** wherein the reconfiguration request comprises a request for an upgrade of at least one of a software component and a hardware component of the electronic device.

10. The method of claim **1** wherein the reconfiguration request is received from the electronic device over a network connection established with a reconfiguration manager implementing the receiving, determining, comparing and generating steps.

11. An apparatus for controlling the reconfiguration of an electronic device, the apparatus comprising:

a memory for storing at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device; and

a processor coupled to the memory and operative (i) to receive information representative of a reconfiguration request relating to the electronic device; (ii) to determine at least one device component required to implement the reconfiguration request; (iii) to compare the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of the list of known acceptable configurations for the electronic device and the list of known unacceptable configurations for the electronic device; and (iv) to generate information indicative of an approval or a denial of the reconfiguration request based at least in part on the comparison operation.

12. The apparatus of claim **11** wherein the processor is further operative to generate information indicative of an approval of the reconfiguration request if the determined component and the additional component are consistent with a given one of the known acceptable configurations.

13. The apparatus of claim **11** wherein the processor is further operative to download the determined component to the electronic device if the determined component and the additional component are consistent with a given one of the known acceptable configurations.

14. The apparatus of claim **11** wherein the processor is further operative to compare the determined component and information specifying at least one additional component currently implemented in the electronic device with the list of known unacceptable configurations for the electronic device; and to generate information indicative of a denial of the reconfiguration request if the determined component and the additional component are consistent with a given one of the known unacceptable configurations.

15. The apparatus of claim **11** wherein the processor is further operative to compare the determined component and information specifying at least one additional component currently implemented in the electronic device with a list of known unacceptable configurations for the electronic device; and to generate information indicating that the requested reconfiguration is unknown if the determined component and the additional component are not consistent with a given one of the known acceptable or unacceptable configurations.

16. The apparatus of claim **11** wherein the processor is further operative to transmit in response to the reconfiguration request a list of additional components required in the electronic device in order to implement the reconfiguration request.

17. The apparatus of claim **11** wherein the information specifying at least one additional component currently implemented in the electronic device includes identifiers of each of the components in a set of components currently implemented in the electronic device.

18. The apparatus of claim **17** wherein the identifiers of each of the components in the set of components are included in the reconfiguration request transmitted by the electronic device.

19. The apparatus of claim **11** wherein the reconfiguration request comprises a request for an upgrade of at least one of a software component and a hardware component of the electronic device.

20. The apparatus of claim **11** wherein the reconfiguration request is received from the electronic device over a network connection established, with a reconfiguration manager which includes the memory and processor.

21. An article of manufacture comprising a machine-readable medium containing one or more software programs which when executed implement the steps of:

receiving information representative of a reconfiguration request relating to an electronic device;

determining at least one device component required to implement the reconfiguration request;

comparing the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device; and

generating information indicative of an approval or a denial of the reconfiguration request based at least in part on the result of the comparing step.

* * * * *

United States District Court
Western District of Texas
Waco Division

Uniloc 2017 LLC	§	
	§	
Plaintiff	§	
	§	
v.	§	Case No. 6:19-CV-00532-ADA
	§	
Apple Inc.,	§	
	§	
Defendant	§	Jury Trial Demanded
	§	
	§	

PRELIMINARY INFRINGEMENT CONTENTIONS

Pursuant to the Order Governing Proceedings – Patent Case (Dkt. 11), Uniloc 2017 LLC ("Uniloc") serves the following Preliminary Infringement Contentions to Defendant Apple Inc. for U.S. Patent No. 6,467,088 ("the '088 Patent"). This disclosure is made solely for the purpose of this action. Discovery in this matter is ongoing, and Apple has provided no discovery to date. Uniloc's investigation regarding these and other potential grounds of infringement is ongoing. This disclosure is therefore based upon information that Uniloc has been able to obtain publicly, together with Uniloc's current good faith beliefs regarding the accused instrumentalities, and is given without prejudice to Uniloc's right to obtain leave to supplement or amend its disclosures as additional facts are ascertained, analyses are made, research is completed, and claims are construed. Specifically, Uniloc's expects that information obtained during discovery but not publicly available, including but not limited to the inspection of source code, may form the basis to assert additional patents or patent claims against the accused instrumentalities contemplated in these disclosures.

This disclosure is based upon Uniloc's present understanding of the meaning and scope of the claims of the Asserted Patents in the absence of claim construction proceedings. Uniloc reserves the right to seek leave to supplement or amend this disclosure if its understanding of the claims changes, including if the Court should construe them.

I. Preliminary Infringement Contentions Claim Chart

The claim chart setting forth where in the accused products each element of the asserted claims are found is attached as Exhibit A.

II. Priority Date for Each Asserted Claims

Each asserted claim of the '088 Patent is entitled to a priority date of at least June 30, 1999 when the application that lead to the '088 Patent was filed.

III. Production of Documents

Documents produced in the range UNI-APPLE-00000001-121 contains a copy of the file history for the '088 Patent. Uniloc does not have within its possession, custody, or control documents evidencing conception and reduction to practice for each claimed invention.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing PLAINTIFF UNILOC 2017 LLC'S DISCLOSURE INFRINGEMENT CONTENTIONS is being served on this October 21, 2019, via email on all counsel of record for Defendant Apple Inc., each of whom is deemed to have consented to electronic service.

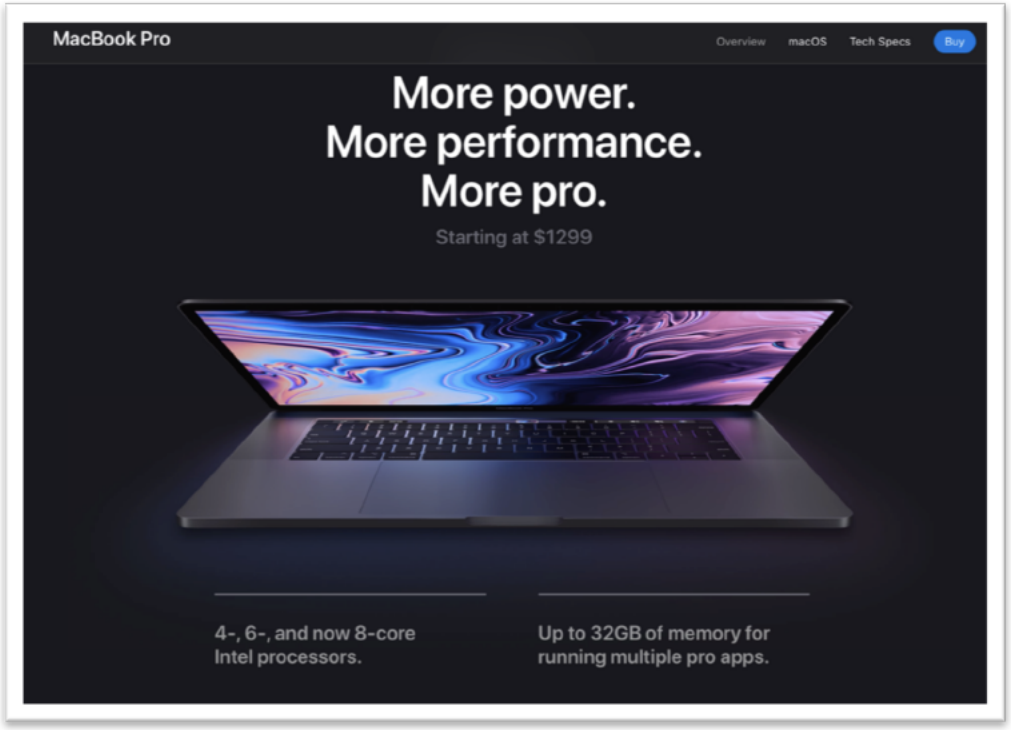
/s/ William E. Davis, III
William E. Davis, III

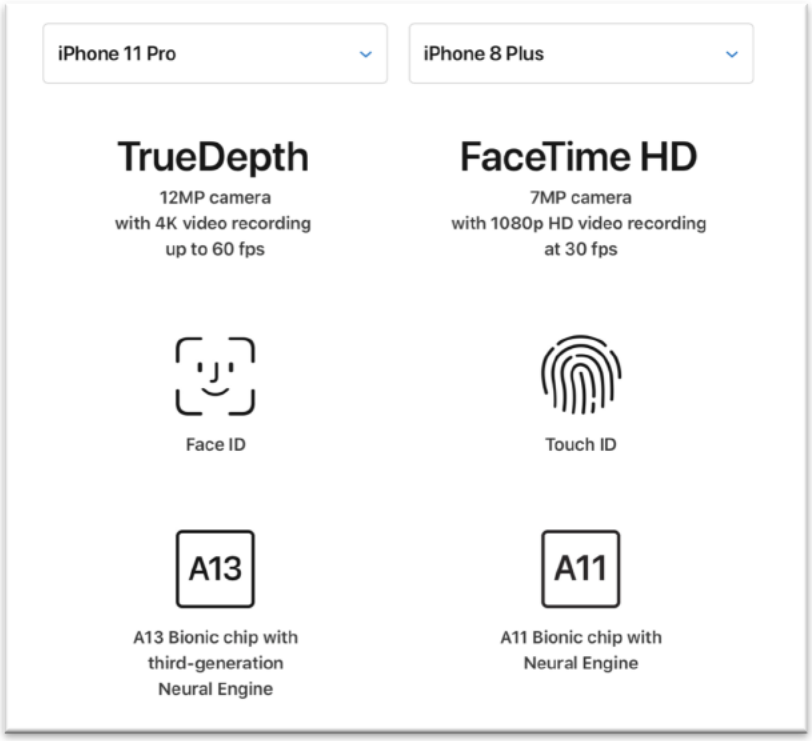
Uniloc has prepared these contentions based on the opinion of those of skill in the art as to how the Accused Products and Services ("Accused Product," "Accused Products," "Product," or "Products") likely operate, based on statements of the Defendant and the characteristics of the technical standards to which Defendant claims to conform. Uniloc will update these contentions, upon confirmation through discovery of how the Accused Products operate.

Accused Products: Apple operating systems including macOS and iOS versions subsequent to version 1.0 and associated servers implementing iOS update functionality, MacBook, MacBook Pro, MacBook Air, iMac, iPad, iPhone, and iPod devices running said versions of iOS, the App Store and associated servers implementing App Store functionality.

Claim	Accused Products
1pre. A processor-implemented method for controlling the reconfiguration of an electronic device, the method comprising the steps of:	The Accused Products implement a processor-implemented method for controlling the reconfiguration of an electronic device (e.g., computers that are running a version of macOS or iOS), such as a software upgrade request. For example, the Accused Products[1] include the Apple macOS and iOS operating system being run on compatible devices such as iPhones and iPads. The iOS operating system can include functionality for controlling the reconfiguration of said compatible devices, for example controlling application updates on an iPhone running iOS. The macOS operating system includes functionality for control reconfiguration of Apple computer devices, for example, controlling application updates on a MacBook running macOS. In addition, Apple App Store servers include functionality for controlling Apple device reconfiguration in the context of updating or installing an App Store application. Electronic devices include any computer running a version of macOS or iOS, as well as computing devices made, sold or used by Apple. Examples of Apple computing devices configured to run macOS and iOS include: iPhone, iPhone 3G, iPhone 3GS, iPhone 4, iPhone 4s, iPhone 5, iPhone 5c, iPhone 5s, iPhone 6 (6 Plus), iPhone SE, iPhone 6s (6s Plus), iPhone 7, (7 Plus), iPhone 8 (8 Plus), iPhone X, iPhone XR, iPhone XS Max, iPhone 11, iPhone 11 Pro, iPhone 11 Pro Max; iPad 1, iPad 2, iPad (3rd gen), iPad mini, iPad mini 2, iPad mini 3, iPad mini 4, iPad (4th gen), iPad Air, iPad Air 2,

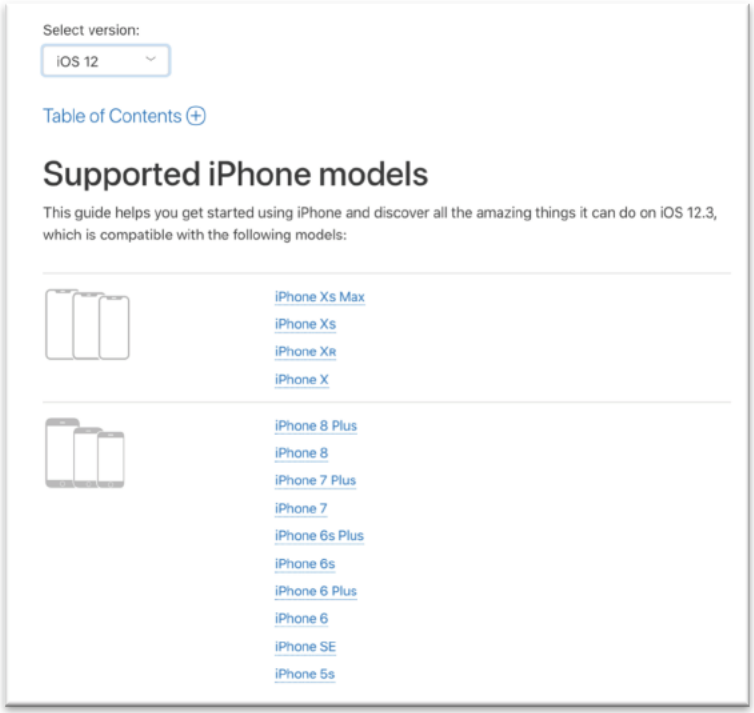
[1] Uniloc has charted Apple iOS, macOS, iPhone, MacBook, and App Store as exemplary products only and are not indented to limit Uniloc's infringement allegations. Upon information and belief, all the Accused Products operate in substantially the same manner with respect to the accused functionality.

Claim	Accused Products
	iPad (5th gen), iPad Pro (12.9-inch, 9.7-inch, 2nd gen, 10.5-inch); MacBook, MacBook Pro, MacBook Air, iMac; iMac Pro, Mac Mini, and Mac Pro. Electronic devices necessarily include processors, as do the servers that process requests from electronic devices. For example, all Apple consumer computers include a processor (such as multi-core Intel processors).  https://www.apple.com/macbook-pro/ Additionally, all Apple smartphones include a processor (such as the A13 and A11 chips for the iPhone 11 Pro and the iPhone 8 Plus, respectively and without limitation).

Claim	Accused Products
	 https://www.apple.com/iphone/compare/ Through its support page, Apple maintains a list of compatible operating systems with its various computing devices for both macOS and iOS.

Claim	Accused Products
	

See https://support.apple.com/en-us/HT201686

Claim	Accused Products
	 *See* https://support.apple.com/guide/iphone/iphe3fa5df43/12.0/ios/12.0
1a. receiving information representative of a reconfiguration request relating to the electronic device;	The Accused Products further perform the step of receiving information representative of a reconfiguration request relating to the electronic device. A reconfiguration request could be a software upgrade request from an electronic device. For example, iOS run on an iPhone includes functionality for requesting installation of an updated application via the App Store. Additionally, macOS running on a MacBook includes functionality for requesting installation of an updated application via the App Store.

Claim	Accused Products

Update your apps manually

Update apps manually on your iOS or iPadOS device, on your Mac, or on your Apple Watch.

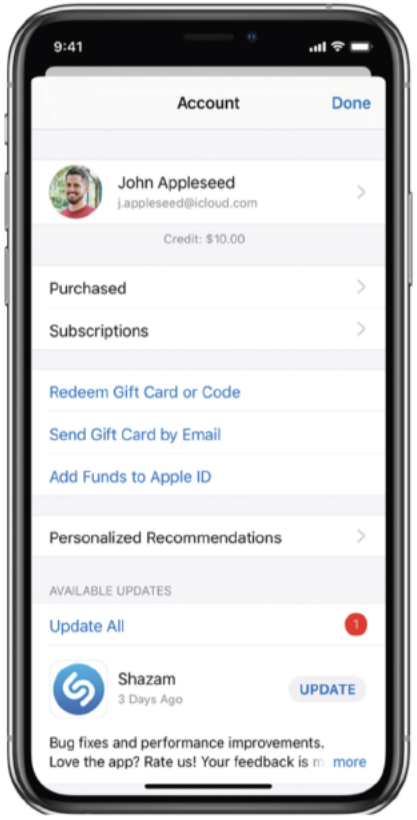
How to manually update apps on your iPhone, iPad, or iPod touch

1. Open the App Store. If you're using iOS 12 or earlier, tap Today at the bottom of the screen.
2. Tap your profile icon at the top of the screen.
3. Scroll down to see pending updates and release notes. Tap Update next to an app to update only that app, or tap Update All.

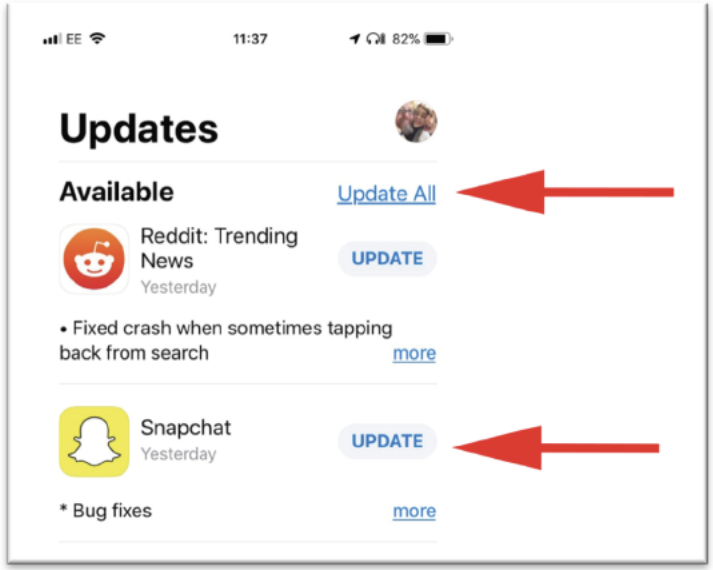
How to manually update apps on your Mac

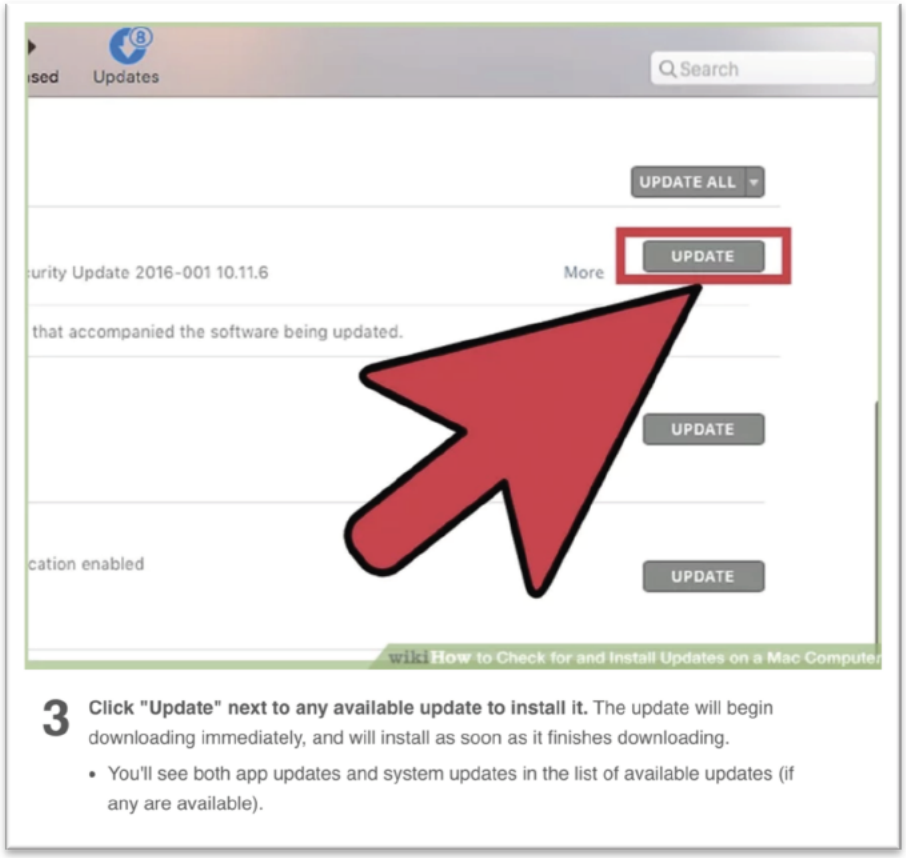
1. Open the App Store.
2. In the sidebar, click Updates.
3. Click Update next to an app to update only that app, or click Update All.

If you didn't get the app from the App Store on your Mac, contact the app developer to get help with updates.

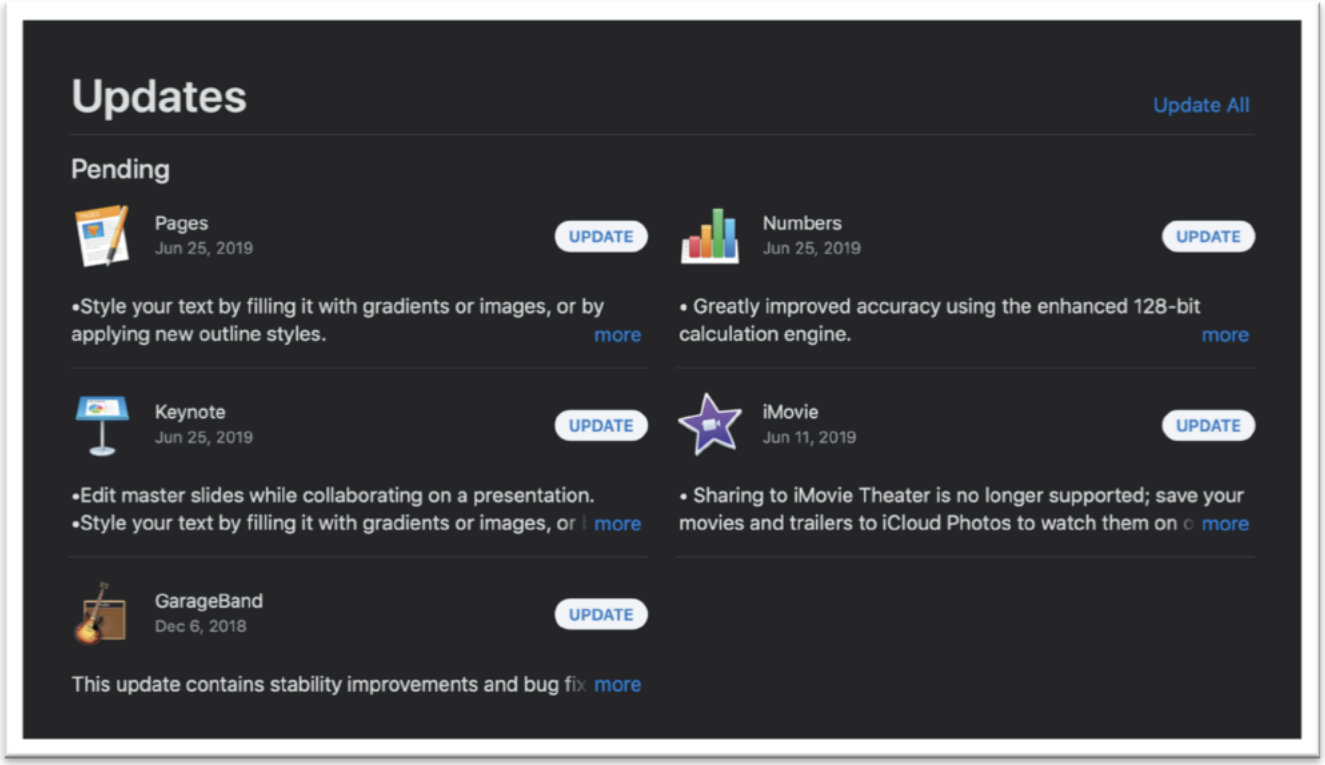


See https://support.apple.com/en-us/HT202180

Claim	Accused Products
	Apple also allows for automatic updates. *See* https://support.apple.com/en-us/HT202180#automatic. On an iPhone, users can select to update apps individually or update all at once.  https://www.macworld.co.uk/how-to/iosapps/update-app-iphone-ipad-3688416/ MacBook Pro users have similar functionality provided by the App Store. Users can update one application at a time, or all applications that are available for updates.

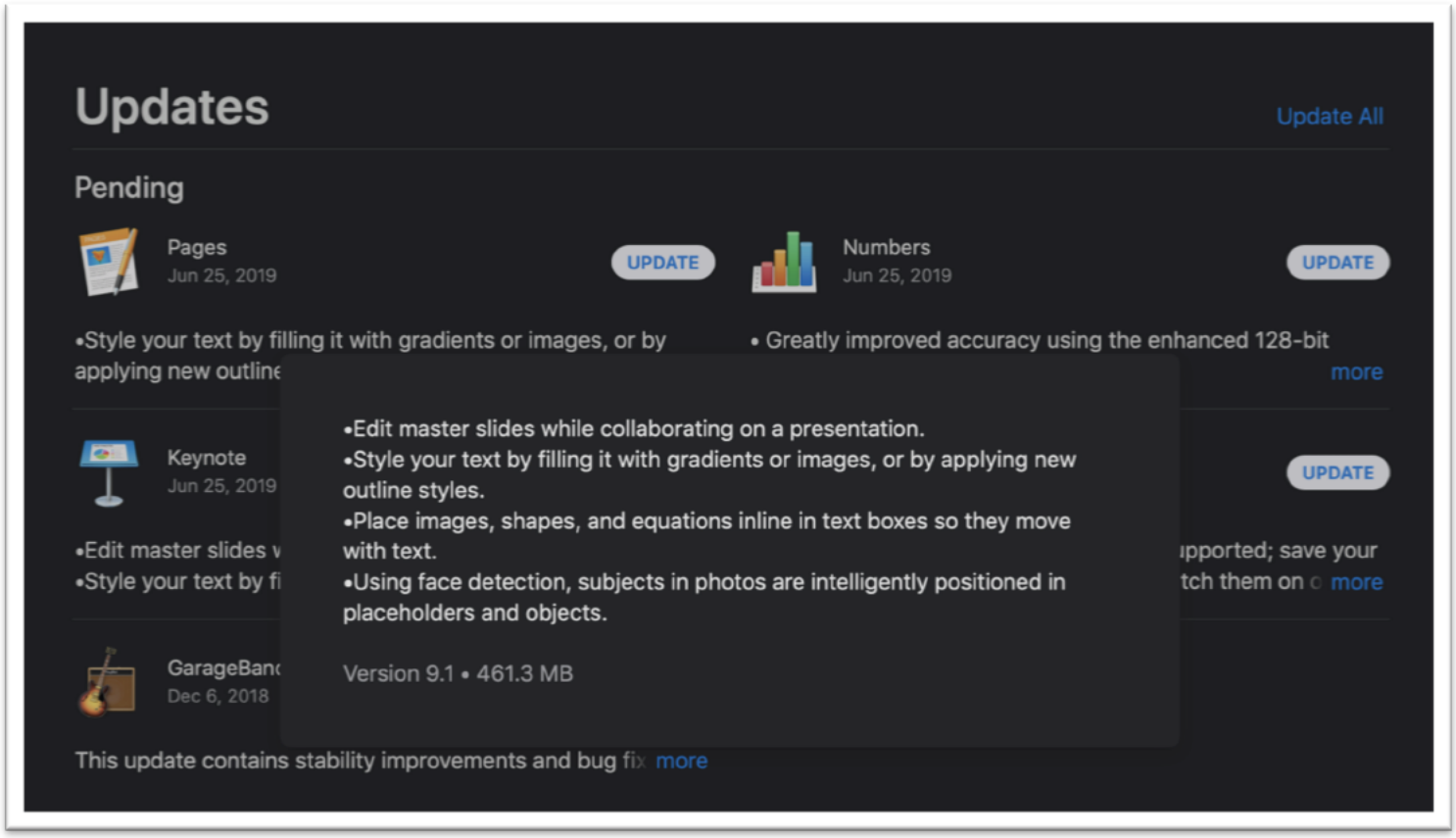
Claim	Accused Products
	 https://www.wikihow.com/Check-for-and-Install-Updates-on-a-Mac-Computer The App Store receives a request from the user for reconfiguration—e.g., updating applications.
1b. determining at least one device component required	The Accused Products further perform the step of determining at least one device component required to implement the reconfiguration request.

Claim	Accused Products
to implement the reconfiguration request;	The Accused Products identify at least one device component—such as the to-be-updated application software—required to implement the software update. For example, the App Store determines at least one application to implement the reconfiguration request. In the screenshot below, the device components include the pending updates (e.g. Pages, Keynote, Numbers).



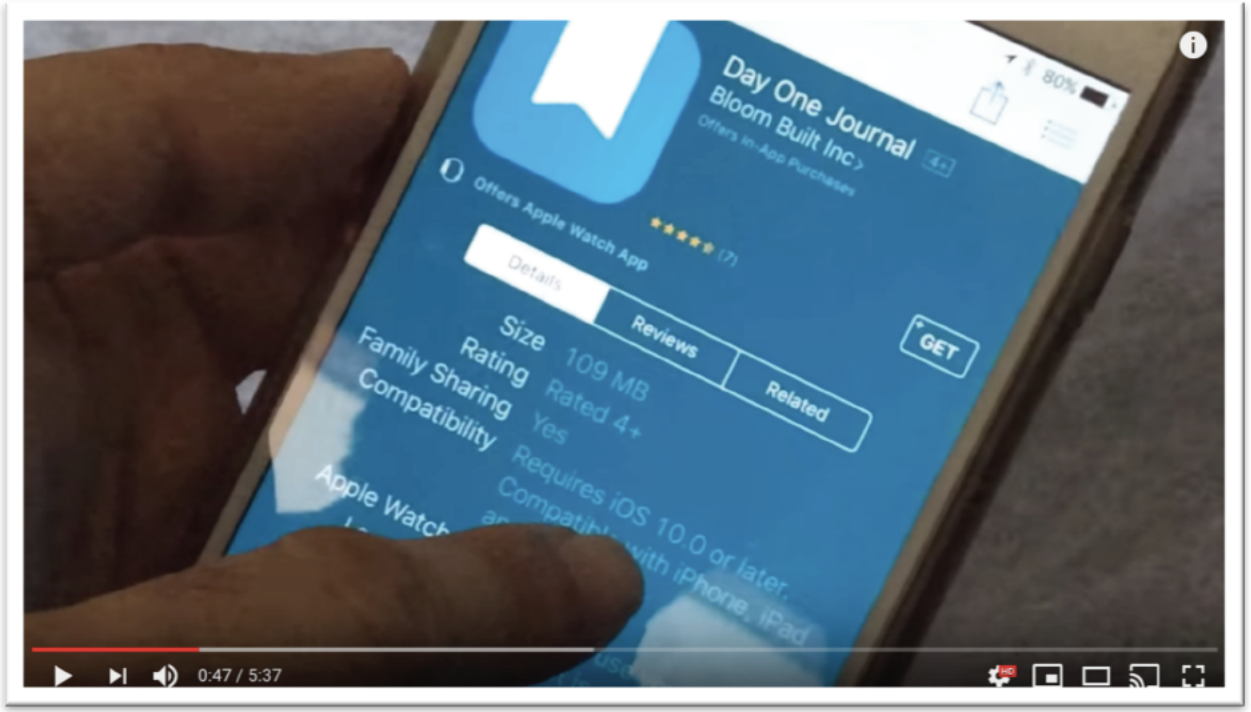
Screenshot of Microsoft App Store on macOS.

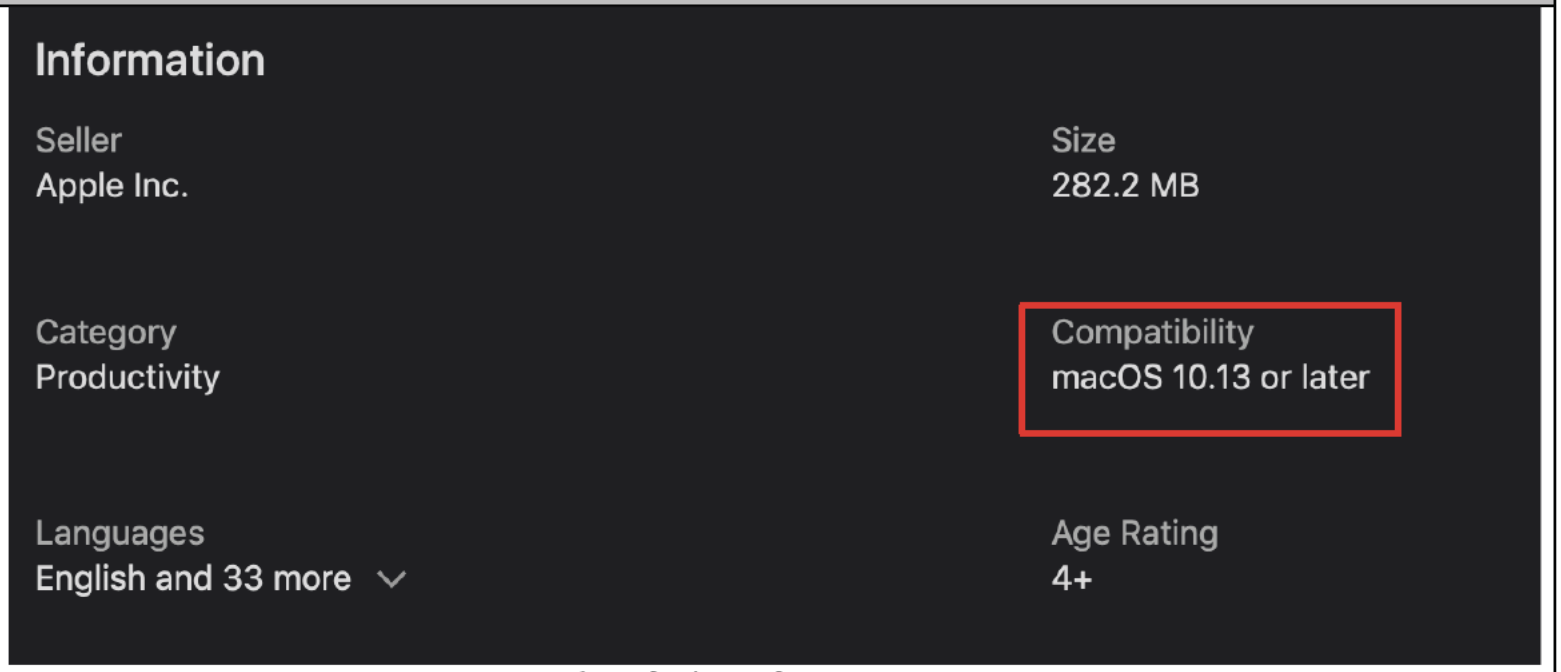
Claim	Accused Products
	The Apple device and/or App Store identifies a specific version of the application software for reconfiguration. In the screenshot below, the version identified is Version 9.1.

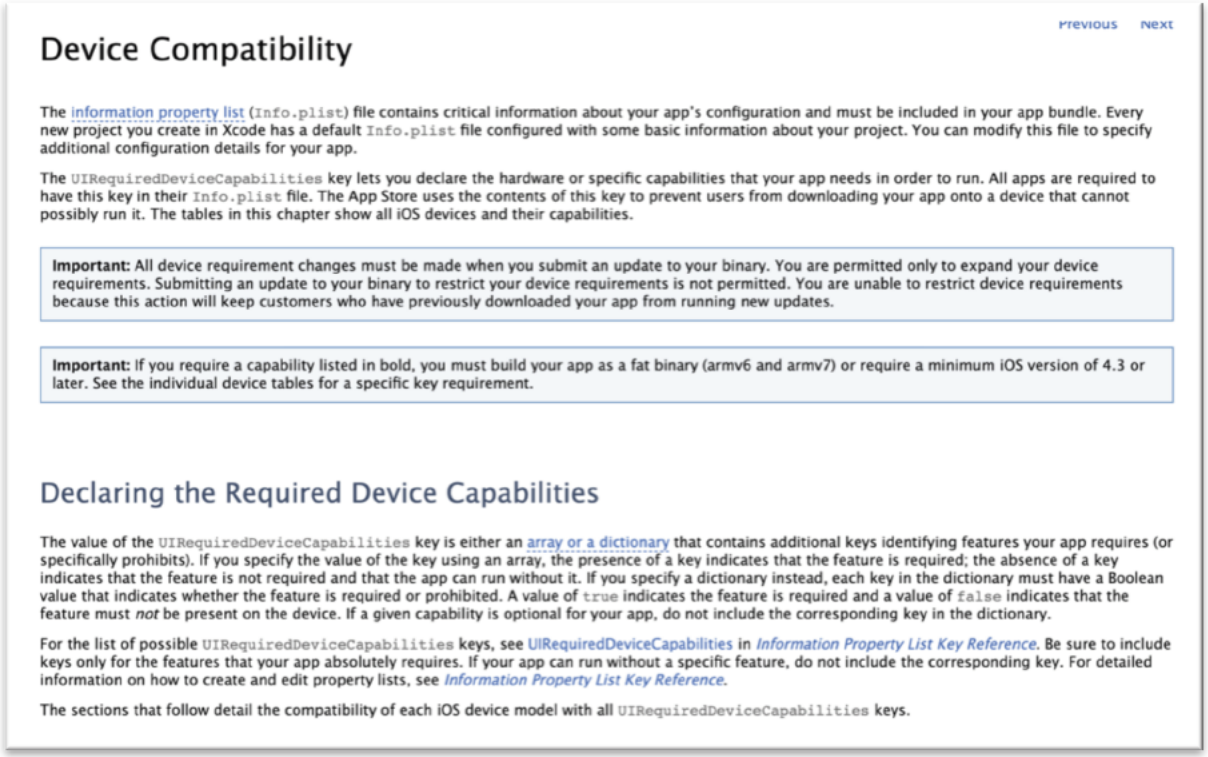


Screenshot of Microsoft App Store on macOS

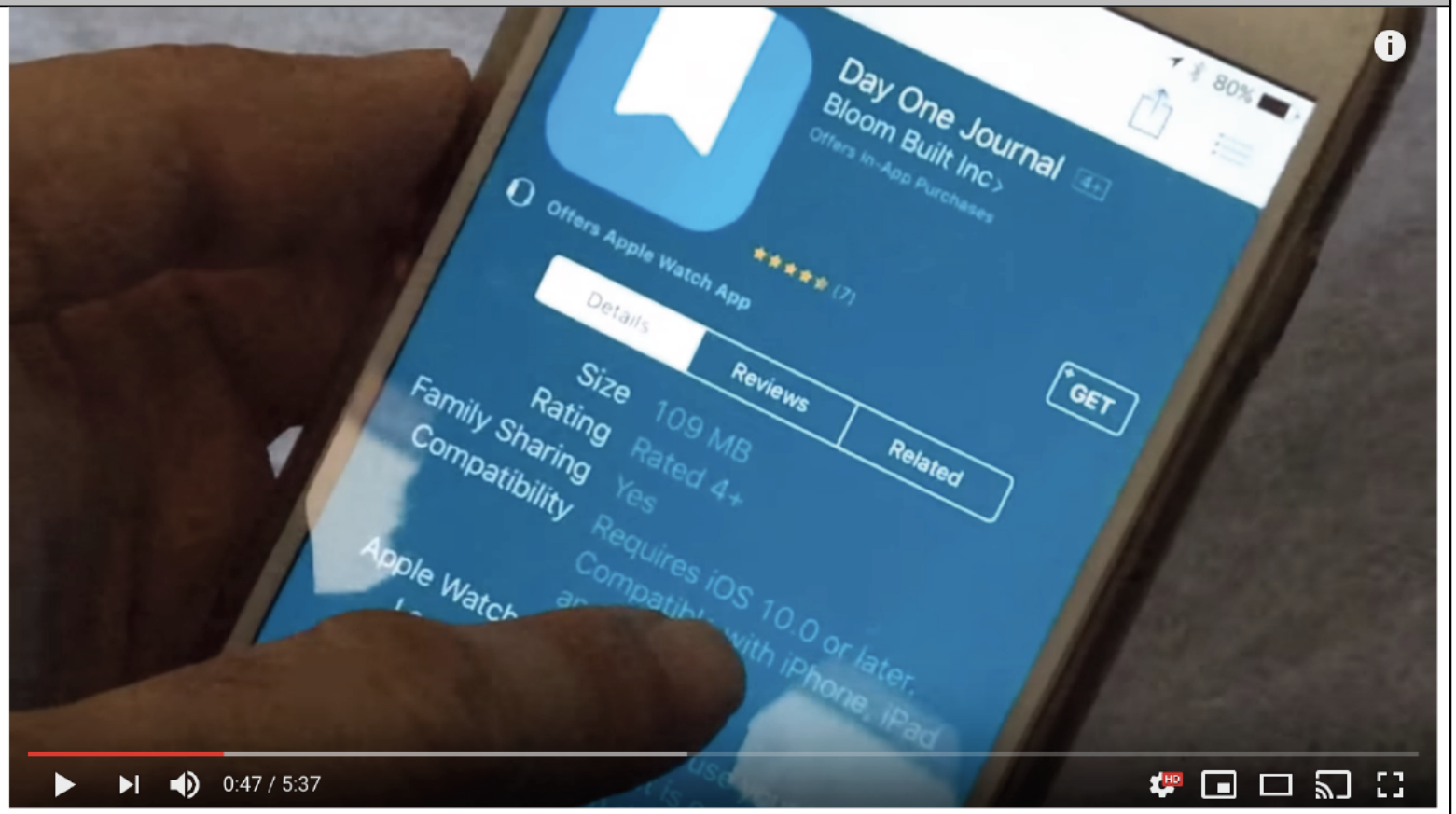
Further, when an updated application is requested, the operating system and/or an App Store server determines whether the requested application update requires a certain version of operating system in order to be installed.

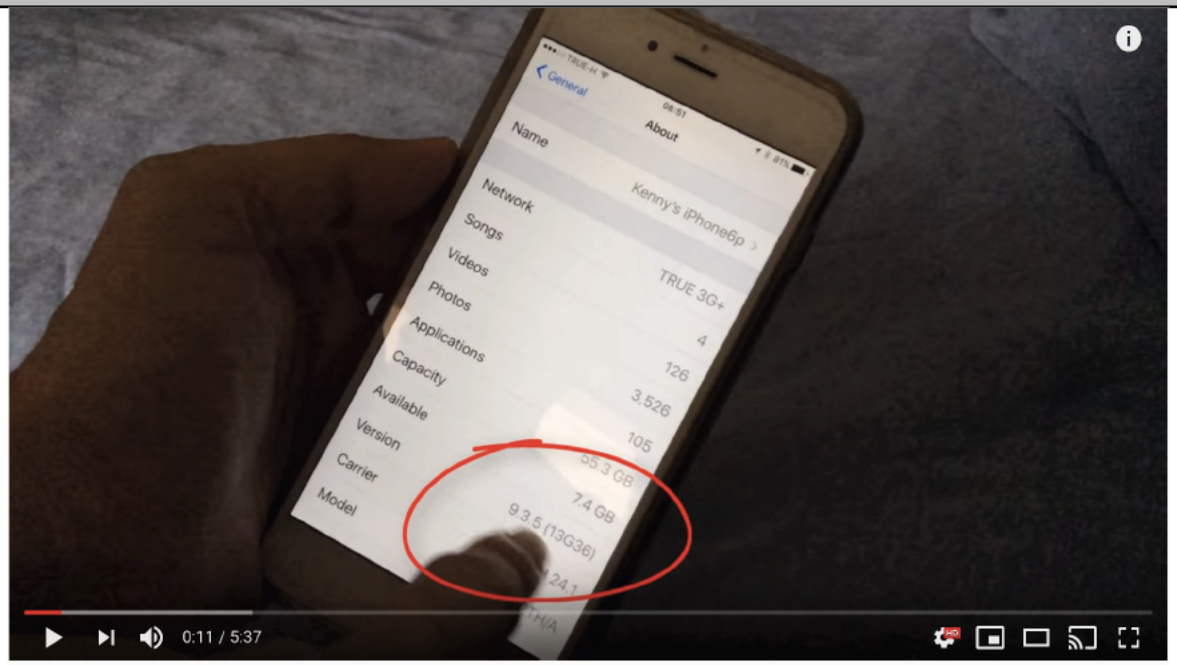
Claim	Accused Products
	The App Store displays compatibility requirements for iOS applications.  https://www.lifewire.com/iphone-cant-update-apps-fix-4057706 The App Store has equivalent functionality for updating macOS applications.

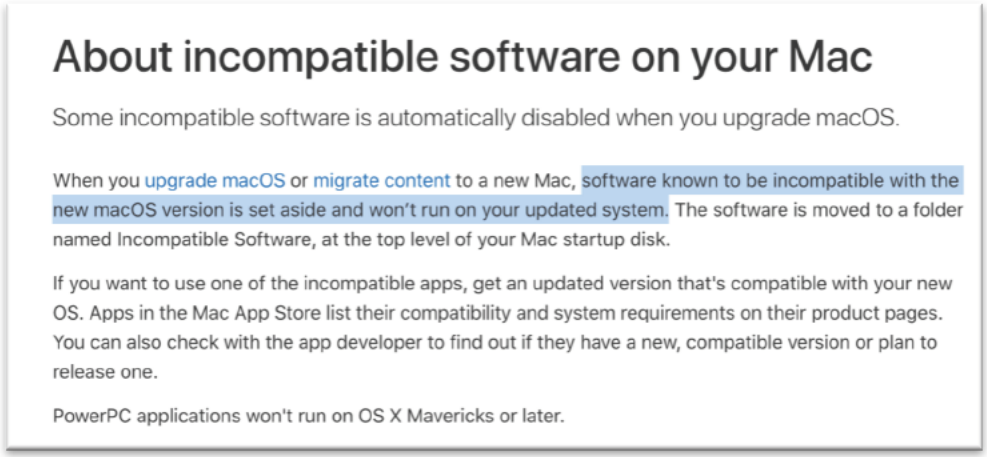
Claim	Accused Products
	 Screenshot of Microsoft App Store on macOS
1c. comparing the determined component and information specifying at least one additional component currently implemented in the electronic device	The Accused Products further perform the step of comparing the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device. The Accused Products compare at least one additional component currently implemented in the electronic device—the currently installed operating system and/or device name (e.g., specific versions of either macOS of iOS)—with the determined component (e.g., the updated application software) including compatible operating systems for the application software.

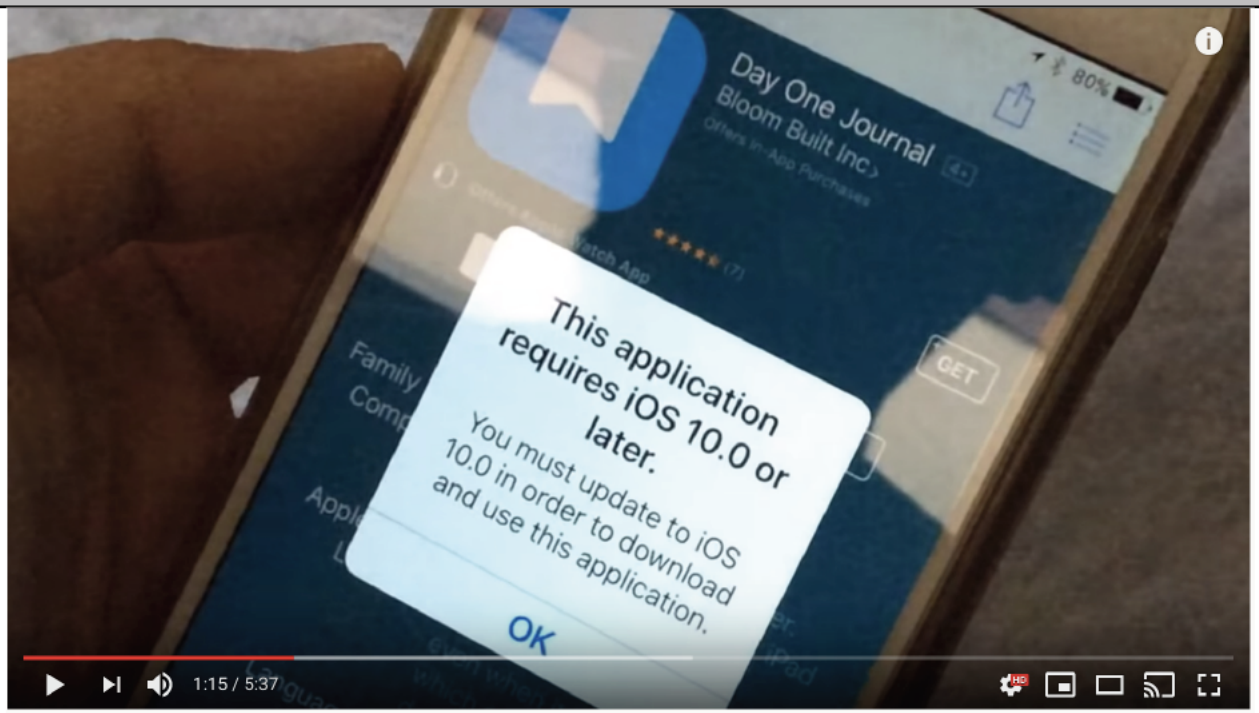
Claim	Accused Products
with at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device; and	The Accused Products utilize a list of known acceptable configurations. For example, and without limitation, applications include an "information property list" file that contains critical information about the application's configuration—including, for example, a `UIRequiredCapabilities` key that is either an array or a dictionary (a hash table) for iOS devices—all of which are a stored representation of information indicative of component capability. The App Store uses the contents of this list to prevent users from downloading applications onto devices that cannot run them.  Previous Next **Device Compatibility** The information property list (`Info.plist`) file contains critical information about your app's configuration and must be included in your app bundle. Every new project you create in Xcode has a default `Info.plist` file configured with some basic information about your project. You can modify this file to specify additional configuration details for your app. The `UIRequiredDeviceCapabilities` key lets you declare the hardware or specific capabilities that your app needs in order to run. All apps are required to have this key in their `Info.plist` file. The App Store uses the contents of this key to prevent users from downloading your app onto a device that cannot possibly run it. The tables in this chapter show all iOS devices and their capabilities. **Important:** All device requirement changes must be made when you submit an update to your binary. You are permitted only to expand your device requirements. Submitting an update to your binary to restrict your device requirements is not permitted. You are unable to restrict device requirements because this action will keep customers who have previously downloaded your app from running new updates. **Important:** If you require a capability listed in bold, you must build your app as a fat binary (armv6 and armv7) or require a minimum iOS version of 4.3 or later. See the individual device tables for a specific key requirement. **Declaring the Required Device Capabilities** The value of the `UIRequiredDeviceCapabilities` key is either an array or a dictionary that contains additional keys identifying features your app requires (or specifically prohibits). If you specify the value of the key using an array, the presence of a key indicates that the feature is required; the absence of a key indicates that the feature is not required and that the app can run without it. If you specify a dictionary instead, each key in the dictionary must have a Boolean value that indicates whether the feature is required or prohibited. A value of `true` indicates the feature is required and a value of `false` indicates that the feature must *not* be present on the device. If a given capability is optional for your app, do not include the corresponding key in the dictionary. For the list of possible `UIRequiredDeviceCapabilities` keys, see UIRequiredDeviceCapabilities in *Information Property List Key Reference*. Be sure to include keys only for the features that your app absolutely requires. If your app can run without a specific feature, do not include the corresponding key. For detailed information on how to create and edit property lists, see *Information Property List Key Reference*. The sections that follow detail the compatibility of each iOS device model with all `UIRequiredDeviceCapabilities` keys.

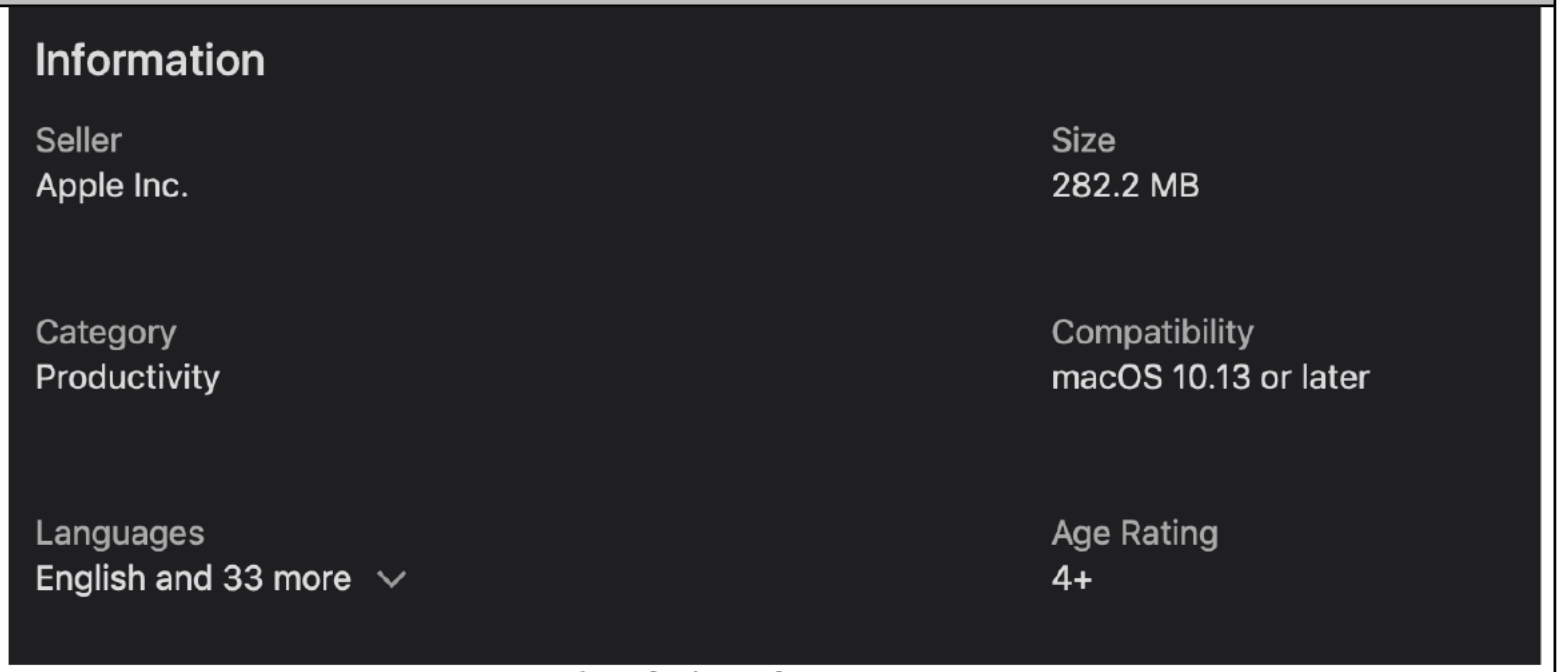
Claim	Accused Products
	See https://developer.apple.com/library/archive/documentation/DeviceInformation/Reference/iOSDeviceCompatibility/DeviceCompatibilityMatrix/DeviceCompatibilityMatrix.html For example, iOS running on an iPhone requesting an application update (and/or an App Store) server identifies the current version of operating system that is running on the requesting device. The operating system or the server can further compare the current iOS version running on the requesting device to the required to subsequent operating system versions to determine whether a subsequent version is required to install the requested update.

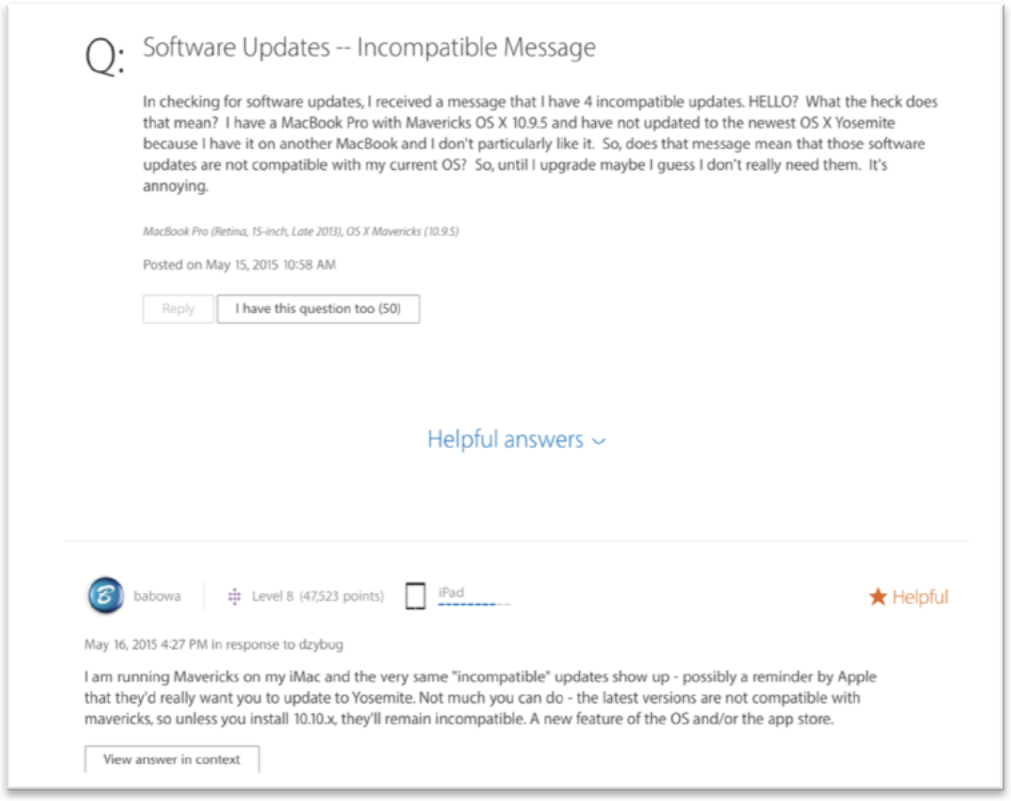
Claim	Accused Products
	 **Source**: https://www.lifewire.com/iphone-cant-update-apps-fix-4057706

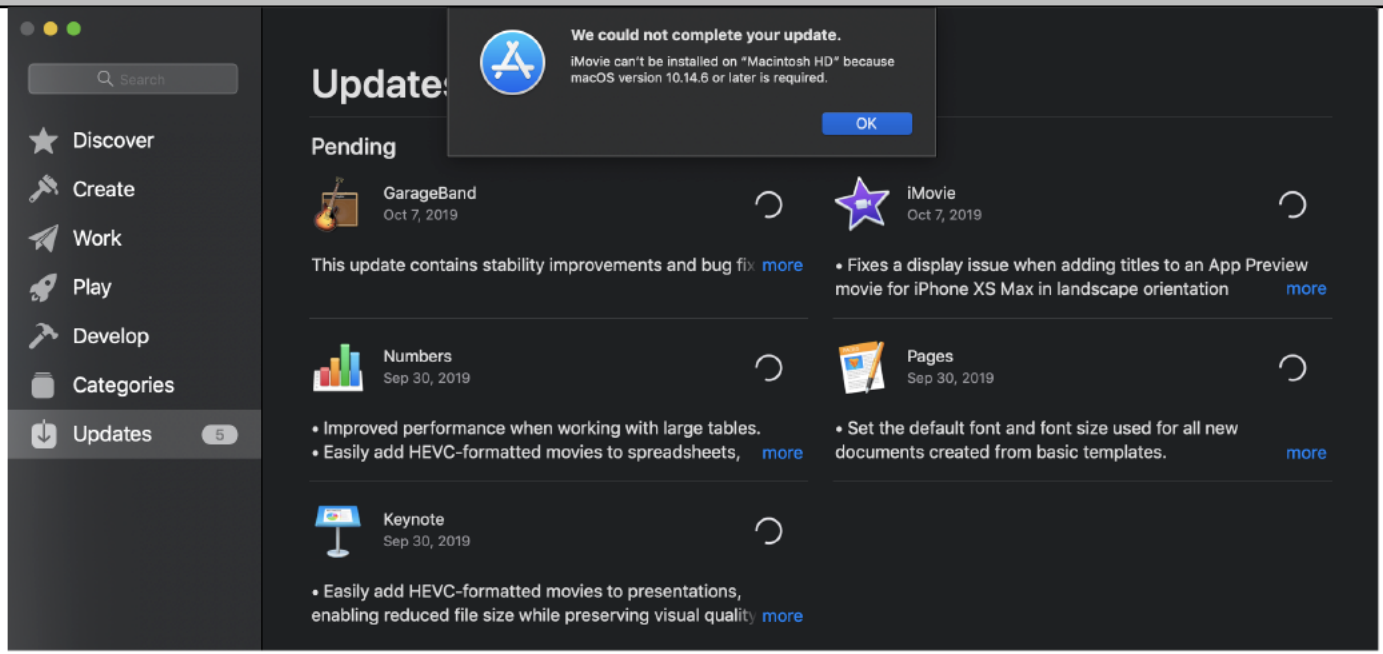
Claim	Accused Products
	 https://www.youtube.com/watch?v=3izYGcbGydg As introduced above, iOS and/or an App Store server is capable of indicating a list of known acceptable configurations for the iPhone requesting an app update (e.g. "iOS 9.0 or later", "iOS 10.0 or later"). Keeping a list of known acceptable configurations also means that the system at least implicitly keeps a list of known unacceptable configurations (implicitly all versions of iOS prior to version 9.0 or 10.0, respectively). Further, Apple maintains a list of incompatible software.

Claim	Accused Products
	 *See* https://support.apple.com/en-us/HT201861

Claim	Accused Products
	 **Source**: https://www.youtube.com/watch?v=3izYGcbGydg Users of macOS receive similar configuration information and warnings, including operating system compatibility information.

Claim	Accused Products
	 Screenshot of Microsoft App Store on macOS

Claim	Accused Products
	 *See* https://discussions.apple.com/thread/7043650

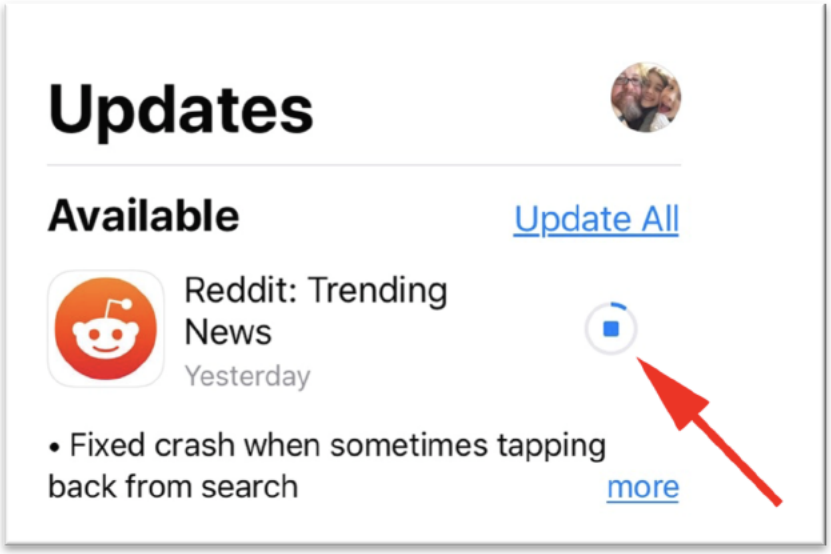
<table>
<tr><th>Claim</th><th>Accused Products</th></tr>
<tr><td></td><td> 

Screenshot of Microsoft App Store on macOS</td></tr>
<tr><td>1d. generating information indicative of an approval or a denial of the reconfiguration request based at least in part on the result of the comparing step.</td><td>The Accused Products further perform the step of generating information indicative of an approval or a denial of the reconfiguration request based at least in part on the result of the comparing step.

For example, as discussed above, upon determining that the currently installed version of an operating system (macOS or iOS) must be updated to a subsequent version of macOS or iOS to install the requested application, macOS, iOS and/or an App Store server can generate a notification indicative of a denial of the requested update. Also, upon determining that the currently installed version of the operating system does not need to be updated to a subsequent version of the operating system to install the requested application, macOS, iOS and/or the App Store server can generate an indication indicative of an approval of the requested update.</td></tr>
</table>

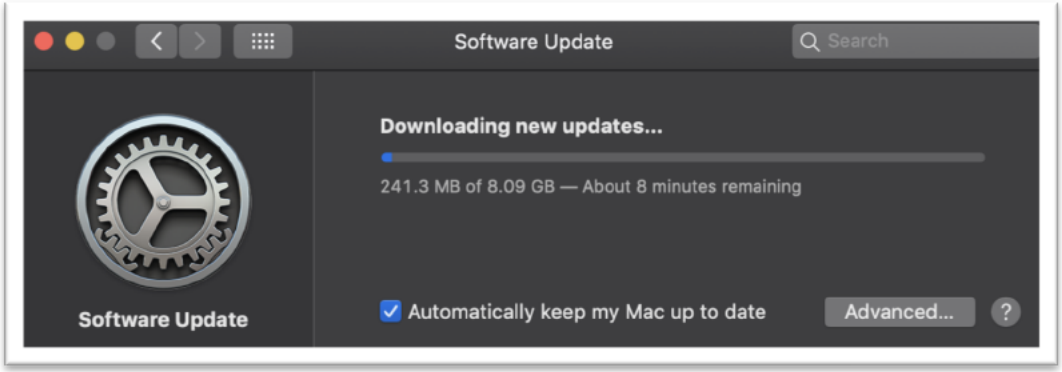
Claim	Accused Products
	 https://www.youtube.com/watch?v=3izYGcbGydg For example, the denial includes a warning message showing that the application requires a more recent version of iOS. In the screenshot above, the denial includes the information that the user "must update to iOS 10.0 in order to download and use this application." The Accused Products generate information indicative of an approval based at least in part of the comparing step. The approval, indicated by a download progress meter, shows that the application is being downloaded from Apple servers.

Claim	Accused Products

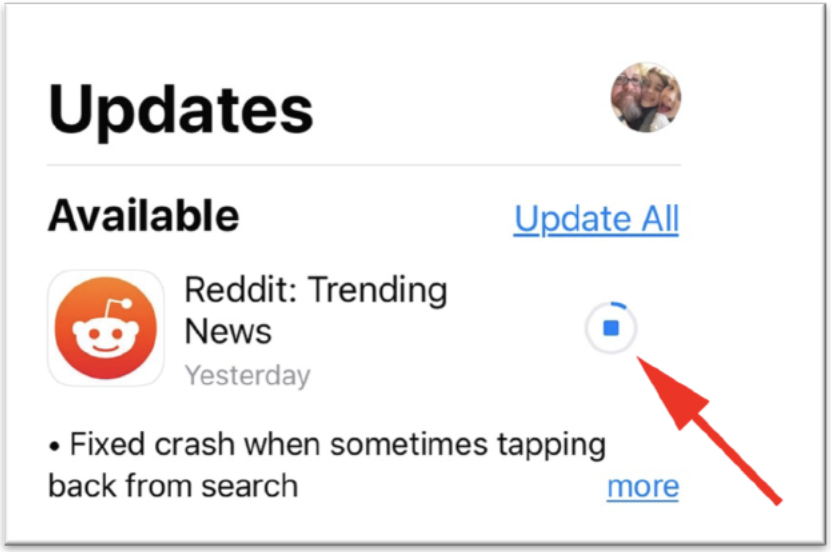


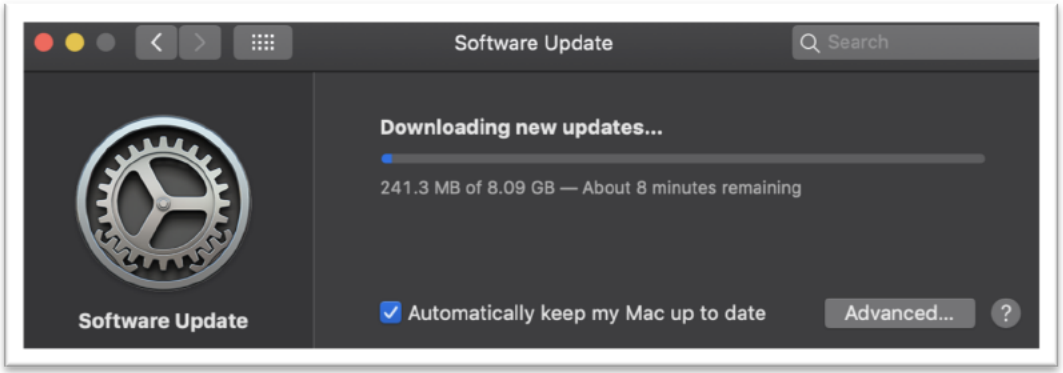
https://www.macworld.co.uk/how-to/iosapps/update-app-iphone-ipad-3688416/

Similarly, the App Store on macOS shows approval, for example, by a download progress indicator.

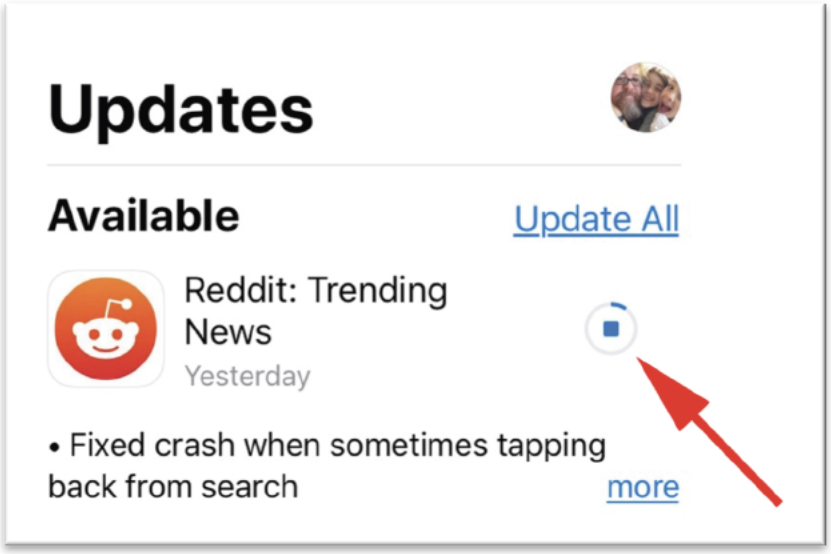


Download Progress indicator launched after selecting program for update from App Store.

Claim	Accused Products
2. The method of claim 1 further including the step of generating information indicative of an approval of the reconfiguration request if the determined-component and the additional component are consistent with a given one of the known acceptable configurations.	*See* discussion of claim 1, incorporated herein by reference. The Accused Product further performs the step of generating information indicative of an approval of the reconfiguration request if the determined-component (e.g., the to-be-updated application) and the additional component (e.g., the operating system) are consistent with a given one of the known acceptable configurations (e.g., known operating system compatibility). For example, application update status is displayed on the device's screen if the required version and currently installed version are consistent with the known acceptable configuration (for example, iOS 10.0 and later).  https://www.macworld.co.uk/how-to/iosapps/update-app-iphone-ipad-3688416/ Similarly, the App Store on macOS shows approval, for example, by a download progress indicator.

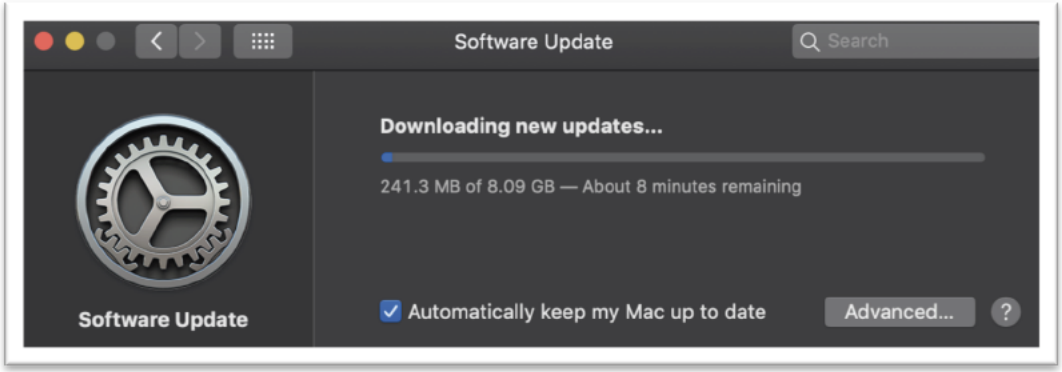
Claim	Accused Products
	 Download Progress indicator launched after selecting program for update from App Store.
3. The method of claim 1 further including the step of downloading the determined component to the electronic device if the determined component and the additional component are consistent with a given one of the known acceptable configurations.	*See* discussion of claim 1, incorporated herein by reference. The Accused Product further performs the step of generating information indicative of an approval of the reconfiguration request if the determined-component and the additional component are consistent with a given one of the known acceptable configurations. The Accused Product downloads the determined component (the updated application) to the Apple hardware if the application and additional component (e.g., the operating system) are consistent with the known acceptable configurations (e.g., if the hardware's operating system satisfies the given requirements, or other requirements contained in the `UIRequiredDeviceCapabilities` list). Further, the required iOS version can be downloaded (for example, iOS 10.0 or later) if the device is compatible with the required iOS version. Once, the Apple devices determine compatibility, the determined component is downloaded to the electronic device.

Claim	Accused Products

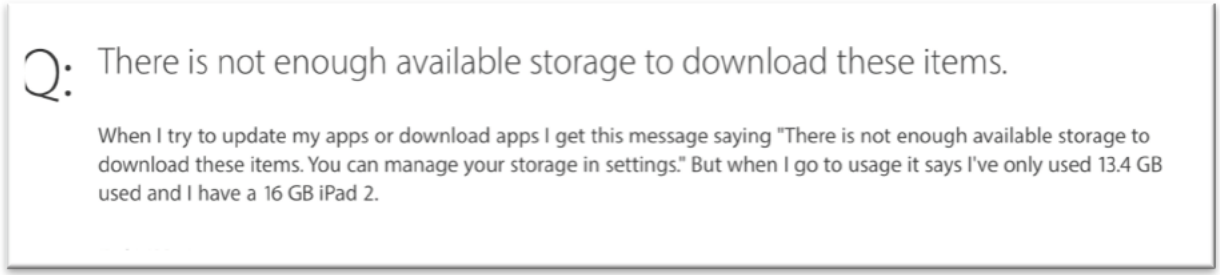


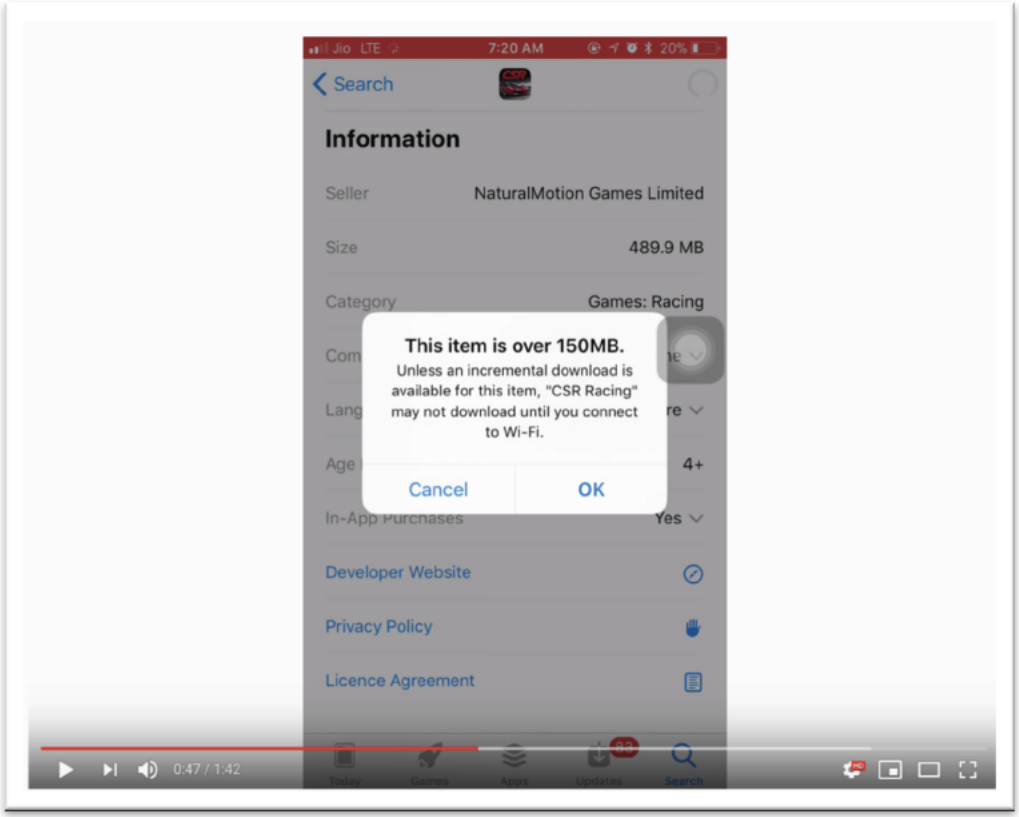
https://www.macworld.co.uk/how-to/iosapps/update-app-iphone-ipad-3688416/

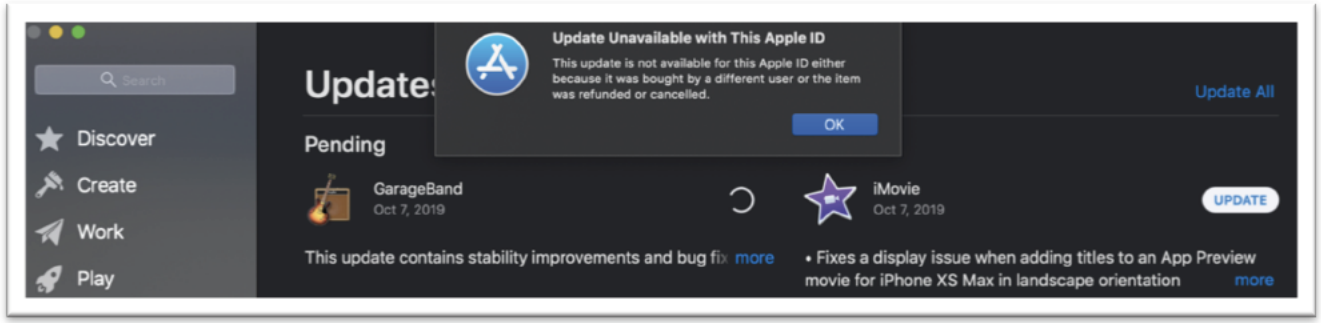
Similarly, the App Store on macOS shows approval, for example, by a download progress indicator.

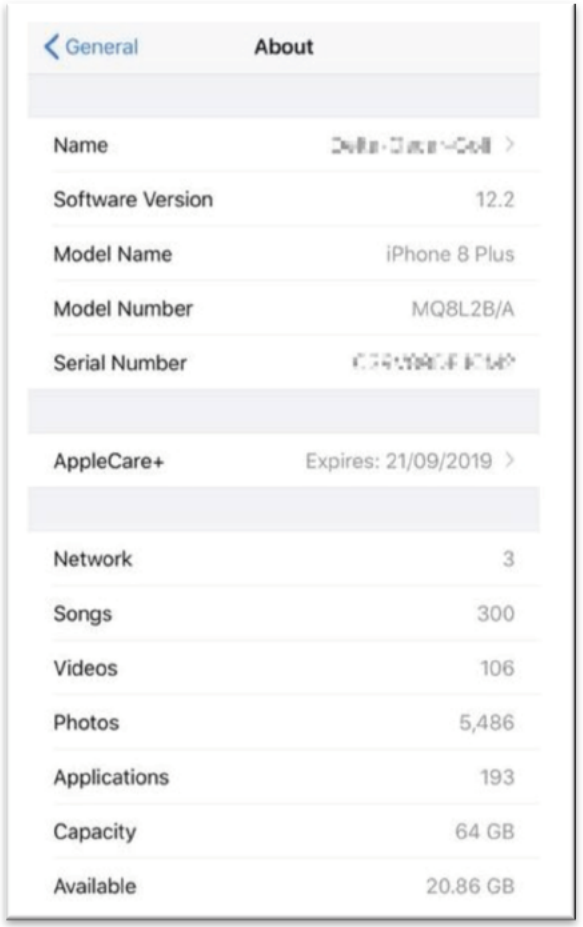


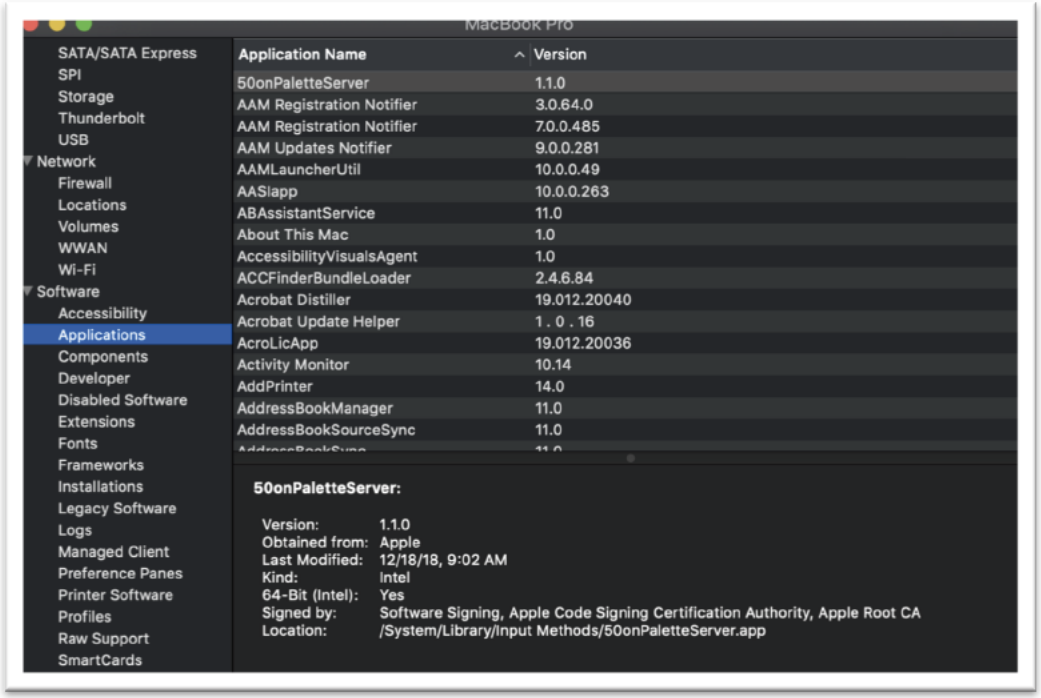
Download Progress indicator launched after selecting program for update from App Store.

Claim	Accused Products
6. The method of claim 1 further including the step of transmitting in response to the reconfiguration request a list of additional components required in the electronic device in order to implement the reconfiguration.	See discussion of claim 1, which is incorporated herein by reference. The Accused Product further performs the step of transmitting in response to the reconfiguration request a list of additional components required in the electronic device in order to implement the reconfiguration. Additionally, for example, when attempting to download an updated app that requires more storage space than is currently available on the requesting electronic device, an insufficient space notification can be generated by an App Store server or the requesting hardware. In addition, for example, when attempting to download an application or application update that exceeds a threshold size while on a cellular data network, a notification can be generated by an App Store server or the requesting hardware indicating that a Wi-Fi connection must be enabled and/or established before the requested download can proceed. Further, the App Store can prevent updates and transmit a response when the device does not contain hardware required by the application (e.g., an accelerometer, an auto-focus-camera, Bluetooth, gps, nfc, or microphone). *See, e.g.*, https://developer.apple.com/documentation/bundleresources/information_property_list/uirequireddevicecapabilities (listing potential fields in `UIRequiredDeviceCapabilities`.). Further, the App Store can prevent updates when license information does not permit the reconfiguration.  Q: There is not enough available storage to download these items. When I try to update my apps or download apps I get this message saying "There is not enough available storage to download these items. You can manage your storage in settings." But when I go to usage it says I've only used 13.4 GB used and I have a 16 GB iPad 2. https://discussions.apple.com/thread/3516265

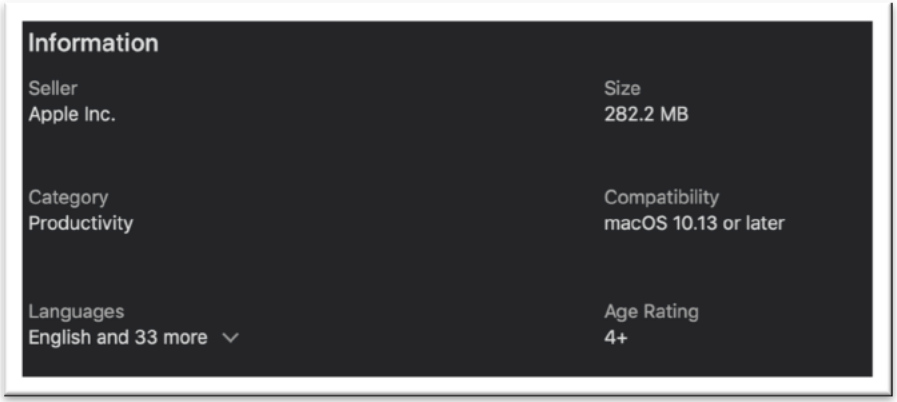
Claim	Accused Products
	 https://www.youtube.com/watch?v=X-GujdK98tY

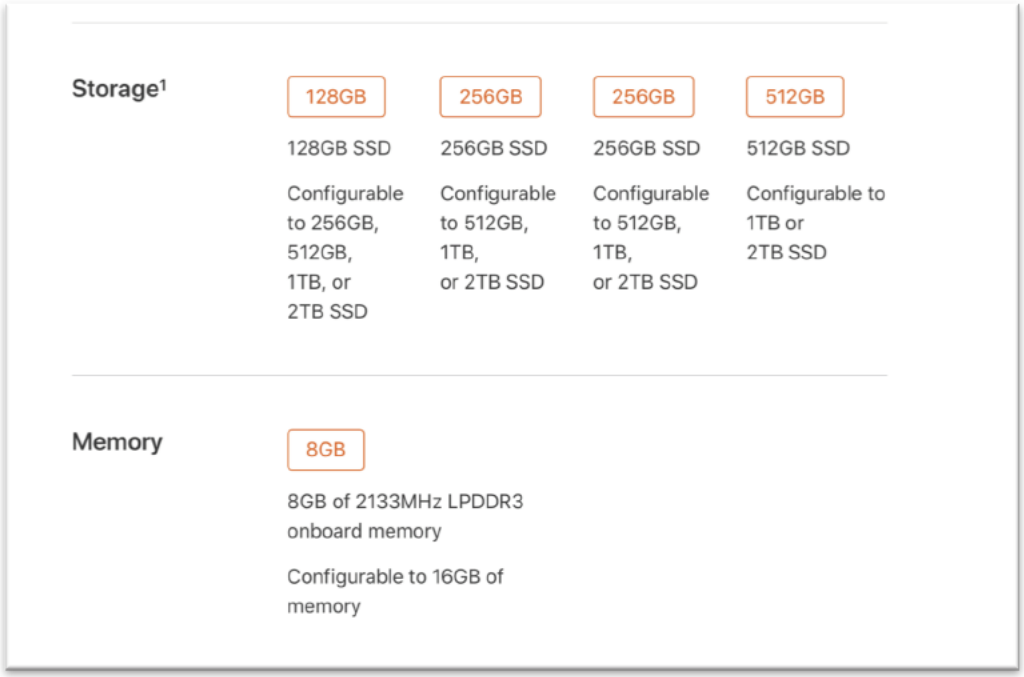
Claim	Accused Products
	 App Store on macOS.
7. The method of claim 1 wherein the information specifying at least one additional component currently implemented in the electronic device includes identifiers of each of the components in a set of components currently implemented in the electronic device.	*See* discussion of claim 1, which is incorporated herein by reference. The Accused Products further include the limitation wherein the information specifying at least one additional component currently implemented in the electronic device includes identifiers of each of the components in a set of components currently implemented in the electronic device. For example, information specifying at least one additional component (e.g. the version of the iOS currently running on the requesting hardware) can include a list of additional components currently installed on the iPhone. For example, a count indicating the number of apps currently installed on the iPhone, the storage capacity of the iPhone, and more.

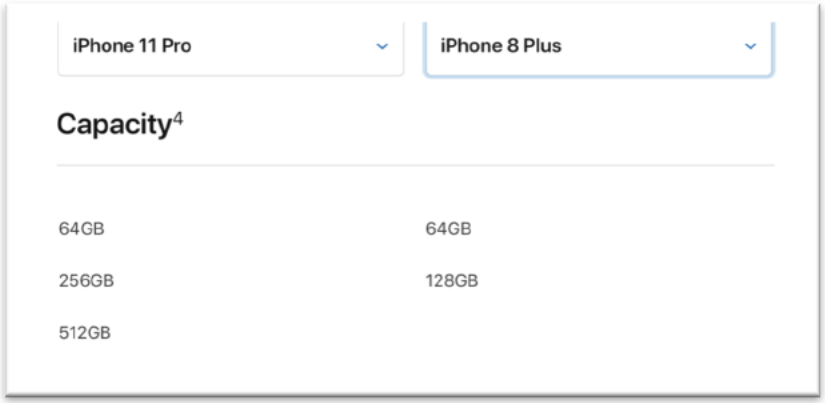
Claim	Accused Products
	 https://www.zdnet.com/pictures/ios-12-2-iphone-tips-tricks-and-shortcuts-you-need-to-know/ Apple devices contained detailed information about additional components, including identifiers of each of those components implemented on the device.

Claim	Accused Products
	 macOS System Report.
8. The method of claim 7 wherein the identifiers of each of the components in the set of components are included in the	*See* claim 7, which is incorporated by reference herein. The Accused Product further includes the limitation wherein the identifiers of each of the components in the set of components are included in the reconfiguration request. On information and belief, the server receives information about the hardware in the reconfiguration request to do its compatibility check and that such information must be transmitted as part of the request.

Claim	Accused Products
reconfiguration request.	
10. The method of claim 1 wherein the reconfiguration request is received from the electronic device over a network connection established with a reconfiguration manager implementing the receiving, determining, comparing and generating steps.	*See* claim 1, which is incorporated by reference herein. The Accused Product further includes the limitation wherein the reconfiguration request is received from the electronic device over a network connection established with a reconfiguration manager implementing the receiving, determining, comparing and generating steps. For example, as discussed above, to the extent that an App Store server can be involved in determining whether Apple hardware is compatible with a requested application update, one or more software routines executed on the App Store server associated with said functionality is a reconfiguration manager.
11pre. An apparatus for controlling the reconfiguration of an electronic device, the apparatus comprising:	The Accused Products include an apparatus (such as an App Store server) for controlling the reconfiguration of an electronic device (e.g., Apple hardware devices). *See* 1pre, which is incorporated herein by reference.
11a. a memory for storing at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable	The Accused Products further include a memory for storing at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device. *See* 1c, which is incorporated herein by reference. App Store servers have memory (otherwise they could not function as computers). That memory stores at least one of a list of known acceptable configurations (as seen in the compatibility information) on App Store pages.

Claim	Accused Products
configurations for the electronic device; and	 For example, an electronic device requesting an application update can store its operating system (macOS or iOS) in its local storage (memory). Apple servers that service App Store update functionality can also implicitly include a memory in that they are servers, such that the memory stores a list of acceptable and unacceptable configurations associated with applications and various devices/versions of iOS. Apple devices include volatile and non-volatile storage.

Claim	Accused Products
	 *See, e.g.*, https://www.apple.com/macbook-pro/specs/

Claim	Accused Products
	 *See also* https://www.theiphonewiki.com/wiki/List_of_iPhones#iPhone_11_Pro_Max (listing RAM capacity for various iPhone models).
11b. a processor coupled to the memory and operative (i) to receive information representative of a reconfiguration request relating to the electronic device; (ii) to determine at least one device component required to implement the	The Accused Products further include a processor coupled to the memory and operative (i) to receive information representative of a reconfiguration request relating to the electronic device; (ii) to determine at least one device component required to implement the reconfiguration request. App Store servers include a processor coupled to the memory. As computers App Store servers must include a processor. App Store servers receive reconfiguration requests (e.g., updating applications installed on Apple hardware). *See 1pre to 1b*, which are incorporated hereing by reference. In addition, as discussed above, an iPhone can be equipped with Apple's Bionic Chip, which includes a processor coupled to the memory discussed above. Apple servers that service App Store update functionality include a processor coupled to a memory because they are servers.

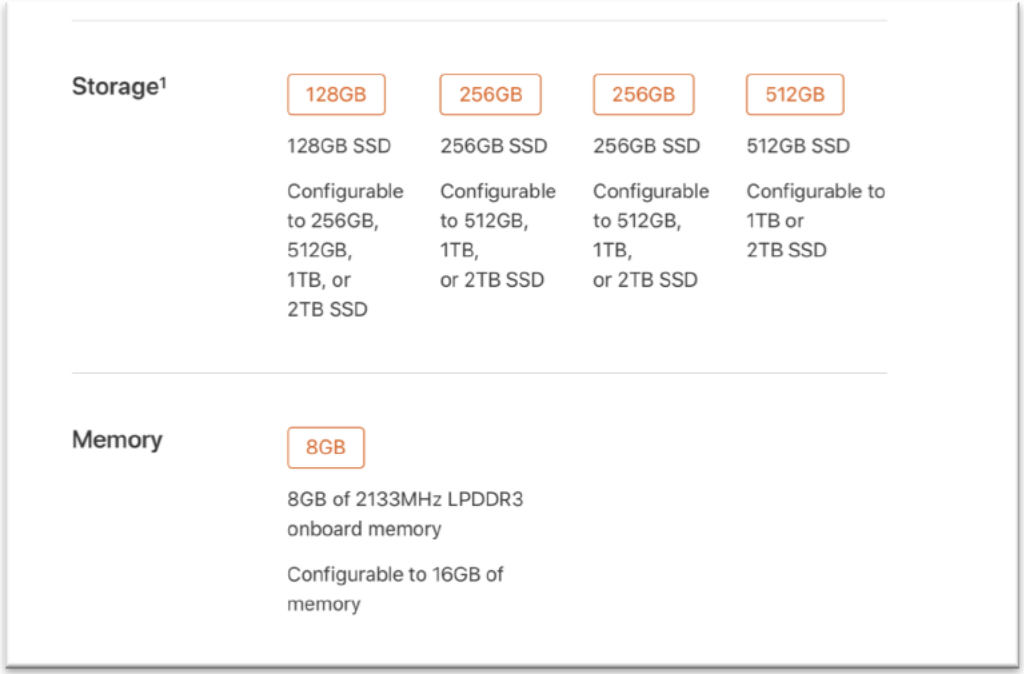
Claim	Accused Products
reconfiguration request;	
11c. (iii) to compare the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of the list of known acceptable configurations for the electronic device and the list of known unacceptable configurations for the electronic device; and	The Accused Products further include a processor coupled to the memory and operative to compare the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of the list of known acceptable configurations for the electronic device and the list of known unacceptable configurations for the electronic device. *See 1c*, which is incorporated herein by reference.
11d. (iv) to generate information indicative of an approval or a denial of the reconfiguration request based at least in part on the comparison operation.	The Accused Products further include a processor coupled to the memory and operative to generate information indicative of an approval or a denial of the reconfiguration request based at least in part on the comparison operation. *See* discussion of *1d*, which is incorporated by reference herein.

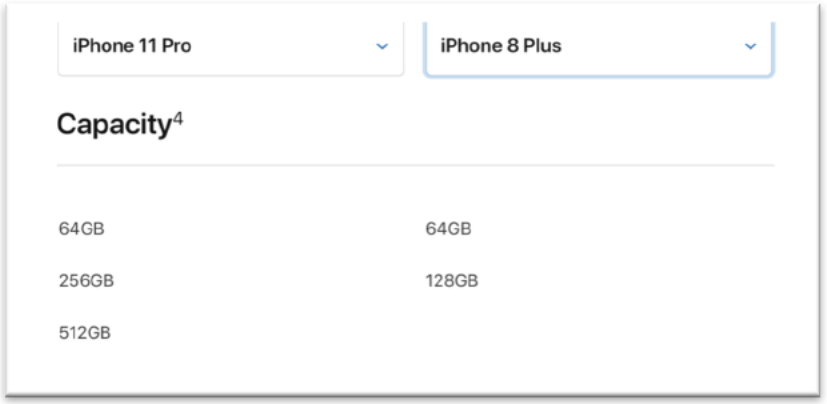
Claim	Accused Products
12. The apparatus of claim 11 wherein the processor is further operative to generate information indicative of an approval of the reconfiguration request if the determined component and the additional component are consistent with a given one of the known acceptable configurations.	The Accused Products further includes the limitation wherein the processor is further operative to generate information indicative of an approval of the reconfiguration request if the determined component and the additional component are consistent with a given one of the known acceptable configurations. *See* discussion of claim 2, which incorporated by reference herein.
13. The apparatus of claim 11 wherein the processor is further operative to download the determined component to the electronic device if the determined component and the additional component are consistent with a given one of the	The Accused Product further includes the limitation wherein the processor is further operative to download the determined component to the electronic device if the determined component and the additional component are consistent with a given one of the known acceptable configurations. *See* discussion of claim 3, which is incorporated by reference herein..

Claim	Accused Products
known acceptable configurations.	
14a. The apparatus of claim 11 wherein the processor is further operative to compare the determined component and information specifying at least one additional component currently implemented in the electronic device with the list of known unacceptable configurations for the electronic device;	The Accused Product further includes the limitation wherein the processor is further operative to compare the determined component and information specifying at least one additional component currently implemented in the electronic device with the list of known unacceptable configurations for the electronic device. *See* discussion of 4a, which is incorporated by reference herein.
14b. and to generate information indicative of a denial of the reconfiguration request if the determined component and the additional component are consistent with a	The Accused Product further includes the limitation wherein the processor is further operative to generate information indicative of a denial of the reconfiguration request if the determined component and the additional component are consistent with a given one of the known unacceptable configurations. *See* discussion of 4b, which is incorporated by reference herein.

Claim	Accused Products
given one of the known unacceptable configurations.	
16. The apparatus of claim 11 wherein the processor is further operative to transmit in response to the reconfiguration request a list of additional components required in the electronic device in order to implement the reconfiguration request.	The Accused Product further includes the limitation wherein the processor is further operative to transmit in response to the reconfiguration request a list of additional components required in the electronic device in order to implement the reconfiguration request. *See* discussion of claim 6, which is incorporated by reference herein.
17. The apparatus of claim 11 wherein the information specifying at least one additional component currently implemented in the electronic device includes identifiers of each of the components in a set of components currently	The Accused Product further includes the limitation wherein the information specifying at least one additional component currently implemented in the electronic device includes identifiers of each of the components in a set of components currently implemented in the electronic device. *See* discussion of claim 7, which is incorporated by reference herein.

Claim	Accused Products
implemented in the electronic device.	
18. The apparatus of claim 17 wherein the identifiers of each of the components in the set of components are included in the reconfiguration request transmitted by the electronic device.	The Accused Products further include the limitation wherein the identifiers of each of the components in the set of components are included in the reconfiguration request transmitted by the electronic device. *See* discussion of claim 8, which is incorporated by reference herein.
20. The apparatus of claim 11 wherein the reconfiguration request is received from the electronic device over a network connection established, with a reconfiguration manager which includes the memory and processor.	*See* discussion of claim 11, which is incorporated herein by reference. The Accused Product further includes the limitation wherein the reconfiguration request is received from the electronic device over a network connection established, with a reconfiguration manager which includes the memory and processor. For example, when an application update is requested, an App Store server can receive the request over the Internet and execute one or more processes (the reconfiguration manager) to determine whether the reconfiguration is permitted. The App Store severs include memory and processors.
21pre. An article of manufacture comprising a machine-readable medium containing one or more	The Accused Product includes an article of manufacture comprising a machine-readable medium containing one or more software programs which when executed implement the claimed steps. The App Store server comprises memory containing one more software programs.

Claim	Accused Products
software programs which when executed implement the steps of:	Further, Apple electronic devices comprise memory and storage containing the iOS or macOS operating system and associated software programs. Apple devices include volatile and non-volatile storage.  *See, e.g.*, https://www.apple.com/macbook-pro/specs/

Claim	Accused Products
	 *See also* https://www.theiphonewiki.com/wiki/List_of_iPhones#iPhone_11_Pro_Max (listing RAM capacity for various iPhone models).
21a. receiving information representative of a reconfiguration request relating to an electronic device;	The Accused Product further performs the step of receiving information representative of a reconfiguration request relating to an electronic device. *See* discussion of *1a*, which is incorporated herein by reference.
21b. determining at least one device component required to implement the reconfiguration request;	The Accused Product further performs the step of determining at least one device component required to implement the reconfiguration request. *See* discussion of 1b, which is incorporated herein by reference.
21c. comparing the determined component and	The Accused Product further performs the step of comparing the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of a list of known

Claim	Accused Products
information specifying at least one additional component currently implemented in the electronic device with at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device; and	acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device. *See* discussion of 1c, which is incorporated by reference herein.
21d. generating information indicative of an approval or a denial of the reconfiguration request based at least in part on the result of the comparing step.	The Accused Product further performs the step of generating information indicative of an approval or a denial of the reconfiguration request based at least in part on the result of the comparing step. *See* discussion of 1d, which is incorporated by reference herein.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNILOC 2017 LLC, Plaintiff, v. APPLE INC., Defendant.	§ § § § § § § § § §	Civil Action No. 6:19-cv-532 PATENT CASE JURY TRIAL DEMANDED

APPLE INC.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

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Pursuant to 28 U.S.C. § 1404(a), Apple hereby moves to transfer this case to the Northern District of California ("NDCA").

I. INTRODUCTION

This Motion to Transfer follows the well-trodden path of twenty-one other cases filed by Uniloc against Apple in Texas, and transferred pursuant to 28 U.S.C. § 1404(a) to the NDCA. For the same reasons those cases were transferred and more, it would be clearly more convenient to litigate this case there as well.

In 2016 and 2017, Uniloc filed its first dozen cases against Apple in the Eastern District of Texas. Apple moved to transfer those cases to the NDCA, and Uniloc opposed with representations of its own presence in that district. That hoax was debunked when, on December 22, 2017, Judge Gilstrap found those representations to contradict the actual facts of Uniloc's presence, to "fly in the face of Uniloc's prior representations," and to be "troubling, particularly because they are not isolated exceptions."[1] Applying controlling Fifth Circuit precedent, Judge Gilstrap transferred ten of the cases to the NDCA (all but two that were stayed pending *inter partes* review and went on to have all patents invalidated).

In 2018, Uniloc filed its second dozen cases against Apple, in this District ("the 2018 WDTX Cases"). Apple again moved to transfer. Uniloc opposed with empty conjecture that it would demonstrate that Apple had a relevant presence in Texas. (Dkt. No. 55 (18-cv-158).) Uniloc was given written venue discovery, document venue discovery, and up to ten venue depositions. (Dkt. Nos. 40, 51 (18-cv-158).) The facts, however, were what they were, and revealed what Apple attested to from the outset. Again applying controlling Fifth Circuit precedent, Judge Yeakel transferred these cases to the NDCA.

[1] *See* Declaration of John M. Guaragna In Supp. of Mot. to Transfer ("Guaragna Decl."), Ex. 1, 2:17-cv-00258-JRG, Dkt. No. 104, pp. 16-17 ("Gilstrap Order").

This case should follow the path of those in Apple's earlier motions to transfer not just because it is similar to them, but because it ***is*** one of them. Amongst the dozen cases Uniloc filed in 2018 in this District is Case No. 1:18-cv-00296-LY (the "-296 Case"), in which Uniloc sued Apple on the very same patent and very same claims as in this case. The only reason it was not addressed by Judge Yeakel's orders on transfer is because Uniloc voluntarily dismissed the case before briefing was complete. (Dkt. No. 37 (18-cv-296).)

Judges Gilstrap and Yeakel's sound reasoning in transferring the prior Uniloc cases against Apple to the NDCA applies equally here. As in the earlier twenty-one cases, Apple's likely witnesses here—Dana Dubois in engineering, Deidre Caldbeck in marketing, Brian Ankenbrandt in licensing, and Michael Jaynes in finance—all reside in the Northern District of California. And Uniloc's likely witnesses are also in California: Craig Etchegoyen (CEO), Drake Turner (CFO), Mike Ford (technology platform engineer), Michele Moreland (licensing officer, Fortress employee), Erez Levy (same), and James Palmer (same). However, there is even greater support for transfer here given the judicial economy that will be achieved by having all of the Uniloc cases against Apple handled in a single venue (the NDCA). Accordingly, Apple respectfully requests that the Court transfer this case to the NDCA.

II. THE LONG HISTORY BETWEEN APPLE AND UNILOC

A. Twenty-One Uniloc Cases Against Apple Already Have Been Transferred From Texas To The NDCA.

This is the twenty-fourth case Uniloc has filed against Apple in Texas. Over Uniloc's objections, twenty-one of those cases have been transferred to the NDCA under 1404(a) and are currently pending there. Two cases in the Eastern District of Texas were stayed pending IPRs—finding all claims invalid—and were therefore not included in those transfer decisions. But there is no reason to believe they would not also be transferred if those stays are ever lifted.

Of particular relevance here is the fact that the present case is actually a retread of a prior case Uniloc filed against Apple in this District in 2018 with the very same patent and the very same asserted claims. That case (the -296 Case) most certainly would also have been transferred if Uniloc had not voluntarily dismissed it before Judge Yeakel addressed the transfer arguments in the other co-pending Uniloc cases. Indeed, when evaluating facts nearly identical to those presented in the current case, both Judge Yeakel and Judge Gilstrap concluded that the NDCA was the clearly more convenient venue for the pending disputes between Uniloc and Apple. (*See* Ex. 1,[2] Gilstrap Order; *Uniloc USA, Inc. v. Apple Inc.*, No. 18-CV-990-LY, 2019 WL 2066121 (W.D. Tex. Apr. 8, 2019) (J. Yeakel)).)

In addition, the transfer proceedings in those earlier cases demonstrated that Uniloc had been less than forthcoming with evidence regarding its connections to California—and lack of connections to Texas. (Ex. 1, Gilstrap Order at pp. 3, 6-7.) In light of what Apple has learned about Uniloc through venue discovery, transfer is even more appropriate now.

For ease of reference, the following table summarizes the prior Uniloc cases against Apple in Texas and the results of the disputed transfer motions.

Filing Date	Case	Original Court	Transfer Disposition
11/17/18	*Uniloc 2017 LLC v. Apple Inc.* 1-18-cv-00989	WD TX	Transfer to NDCA (4/8/19)
11/17/18	*Uniloc 2017 LLC v. Apple Inc.* 1-18-cv-00990	WD TX	Transfer to NDCA (4/8/19)
11/17/18	*Uniloc 2017 LLC v. Apple Inc.* 1-18-cv-00991	WD TX	Transfer to NDCA (4/8/19)
11/17/18	*Uniloc 2017 LLC v. Apple Inc.* 1-18-cv-00992	WD TX	Transfer to NDCA (4/8/19)
4/9/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00293	WD TX	Transfer to NDCA (3/28/19)
4/9/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00296	WD TX	Voluntary dismissal prior to disposition (7/19/19)

[2] All exhibits referred to herein are attached to the Guaragna Decl.

Filing Date	Case	Original Court	Transfer Disposition
2/22/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00158	WD TX	Transfer to NDCA (3/28/19)
2/22/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00159	WD TX	Transfer to NDCA (3/28/19)
2/22/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00161	WD TX	Transfer to NDCA (3/28/19)
2/22/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00163	WD TX	Transfer to NDCA (3/28/19)
2/22/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00164	WD TX	Transfer to NDCA (3/28/19)
2/22/18	*Uniloc USA, Inc. et al v. Apple Inc.* 1-18-cv-00166	WD TX	Transfer to NDCA (3/28/19)
10/20/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00708	ED TX	Stayed pending IPR
8/2/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00571	ED TX	Transfer to NDCA (12/22/17)
7/12/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00534	ED TX	Transfer to NDCA (12/22/17)
7/12/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00535	ED TX	Transfer to NDCA (12/22/17)
6/30/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00522	ED TX	Transfer to NDCA (12/22/17)
6/2/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00469	ED TX	Transfer to NDCA (12/22/17)
6/2/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00470	ED TX	Transfer to NDCA (12/22/17)
5/26/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00454	ED TX	Transfer to NDCA (12/22/17)
5/26/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00455	ED TX	Transfer to NDCA (12/22/17)
5/26/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00457	ED TX	Transfer to NDCA (12/22/17)
4/3/17	*Uniloc USA, Inc. et al v. Apple Inc.* 2-17-cv-00258	ED TX	Transfer to NDCA (12/22/17)
6/14/16	*Uniloc USA, Inc. et al v. Apple Inc.* 2-16-cv-00638	ED TX	Stayed pending IPR

B. The Subject Matter of the Current Case

Despite Uniloc's vague infringement allegations, and based on Apple's current understanding of Uniloc's infringement allegations, the accused technology in the current case appears to relate to "the reconfiguration of the device, such as, for example, the installation or

update of an App Store application on the device…the installation or update of a Mac App Store application on the device" (the "Accused Technology"). (*See* Compl. at ¶ 12.)

In this case, Uniloc has accused various Apple products, including iPhones, iPads, and desktop and notebook computers running the iOS and macOS operating systems (collectively, the "Accused Products"). (*See* Compl. at ¶ 10.) These products directly overlap with products accused in other Uniloc cases pending against Apple in the NDCA. In fact, Uniloc accuses the same smartphones and tablets in this case as in eight of the cases previously transferred to the NDCA,[3] as well as the same iPods, desktop computers, and notebook computers asserted in five of the cases previously transferred to the NDCA.[4]

C. Uniloc

The Complaint identifies a single Plaintiff, Uniloc 2017 LLC, a Delaware company with no connection to Waco or this District. Uniloc 2017 is part of a web of Uniloc entities, including Uniloc Luxembourg and Uniloc USA, that have asserted claims against Apple in this and two dozen prior cases.

Uniloc 2017 was essentially substituted as a plaintiff (for Uniloc Luxembourg and Uniloc USA) when Uniloc dismissed and then simultaneously re-filed four cases in this District in late 2018. As such, Uniloc 2017 and its relevant activities and witnesses were the subject of transfer discovery in the prior Texas cases. That transfer discovery, along with transfer discovery in the Eastern District of Texas cases, unearthed numerous Uniloc connections to California—both for Uniloc 2017 and the other related Uniloc entities:

- First, several managers of Uniloc 2017 are located in San Francisco, in the

[3] *Compare* Compl. at ¶ 10 to 5:19-cv-01694, 5:19-cv-01692, 5:19-cv-01695, 3:19-cv-01904, 5:19-cv-01929, 4:19-cv-01691, 4:19-cv-01693, and 3:19-cv-01697.
[4] Compare Compl. at ¶ 10 to 5:19-cv-01694, 5:19-cv-01692, 5:19-cv-01695, 3:19-cv-01904, and 5:19-cv-01929.

NDCA, including Mr. Erez Levy, Mr. James Palmer, Ms. Michelle Moreland, and three others. (Ex. 2, Turner Dep. at 57:6-58:11.)

- Second, Mike Ford is a Uniloc software engineer who lives and works in Northern California, near Roseville. (*Id.* at 87:16-19; 91:5-21; 95:17-96:21; 164:1-25.) Mr. Ford is responsible for Uniloc's Centurion software—a program that Uniloc used to identify patents to acquire and assert against Apple. (*Id.*)
- Third, Uniloc maintains an office in Newport Beach, California that hosted "around 100 top-level strategy meetings" during a three year period, and Uniloc Luxembourg's CEO holds monthly meetings in California with Uniloc's CFO. (Ex. 1, Gilstrap Order at 6.)
- Fourth, Uniloc's CEO, Mr. Etchegoyen, has maintained a residence in Newport Beach, California since 2010. (*Id.* at 4.)
- Fifth, Uniloc's CFO, Mr. Turner, resides and works in California. (*Id.* at 5.)

D. Apple

Apple is a California corporation headquartered in Cupertino (in the NDCA) since 1976. (Supplemental Declaration of Michael Jaynes In Supp. of Mot. to Transfer ("Jaynes Decl."), ¶ 4.)[5] Apple's management and primary research and development facilities are located in Cupertino. (Jaynes Decl., ¶¶ 5, 23, 24.) While Apple sells its products throughout the United States, the research, design and development of the Accused Technology takes place primarily in the NDCA. (Jaynes Decl., ¶¶ 5, 23, 24, 38, 48, 49, 59-62.) Based on Apple's understanding of Uniloc's claims, only Apple employees located in or around Cupertino have designed and

[5] Citations to paragraphs 1-50 of the Jaynes Declaration refer to the first declaration that Mr. Jaynes submitted, which is attached as Exhibit A to his second declaration filed with this motion.

developed the Accused Technology. (Jaynes Decl., ¶¶ 38, 59, 60, 62.) In this regard, the following is a list of Apple employees likely to be witnesses in this case:

- App Store Accused Technology: Dana DuBois;
- Marketing: Deidre Caldbeck;
- Intellectual Property Licensing: Brian Ankenbrandt[6]; and
- Finances: Michael Jaynes.

(Jaynes Decl., ¶¶ 38, 44, 47, 59, 62, 64.) Each of these individuals and the current, relevant teams are located in the NDCA, while none are located in this District. (*Id.*)

III. LEGAL STANDARD

Under section1404(a), the moving party must first show that the claims "might have been brought" in the proposed transferee district. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 312-13 (5th Cir. 2008) ("*Volkswagen II*"). This first requirement is not in dispute.[7] Second, the movant must show "good cause" by demonstrating that the "transferee venue is clearly more convenient" than the transferor district. *Id.* at 315. As shown below, that is the case here.

In evaluating convenience, the district court weighs both private and public interest factors. *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*") (citations omitted). The private factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Id.* The public interest factors include: "(1) the

[6] In prior transfer briefing, Apple identified Heather Mewes as a likely witness on licensing issues. However, Ms. Mewes now has a new role at Apple and Mr. Ankenbrandt is now Apple's likely witness on licensing issues. (Jaynes Decl., ¶¶ 63-64.)

[7] Apple's headquarters are in the NDCA and Uniloc has not disputed that Apple can be sued there. (Jaynes Decl., ¶ 4; Ex. 1, Gilstrap Order at 10.)

administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or the application of foreign law." *Id*.

The convenience of the witnesses is the most important factor in transfer analysis. *In re Genentech*, 566 F.3d 1338, 1343 (Fed. Cir. 2009); *Auto-Dril, Inc. v. Nat'l Oilwell Varco, L.P.*, No. 6:15-cv-00091, 2016 WL 6909479, at *7 (W.D. Tex. Jan. 28, 2016).[8] Moreover, "in a case featuring most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff, the trial court should grant a motion to transfer." *In re Nintendo Co., Ltd.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009); *see also, e.g.*, *In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014); *In re Apple, Inc.*, 581 F. App'x 886, 889-90 (Fed. Cir. 2014); *Genentech,* 566 F.3d at 1348; *In re TS Tech USA Corp*., 551 F.3d. 1315, 1321-22 (Fed. Cir. 2008); *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *3 (Fed. Cir. Sept. 25, 2018).

IV. THE NDCA IS CLEARLY THE MORE CONVENIENT VENUE

A. The Private Interest Factors Favor Transfer

All four private interest factors favor transfer.

1. Relative Ease of Access to Sources of Proof

"The Fifth Circuit [has] clarified that despite technological advances that make the physical location of documents less significant, the location of sources of proof remains a 'meaningful factor in the analysis.'" *Wet Sounds, Inc. v. Audio Formz, LLC*, No. 17-cv-141, 2017 WL 4547916, at *2 (W.D. Tex. Oct. 11, 2017) (quoting *Volkswagen II*, 545 F.3d at 315),

[8]The plaintiff's choice of venue is not a distinct factor in the analysis. *Volkswagen II*, 545 F.3d at 314-15.

report and recommendation adopted, No. 1:17-cv-141, 2018 WL 1219248, at *1 (W.D. Tex. Jan. 22, 2018). "The Federal Circuit has observed that '[i]n patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer,' and therefore the location of the defendant's documents tends to be the more convenient venue." *DataQuill, Ltd. v. Apple Inc.*, No. 13-ca-706, 2014 WL 2722201, at *3 (W.D. Tex. June 13, 2014) (quoting *In re Genentech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009)).

"[I]in determining the ease of access to sources of proof, the Court will look to the location where the allegedly infringing products were researched, designed, developed and tested." *XY, LLC v. Trans Ova Genetics, LC*, 16-cv-00447, 2017 WL 5505340, at *13 (W.D. Tex. Apr. 5, 2017) (citation omitted). *See also Uniloc USA Inc. v. Box, Inc.*, No. 1:17-cv-754-LY, 2018 WL 2729202, at *3 (W.D. Tex. June 6, 2018) (finding that "it would be more inconvenient for Box to litigate in [WDTX] than for Uniloc to litigate in Northern California"); *Collaborative Agreements, LLC. v. Adobe Sys., Inc.*, No. 1-14-CV-356, 2015 WL10818739, at *4 (W.D. Tex. Aug. 21, 2015).

The Accused Technology was designed and developed by Apple employees in the NDCA. (Jaynes Decl., ¶ 21.) The documents relating to the design and development of the Accused Technology were generated in or around Cupertino, and are stored there. (*Id*. at ¶ 62.) Even beyond the Accused Technology, the primary research, design, development, facilities and engineers for the Accused Products are located in or near Cupertino, California, along with Apple's records related to the research and design of the Accused Products. (*Id.* at ¶ 23.) All of the documents generated concerning the marketing, sales and financial information for the Accused Products are located in or around Cupertino, California. (*Id* at ¶¶ 5, 44, 47.) As such, the overwhelming majority of the sources of proof regarding the Accused Products and the

Accused Technology are in the NDCA.

In addition, Uniloc has numerous sources of proof in or near the NDCA, including: (1) the managers of Uniloc 2017 who are based in San Francisco, (2) the software engineer Mike Ford, (3) the CEO, Mr. Etchegoyen, (4) the CFO, Mr. Turner, and (5) Uniloc's management offices in California. *See* Section II.C, above.

Conversely, there are no relevant sources of proof in this District. First, Uniloc has no physical presence in this District. (Ex. 3, Google Decl., ¶¶ 2-3.) Second, Apple is not aware of any third party witnesses who reside in this District. Third, Apple does not have any relevant employees in this District, nor does it maintain relevant documents in this District. (Jaynes Decl., ¶¶ 27-29, 38, 44, 48, 49, 59, 60, 64.) *See Uniloc USA Inc., et al. v. LG Elecs. USA, et al.*, No. 4:17-cv-00858, 2018 WL 341975, at *4 (N.D. Tex. May 14, 2018) (granting defendants' motion to transfer, noting "no document or piece of evidence resides" in the chosen forum). In evaluating nearly identical facts with these same parties in the 2018 WDTX Cases, Judge Yeakel concluded that "access to the relevant proof tends to favor venue of this action in the Northern District of California." *Uniloc USA*, 2019 WL 2066121, at *3. That same conclusion is warranted here and is consistent with authority from this District, and others.

In *Polaris Innovations Ltd. v. Dell, Inc.*, No. 16-cv-451, 2016 WL 7077069 (W.D. Tex. Dec. 5, 2016), the defendants moved to transfer the patent infringement case from this District to the NDCA, where a majority of the evidence and engineers were located. The defendant had an Austin office with 300 employees, and identified at least one Austin-based engineer as being heavily involved in the design and development of at least one of the accused products. *Id.* at *3. However, the Court still found that the bulk of the evidence was in California, and that this factor thus weighed in favor of transfer:

> Though a potentially relevant NVIDIA engineer is based in Austin, this engineer alone does not indicate that evidence of NVIDIA's infringement will be relatively easier to access in Austin than in Santa Clara—this engineer reports to higher-ups in California, and NVIDIA's presence in California dwarves its presence in Texas, even considering this engineer. The most important people to NVIDIA's accused products (the seven Chip Managers) are in Santa Clara; NVIDIA's Santa Clara headquarters houses more than 10 times the number of employees than the Austin office and more than 20 times the number of employees who have knowledge of the accused products; the bulk of NVIDIA's marketing is done from Santa Clara. Insofar as NVIDIA is concerned, the Northern District of California is clearly the more convenient forum in terms of access to evidence.

Id. at *5; *see also Collaborative Agreements*, 2015 WL 10818739, at *4 (finding that where key witnesses were located in the NDCA, "[t]he proof surrounding Collaborative's theories of infringement and damages will almost certainly lie with Adobe in the Northern District of California.").

2. Availability of Compulsory Process

Transfer is favored when a transferee forum has absolute subpoena power over a greater number of third party witnesses. *In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1337-38 (Fed. Cir. 2009); *Genentech*, 566 F.3d at 1345; *Wet Sounds*, 2017 WL 4547916, at *3, *report and recommendation adopted*, 2018 WL 1219248. A court may subpoena a witness to attend trial only (a) "within 100 miles of where the person resides, is employed, or regularly transacts business in person"; or (b) "within state where the person resides, is employed, or regularly transacts business in person, if the person (i) is a party or a party's officer; or (ii) is commanded to attend a trial and would not incur substantial expense." Fed. R. Civ. Proc. 45(c)(1)(A), (B). *Gemalto S.A. v. CPI Card Grp. Inc.*, No. CV A-15-CA-0910, 2015 WL 10818740, at *4 (W.D. Tex. Dec. 16, 2015) ("The court holds that for compulsory process, if the action were transferred to Colorado at least one party, CPI Card Group would have compulsory process available to

them. The court holds that this factor weighs in favor of transferring this action to Colorado.").

As courts have recognized, "there is certainly benefit to providing live witnesses at trial." *TracBeam, LLC v. Apple Inc.*, No. 6:14-cv-680, 2015 WL 5786449, at *5 (E.D. Tex. Sept. 29, 2015). Apple wishes to have the right to present live witnesses, and "it is improper to discount a party's stated desire to present live witness testimony even when deposition testimony is available." *Uniloc USA, Inc. et al v. Apple Inc*., No. 2:17-cv-00258-JRG, Dkt. No. 104 at 18 (E.D. Tex. Dec. 22, 2017). In this regard, the ability to compel live trial testimony is crucial for evaluating a witness's testimony. *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 419 (5th Cir. 1992).

First, as noted above, several Uniloc-affiliated witnesses are located in the NDCA and would be subject to its absolute subpoena power.

- Several managers of Uniloc 2017 are located in San Francisco, in the NDCA, including Mr. Erez Levy, Mr. James Palmer, Ms. Michelle Moreland, and about three others. (Ex. 2, Turner Dep. at 57:6-58:11.) These witnesses likely have information regarding Uniloc's finances, including the value attributed to the asserted patents, which is relevant to damages.
- A Uniloc engineer, Mike Ford, with knowledge of software used in Uniloc's patent acquisition efforts also is located in northern California. (*Id.* at 87:16-19; 91:5-21.)
- Additional Uniloc executives reside in Southern California, including Mr. Turner and Mr. Etchegoyen, and also would be subject to subpoena in California. (Ex. 1, Gilstrap Order at 4-6.)

Apple's venue discovery in the prior Uniloc cases also revealed additional third-party witnesses in the NDCA who are subject to compulsory process there. San Francisco-based

personnel from the investment firm Fortress, such as Mr. Erez Levy, were involved in the transactions through which Uniloc 2017 purchased title to the asserted patents. (Ex. 2, Turner Dep. at 61:2-23.) These witnesses have information regarding the value attributed to the asserted patents, which is relevant to damages. They also have information regarding ownership and standing. In cases pending in the NDCA, for instance, Apple challenged Uniloc's standing based, in part, on testimony from Mr. Levy. (Ex. 4, *Uniloc USA, Inc., et al v. Apple Inc.*, No. 3:18-cv-00360-WHA, N.D. Cal., Dkt. No. 168-3 (Redacted Version of Apple Motion to Dismiss) at, e.g., pp. 4, 6, 9, 11, 12.)

In contrast, Apple is not aware of a single third-party witness who would be within this District's subpoena power. Once again, when considering nearly identical facts in the 2018 WDTX Cases, Judge Yeakel concluded that this factor favored transfer to the NDCA. *Uniloc USA*, 2019 WL 2066121, at *3. The same is true here.

3. Attendance of Willing Witnesses

The inconvenience to willing witnesses is the single most important factor in the transfer analysis. *See Genentech*, 566 F.3d at 1343; *Auto-Dril*, 2016 WL 6909479, at *7.

As noted above in Section II.D, all of the likely Apple witnesses with knowledge of the Accused Technology are located in the NDCA. (Jaynes Decl., ¶¶ 38, 44, 47, 59, 62, 64.) In addition, the likely Apple witnesses on licensing, finance, sales and marketing also are located in the NDCA. (*Id.*) These witnesses are a short car ride from the courthouses in the NDCA (*e.g.*, 15 minutes from San Jose), but more than 1,500 miles and a lengthy plane ride from Waco. (Ex. 5, Google search results.)

If this case remains in Texas, the Apple witnesses would need to spend days away from home and work—as opposed to several hours if the trial takes place in the NDCA. This travel burden is not insignificant and has been cited as a key reason why transfer is often appropriate.

See Volkswagen II, 545 F.3d at 317 ("Witnesses not only suffer monetary costs, but also the personal costs associated with being away from work, family, and community."). This length of travel also imposes additional burdens beyond travel time, such as meal and lodging expenses. *Volkswagen I*, 371 F.3d at 204-05. For all of these reasons, it would be clearly more convenient for the NDCA-based witnesses to attend trial in the NDCA. *Volkswagen II*, 545 F.3d at 317 (recognizing the "obvious conclusion" that "it is more convenient for witnesses to testify at home"); *see Apple*, 581 F. App'x at 889 (faulting district court for failing to follow the 100-mile rule); *TS Tech*, 551 F.3d at 1320 ("The district court's disregard of the 100-mile rule constitutes clear error.").

On the other hand, there is not a single relevant Apple witness in this District.[9] However, several key Uniloc witnesses also live and work in California.

First, Mike Ford is a Uniloc software engineer who lives and works in Northern California, near Roseville. (Ex. 2, Turner Dep. at 87:16-19; 91:5-21; 95:17-96:21; 164:1-4.) Mr. Ford is responsible for Uniloc's Centurion software—a program that Uniloc used to identify patents to acquire and assert against Apple. (*Id.*) Mr. Ford likely has information about Centurion and Uniloc's patent-acquisition analysis, which are relevant to the alleged value of the patents for damages. Second, two of Uniloc's senior executives and key managers also live in California. Craig Etchegoyen (the CEO) and Drake Turner (the CFO) both live and work in Southern California—Mr. Turner on a full-time basis, and Mr. Etchegoyen about half-time. (*Id.*

[9] Uniloc has pointed to manufacturing of some of the accused Apple products in Texas in a failed effort to resist transfer. (Compl. at ¶ 5.) But any such argument would again be meritless because the allegations at issue relate to software functionality and not to any manufacturing processes. Indeed, in denying transfer in the earlier cases with overlapping technology, Judge Gilstrap noted that none of the relevant Apple witnesses were located in Texas. Ex. 1, Gilstrap Order at p.19.

at 5:2-5; 119:13-121:6.) And both of these individuals rarely travel to Texas. (*Id.*) Given this, Mr. Turner agreed that California is "a convenient place for Uniloc people to meet." (*Id.* at 85:19-22.) For these likely Uniloc witnesses, travel to the NDCA actually would be more convenient than travel to this District.

In situations like this, where the vast majority of likely witnesses are in the transferee district, this factor weighs in favor of transfer. *See HP*, 2018 WL 4692486, at *3; *Genentech*, 566 F.3d at 1343-44, *Wet Sounds*, 2017 WL 4547916, at *3, *report and recommendation adopted*, 2018 WL 1219248; *Via Vadis, LLC v. Netgear, Inc.*, No. 14-cv-809, 2015 WL 10818675, at *2 (W.D. Tex. July 30, 2015) (granting motion to transfer in part because the plaintiff "does not have employees knowledgeable regarding the accused products in Texas."); *see also Polaris Innovations*, 2016 WL 7077069, at *9. Indeed, Judge Yeakel noted the presence of Apple witnesses in the NDCA when deciding this factor favored transfer. *Uniloc USA*, 2019 WL 2066121, at *3 ("In considering this factor, the Court also includes Apple's employee-witnesses, all of whom are in the Northern District of California.").

Apple is aware of the Court's analysis regarding the weight afforded to party witnesses in *Fintiv, Inc. v. Apple Inc.*, No. 6:18-cv-00372, 2019 WL 4743678 (W.D. Tex. Sept. 13, 2019). Apple respectfully submits that affording little weight to the inconvenience of party witnesses is inconsistent with the great weight of authority and is apparently based on imprecise language in *ADS Sec. L.P. v. Adv. Detection Sec. Servs., Inc.*, No. A-09-CA-773-LY, 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010), report and recommendation adopted in A-09-CA-773-LY (ECF No. 20) (Apr. 14, 2010). In *ADS Sec.*, the underlying discussion and analysis focused on the *relative* inconvenience among party and non-party witnesses and not on the absolute weight to be given to party witnesses. *Id.* Although the inconvenience to non-party witnesses may be

afforded greater weight, it is not appropriate to afford little weight to the inconvenience to party witnesses. *See Volkswagen I*, 371 F.3d at 205; *Uniloc*, 2019 WL 2066121, at *3 ("In considering this factor, the Court also includes Apple's employee-witnesses, all of whom are in the Northern District of California."); *see also In re Acer America Corp,*, 626 F.3d 1252 at 1255 (Fed. Cir. 2010); *Nintendo*, 589 F.3d at 1199.

Uniloc has previously cited Apple's facilities in Austin in attempting to resist transfer to California, and may do so again here. But any such argument would be meritless. Apple does have employees in Austin, but is aware of none relevant to this case. (*See* Jaynes Decl., ¶¶ 60-61.) Indeed, when faced with this same Uniloc argument in the Eastern District of Texas cases, Judge Gilstrap found that Apple's facilities in Austin did not weigh in favor of transfer because none of the relevant Apple employees worked at Apple's Austin campus. (Ex. 1, Gilstrap Order at 19.) Judge Yeakel also found that the relevant Apple witnesses were located in the NDCA, such that this factor favored transfer. *Uniloc USA*, 2019 WL 2066121, at *3; *see also Peak Completion Techs. Inc. v. I-TEC Well Solutions, LLC*, No. A-13-CV-086-LY, 2013 WL 12121002, at *3 (W.D. Tex. June 26, 2013) (finding that the presence of an office and personnel in the district did not weigh against transfer because those individuals were not likely witnesses). The same is true here. Accordingly, this factor weighs strongly in favor of transfer. *Volkswagen I*, 371 F.3d at 205; *see also DataQuill, Ltd. v. Apple Inc.*, No. 13-CA-706-SS, 2014 WL 2722201, at *4 (W.D. Tex. June 13, 2014) (recognizing that local interest weighed in favor of transfer notwithstanding Apple's Austin presence because "this case is about Apple's actions in designing and developing [the accused products], all of which happened in Cupertino").

4. All Other Practical Problems that Make Trial of a Case Easy, Expeditious, and Inexpensive

Courts weigh a number of case-specific factors in the section 1404(a) analysis but, "at the

end of the day, judicial economy plays a paramount role in trying to maintain an orderly, effective, administration of justice." *XY, LLC*, 2017 WL 5505340, at *14 (citation omitted); *see also In re Eli Lilly & Co.*, 541 F. App'x 993, 994 (Fed. Cir. 2013) ("[I]t is entirely within the district court's discretion to conclude that in a given case the § 1404(a) factors of public interest or judicial economy can be of paramount consideration, ... and as long as there is plausible support of record for that conclusion we will not second guess such a determination, even if the convenience factors call for a different result.") (internal quotations and citations omitted).

As noted above, nearly two dozen Uniloc cases against Apple have already been transferred from Texas to the NDCA and are being litigated there. The present case involves many of the same accused products already at issue in the NDCA Uniloc cases.[10] In addition, the relevant parties obviously overlap, such that the NDCA will have gained an understanding of their respective business methods and activities, including issues such as licensing, marketing and sales. Judges in the NDCA are therefore already familiar with the background of, and facts relevant to, the dispute between Uniloc and Apple. These judges have considered or resolved overlapping issues with respect to jurisdiction, the complex history of Uniloc's structure, assignments, and licensing, motions to compel, motions for protective orders, motions to strike contentions, confidentiality claims, and more.

Therefore, judicial economy weighs heavily in favor of transfer because it would be incredibly inefficient to litigate twenty-one patent cases between Uniloc and Apple in the NDCA and a single one in this District. *See XY, LLC*, 2017 WL 5505340, at *16. Conversely, because

[10] *See, e.g.*, the *Uniloc v. Apple* cases 5:18-cv-00357, Dkt. No. 1 at ¶¶ 10, 26, 42, 5:18-cv-00358, Dkt. No. 1 at ¶ 10, 5:18-cv-00359, Dkt. No. 1 at ¶ 10, 3:18-cv-360, Dkt. No. 1 at ¶ 10, 4:18-cv-00361, Dkt. No. 1 at ¶ 10, 4:18-cv-00362, Dkt. No. 1 at ¶ 10, 4:18-cv-00364, Dkt. No. 1 at ¶¶ 8, 19, 30, 4:18-cv-00365, Dkt. No. 1 at ¶ 10, 3:18-cv-00572, Dkt. No. 1 at ¶ 8.

this case is in its very early stages, no practical problems exist that would deter this Court from transferring it to the NDCA. *See Transunion Intelligence LLC v. Search Am., Inc.*, No. 2:10-CV-130, 2011 WL 1327038, at *5 (E.D. Tex. Apr. 5, 2011).

B. The Public Interest Factors Favor Transfer

The public interest factors also strongly favor transfer because the NDCA has a strong local interest in this matter.

1. Court Congestion Is, At Worst, Neutral

Courts in this District have acknowledged that the NDCA has a shorter time to trial for patent cases than the WDTX. *See Uniloc USA Inc., et al. v. Box, Inc.*, No. 1:17–CV–754–LY, 2018 WL 2729202, at *4 (W.D. Tex. June 6, 2018). Apple understands that the Court is now scheduling patent cases for trial faster than in the past; however, those cases have not yet proceeded to trial. Therefore, given historical data and the uncertainty of future activity, this factor is, at worst, neutral.

2. Local Interests Strongly Favor Transfer

The NDCA has a strong local interest in this matter because it is the location of Apple's headquarters, where the Accused Products were designed and developed, and where all of Apple's relevant employees are based. (Jaynes Decl., ¶¶ 4, 23, 24, 38, 48, 49, 59, 60, 62, 64); *see, e.g.*, *Wet Sounds*, 2017 WL 4547916, at *4; *Datascape, Ltd. v. Dell Techs., Inc.*, No. 6:19-cv-00129, 2019 WL 4254069, at *3 (W.D. Tex. June 7, 2019). Where, as here, the accused Apple technology was "developed and tested" in the NDCA, and because this suit "calls into question the work and reputation of several individuals residing" in that district, the NDCA interest in this matter is "self-evident." *In re Hoffman-La Roche, Inc.* 587 F.3d 1333, 1336, 1338 (Fed. Cir. 2009); *DataQuill*, 2014 WL 2722201, at *4 (recognizing that local interest favored transfer notwithstanding Apple's Austin presence because this case is about Apple's actions in

designing and developing [the accused products], all of which happened in Cupertino").

In *Datascape*, for example, this Court acknowledged that the defendant had operations in multiple districts, but noted that the *Volkswagen* analysis focused on "relative interests," concluding that the local interests were greater in the transferee forum where the defendants' headquarters were located. *Datascape*, 2019 WL 4254069, at *3. Applied here, that same analysis leads to the conclusion that the NDCA (where Apple is based) has a stronger local interest than the WDTX. Therefore, this factor strongly favors transfer.

In contrast, as established above, Uniloc has no connection to this District, but does have many connections to California. Indeed, in determining whether the local interest favored transfer, Judge Gilstrap noted that Uniloc's California office was used for "around 100 top level strategy meetings" during a three year period, and Uniloc's CEO holds monthly meetings in California with his CFO. (Ex. 1, Gilstrap Order at 6.) Therefore, given the many Apple and Uniloc connections to the NDCA and none to this District, this factor strongly favors transfer.

3. Familiarity With The Governing Law And Conflicts Of Law Are Neutral

The last two factors are neutral. There are no perceived conflicts of law and both districts are equally qualified to apply patent law. *TS Tech.*, 551 F.3d at 1320.

V. CONCLUSION

For all the reasons set forth above, Apple respectfully requests that this Court transfer this case to the NDCA.

Dated: November 12, 2019

Respectfully submitted,

By: */s/ John M. Guaragna*

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i), counsel for Apple has conferred with counsel for Uniloc in a good-faith effort to resolve the matter presented herein. Counsel for Uniloc opposes the instant Motion.

/s/ John M. Guaragna
John M. Guaragna

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on November 12, 2019, pursuant to Local Rule CV-5(a) and has been served on all counsel whom have consented to electronic service. Any other counsel of record will be served by first class U.S. mail on this same date.

/s/ John M. Guaragna
John M. Guaragna

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

Uniloc 2017 LLC, Plaintiff, v. Apple Inc., Defendant.	Civil Action No. 6:19-cv-532-ADA

SUPPLEMENTAL DECLARATION OF MICHAEL JAYNES IN SUPPORT OF APPLE INC.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

I, Michael Jaynes, declare as follows:

51. I am over 18 years of age and competent to make this declaration. If called to testify as a witness, I could and would testify truthfully under oath to each of the statements in this declaration.

52. I am employed as a Senior Finance Manager at Apple Inc. ("Apple") in Sunnyvale, California. I have been employed by Apple since January 2015.

53. I provide this declaration ("Second Declaration") in support of Apple's Motion to Transfer Venue Pursuant to 28 U.S.C. § 1404(a) in the above-captioned case ("the -532 Case"). Unless otherwise indicated, the statements made in this declaration are based on my personal knowledge, corporate records maintained by Apple in the ordinary course of its business and/or consulting with Apple employees. If called to testify as a witness, I could and would competently do so under oath.

54. I previously provided a declaration (the "First Declaration") in support of Apple's Motion to Transfer Pursuant to 28 U.S.C. § 1404(a) in the lawsuits titled *Uniloc*

USA, Inc. et al. v. Apple Inc., Case Nos. 1:18-cv-158; 1:18-cv-159; 1:18-cv-161; 1:18-cv-163; 1:18-CV-00164; 1:18-cv-00166; 1:18-cv-00293; and 1:18-cv-00296 ("the -296 Case"), which were pending in the U.S. District Court for the Western District of Texas, Austin Division. My First Declaration, which I have reviewed in the course of preparing this Second Declaration, is attached as Exhibit A. I have numbered the paragraphs in this Second Declaration with the next available paragraph number after my First Declaration.

55. I understand that in both this -532 Case and the previously filed -296 Case, certain Uniloc entities asserted U.S. Patent No. 6,467,088 (the "'088 patent"). Paragraphs 1-6, 18-19, 21-30, 38, 41, 44, 47-50 of the First Declaration are relevant to the '088 patent. I am not aware of any updates needed to the statements made in those paragraphs of the First Declaration, except as updated below.

56. I understand in the Complaint in this -532 Case, Uniloc 2017 LLC ("Uniloc") identified the accused Apple products as "smartphones (e.g., iPhones), tablets (e.g., iPads), iPods, desktop computers (e.g., iMacs, Mac Pro, Mac mini), and notebook computers (e.g., MacBooks) running iOS or macOS operating systems, including the App Store or Mac App Store and their associated servers implementing iOS/macOS update functionality." Complaint ¶ 10. I will refer in this declaration to the products identified by Uniloc as the "-532 Accused Products." The products accused of infringement in the earlier -296 Case did not include "desktop computers (e.g. iMacs, Mac Pro, Mac Mini)" or "notebook computers (e.g., MacBooks)" "running [] macOS operating systems, including the [] Mac App Store and their associated servers implementing []macOS update functionality." *Compare* -532 Case, Complaint ¶ 10 *with* -296 Case, Dkt. 31 at ¶ 12.

57. Uniloc alleges that the -532 Accused Products infringe the '088 patent because

"[t]he Accused Infringing Devices …perform[] processor-implemented management and control of the reconfiguration of the device." -532 Case, Dkt. 1 at ¶ 12. The same allegations were at issue in the -296 Case, which I addressed at Paragraph 18 of my First Declaration.

58. Despite the vague allegations, for purposes of the motion to transfer, I understand Uniloc's allegations to accuse technology relating to "the reconfiguration of the device, such as, for example, the installation or update of an App Store application on the device" ("Accused Technology"). -532 Case, Dkt. 1 at ¶ 12. The same description of the Accused Technology was at issue in the -296 Case, which I addressed at Paragraph 19 of my First Declaration.

59. Dana DuBois is currently an Engineering Manager in the App Store Frameworks group at Apple. He and members of his team that work on technology that relates to the App Store and Mac App Store and to how third party applications are updated and installed on iOS and macOS devices. I have confirmed that Mr. DuBois and the members of his team working on the Accused Technology are located in the NDCA. All of Mr. DuBois team members are located in NDCA. None are located in the WDTX.

60. Apple has manufactured versions of the Mac Pro hardware in the state of Texas. The Mac Pro runs the macOS operating system. Based on my investigation, no work on the Accused Technology relating to the Mac App Store was developed in the state of Texas, or is unique with respect to the Mac Pro as compared with other macOS products.

61. As an update to paragraphs 5, 28, and 29 of my First Declaration, as of August 2019, Apple has more than 35,000 employees who work in or near its Cupertino headquarters. Apple currently has non-retail offices in Austin and Lockhart, Texas (located in the WDTX) and

Dallas and Garland, Texas (located in the Northern District of Texas). To the best of my knowledge and after a reasonable investigation, no employees in these offices currently have responsibilities for the design, development or implementation of the Accused Technology based on Apple's current understanding of Uniloc's infringement allegations. Aside from the five Apple retail stores in WDTX mentioned in my First Declaration and the Austin and Lockhart, Texas non-retail offices, Apple does not otherwise maintain any facilities or corporate offices in the WDTX.

62. Based on my conversations with Mr. DuBois, I am informed and understand that Apple has records related to the research and design of the Accused Technology located in or near Cupertino, California.

63. As of approximately October 1, 2019, Heather Mewes has taken on a different role at Apple than hers previously on the IP Transactions team. She remains employed by Apple, and still works in the NDCA.

64. Brian Ankenbrandt is Senior Legal Counsel for IP Transactions at Apple and is knowledgeable about licensing of intellectual property, including patent rights, by and to Apple. Mr. Ankenbrandt and his team members are all located in the NDCA. None are located in the WDTX.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 2019, in Sunnyvale, California.

Michael Jaynes

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNILOC USA, INC. and UNILOC LUXEMBOURG, S.A., Plaintiffs, v. APPLE INC., Defendant.	CASE NOS. 1:18-cv-158; 1:18-cv-159; 1:18-cv-161; 1:18-cv-163; 1:18-CV-00164; 1:18-cv-00166; 1:18-cv-00293; 1:18-cv-00296

DECLARATION OF MICHAEL JAYNES IN SUPPORT OF DEFENDANT APPLE INC.'S MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

I, Michael Jaynes, hereby declare as follows:

1. I am over 18 years of age and competent to make this declaration. If called to testify as a witness in this matter, I could and would testify truthfully to each of the statements in this declaration.

2. I am employed as a Senior Finance Manager at Apple Inc. ("Apple") in Sunnyvale, California. I have been employed by Apple since January 2015.

3. I provide this declaration in support of Apple's Motion to Transfer Venue Under 28 U.S.C. § 1404(a) to the Northern District of California ("NDCA") filed in the above captioned cases. Unless otherwise indicated below, the statements in this declaration are based on my personal knowledge, my review of corporate records maintained by Apple in the ordinary course of business, and/or my discussions with Apple employees. If called to testify as a witness, I could and would competently do so under oath.

4. Apple is a California corporation and was founded in 1976. Apple is a global business headquartered in Cupertino, California, which is in NDCA.

5. Apple's management, research and development, and marketing are primarily located in or near Cupertino, including surrounding cities such as Sunnyvale, all located in

NDCA. The primary operation, marketing, sales, and finance decisions for Apple also occur in or near Cupertino, and Apple business records related to product revenue are located there. As of June 2018, Apple has more than 30,000 employees who work in or near its Cupertino headquarters.

6. I understand that Uniloc USA Inc. and Uniloc Luxembourg, S.A. ("Uniloc") filed the eight above captioned patent infringement lawsuits against Apple in the United States District Court for the Western District of Texas ("WDTX"). I understand that in the Amended Complaints filed in the above captioned lawsuits, Uniloc identified the following products as allegedly infringing various United States patents identified in the Complaints: (1) iPhone (1st generation), iPhone 3G, iPhone 3GS, iPhone 4, iPhone 4s, iPhone5, iPhone 5c, iPhone 5s, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone SE, iPhone 7, iPhone 7 Plus, iPhone 8, iPhone 8 Plus, iPhone X smartphones; (2) iPad 2 CDMA, iPad 2 3G, iPad 3G, iPad 3 Cellular, iPad 4 Cellular, iPad Mini Cellular, iPad (3rd, 4th and 5th generation), iPad Mini, iPad Mini 2, iPad Mini 3, iPad Mini 4, iPad Pro, iPad Air, iPad Air 2 tablets; (3) MacBook, MacBook Air (11 inches, 13 inches), MacBook Pro (13 and 15 inches), iMac (21.5 and 27 inches), Mac Mini, Mac Pro laptops; (4) Apple Watch (1st generation), Apple watch Series 1, Apple watch series 2, Apple watch series 3, Apple watch Hermes (series 1, 2, 3), Apple watch Nike+(series 2 and 3), Apple watch Edition (series 2 and 3) watches; (5) iPod (generation 5), iPod touch (5th and 6th generation), iPod nano; (6) Magic Keyboard, Magic Mouse, Magic Mouse 2, Magic Trackpad, Magic Trackpad 2; (7) Apple TV (2nd gen, 3rd gen, 4th gen), Apple TV 4K; and (8) Airpods. ("Accused Products").[1]

7. I understand from the Amended Complaint filed in the 1:18-cv-158 case that Uniloc alleges that certain Accused Products infringe U.S. Patent No. 6,868,079 ("the '079 patent") based on Uniloc's assertion that "[t]he Accused Infringing Devices are used in

[1] 1:18-cv-158 Dkt. 33, ¶12; 1:18-cv-159 Dkt. 32, ¶12; 1:18-cv-161 Dkt. 32, ¶12; 1:18-cv-163 Dkt. 32, ¶12; 1:18-CV-00164 Dkt. 31, ¶12; 1:18-cv-00166 Dkt. 26, ¶13, 28, 43, 58; 1:18-cv-00293 Dkt. 29, ¶12; 1:18-cv-00296 Dkt. 31, ¶12.

communications systems wherein one device is a primary device that allocates time slots to one or more secondary devices in which the secondary device(s) may request services from the primary device." 1:18-cv-158 Dkt. 33, ¶13. I also understand that Uniloc asserts that the Accused Products "implement 3G and LTE standards." 1:18-cv-158 Dkt. 33, ¶14.

8. I understand from the Amended Complaint filed in the 1:18-cv-161 case that Uniloc alleges that certain Accused Products infringe U.S. Patent No. 7,167,487 ("the '487 patent") based on Uniloc's assertion that "[t]he Accused Infringing Devices implement networks having a first plurality of logic channels and a second plurality of transport channels associated by the MAC layer for sending and receiving packet units in accordance with HSPA/HSPA+ standardized in UMTS 3GPP Release 6 and above using a minimum bit rate criteria." 1:18-cv-161 Dkt. 32, ¶13.

9. Despite the vague allegations, for purposes of the motion to transfer, I understand Uniloc's allegations in the -158 and -161 cases to accuse technology for communicating between certain Apple devices and cellular base stations related to certain 3G and LTE standards ("Cellular Baseband Accused Technology").

10. I understand from the Amended Complaint filed in the 1:18-cv-159 case that Uniloc alleges that certain Accused Products infringe U.S. Patent No. 7,587,207 ("the '207 patent") based on Uniloc's assertion that "[t]he Accused Infringing Devices are used to create a communications system wherein a device operates as a beacon that sends a series of inquiry messages that include data fields arranged in accordance with the Bluetooth 4.0 and above protocol and another device receives such a message and is capable of reading data, including location data, contained in the inquiry message." 1:18-cv-159 Dkt. 32, ¶13.

11. I understand from the Amended Complaint filed in the 1:18-cv-163 case that Uniloc alleges that certain Accused Products infringe U.S. Patent 7,020,106 ("the '106 patent") based on Uniloc's assertion that "[t]he Accused Infringing Devices are portable electronic devices capable of wirelessly sending and receiving messages between such devices using a plurality of communication modes and links, for example in accordance with Bluetooth 3.0 + HS

and above, wherein a third such link is used if the first or second such link is unavailable." 1:18-cv-163 Dkt. 32, ¶13.

12. I understand from the Amended Complaint filed in the 1:18-cv-164 case that Uniloc alleges that certain Accused Products infringe U.S. Patent No. 6,993,049 ("the '049 patent") based on Uniloc's assertion that "[t]he Accused Infringing Devices are electronic devices that implement communications systems wherein a first or primary device broadcasts messages including data to a second or secondary device to poll the second or secondary device that may respond to the first or primary device when the second or secondary device has data to transmit to the first or primary device." 1:18-cv-164 Dkt. 31, ¶13. I also understand that Uniloc asserts that the Accused Products "utilize Bluetooth Low Energy version 4.0 and above." 1:18-cv-164 Dkt. 31, ¶12.

13. Despite the vague allegations, for purposes of the motion to transfer, I understand Uniloc's allegations in the -159, -163 and -164 cases to accuse technology relating to wirelessly sending and receiving messages between accused devices using communication modes and links in accordance with Bluetooth 3.0 + HS and above, sending inquiry messages in accordance with Bluetooth 4.0 and above that include location or polling data, and sending broadcast messages that include data for polling another device for transmitting data from the polled device to the device sending the broadcast messages ("Bluetooth Accused Technology").

14. I understand from the Amended Complaint filed in the 1:18-cv-166 case that Uniloc alleges that certain Accused Products infringe: (1) U.S. Patent No. 7,969,925 ("the '925 patent") because "[t]he Accused Infringing Devices are mobile devices that are enabled to communicate data therebetween in a peer-to-peer fashion using unique identifiers and without the need for an intermediating communications server;" (2) U.S. Patent No. 8,018,877 ("the '877 patent") because "[t]he Accused Infringing Devices are mobile devices that are enabled to communicate data therebetween in a peer-to-peer fashion using unique identifiers and page-mode messaging;" (3) U.S. Patent No. 8,406,116 ("the '116 patent") because "[t]he Accused Infringing Devices are mobile devices that utilize –server-based architecture for the exchange of

data;" and (4) U.S. Patent No. 8,369,298 ("the '298 patent") because "[t]he Accused Infringing Devices implement server-based wireless communication between stationary and mobile devices." 1:18-cv-166 Dkt. 26, ¶¶ 14, 29, 44, 59. I also understand that Uniloc asserts that the Accused Products "utilize Apple Push Notification service" (*id.* at ¶¶ 13, 28), "utilize Apple's Continuity, FaceTime, iMessage, Messages and Apple Push Notification (APNs) services" (*id.* at ¶ 43), and "utilize Apple's Continuity, FaceTime, and iMessage services" (*id.* at ¶ 58).

15. Despite the vague allegations, for purposes of the motion to transfer, I understand Uniloc's allegations in the -166 case to accuse technology relating to negotiating and establishing connections between devices using Apple Push Notification, Continuity, FaceTime and iMessage services ("APNS Accused Technology").

16. I understand from the Amended Complaint filed in the 1:18-cv-293 case that Uniloc alleges that certain Accused Products infringe U.S. Patent No. 6,836,654 ("the '654 patent") because "[t]he Accused Infringing Devices are mobile radiotelephony devices incorporating antitheft technology that utilizes timing and identification codes to block and unblock normal operation of the device." 1:18-cv-293 Dkt. 29, ¶13.

17. Despite the vague allegations, for purposes of the motion to transfer, I understand Uniloc's allegations in the -293 case to accuse technology relating to antitheft measures, including the ability of users to lock devices on command or after an elapsed time and unlock their device with a passcode ("Passcode Lock Accused Technology").

18. I understand from the Amended Complaint filed in the 1:18-cv-296 case that Uniloc alleges that certain Accused Products infringe U.S. Patent No. 6,467,088 ("the '088 patent") because "[t]he Accused Infringing Devices …perform[] processor-implemented management and control of the reconfiguration of the device." 1:18-cv-296 Dkt. 31, ¶14.

19. Despite the vague allegations, for purposes of the motion to transfer, I understand Uniloc's allegations in the -296 case to accuse technology relating to "the reconfiguration of the device," such as, for example, "the installation or update of an Apple App Store application on the device" ("App Store Update Accused Technology"). 1:18-cv-296 Dkt. 31, ¶14.

20. The "Cellular Baseband Accused Technology," "Bluetooth Accused Technology," "APNS Accused Technology," "Passcode Lock Accused Technology, and "App Store Update Accused Technology" are collectively referred to as "Accused Technology."

21. I have been informed and understand the following: Based on Apple's current understanding of Uniloc's infringement allegations, all design, development, and implementation of the Accused Technology has occurred and currently occurs in or around Cupertino, California.

22. Apple sells or has sold the Accused Products throughout the United States.

23. The primary research, design, development activities, facilities and engineers for the Accused Products are located in or near Cupertino, California, and Apple records related to the research and design of the Accused Products are located there.

24. Apple's employees knowledgeable about the relevant design and operation of the Accused Products, including their research and development, work at facilities in Cupertino and the surrounding area.

25. Apple regularly conducts business in NDCA involving the Accused Products.

26. As of the date of this declaration, Apple operates more than 270 retail stores in the United States, more than 50 of which are in California, including 19 retail stores in NDCA.

27. Apple has two retail stores in Austin, two retail stores in San Antonio, and one retail store in El Paso, located in the WDTX. I am not aware of any employee in these retail stores, or anywhere else in the WDTX, who is currently involved in the research, design, development, or marketing of the Accused Technology. To the extent that any of the Accused Products are sold or used in the WDTX, they are and were sold and used nationwide, and are not used in any manner or degree differently than they are used elsewhere.

28. Apple has non-retail offices in Austin, Texas (the WDTX) and Dallas, Texas (the Northern District of Texas). To the best of my knowledge and after a reasonable investigation, no employees in these offices currently have responsibilities for the design, development or implementation of the Accused Technology based on Apple's current understanding of Uniloc's

infringement contentions or are likely to have unique documents or information relevant to this case.

29. Aside from these five retail stores and Austin non-retail offices, Apple does not otherwise maintain any facilities or corporate offices in the WDTX.

30. Based on Apple's current understanding of Uniloc's infringement allegations, the design, development and implementation of the Accused Technology in the Accused Products take place in or around Cupertino, California.

31. Jason Giles is currently a Bluetooth Engineering Software Manager in the Location Motion and Wireless group at Apple and has been involved with Apple's support of Bluetooth 3.0 + HS and Bluetooth version 4.0 in certain of the Accused Products, which is a functionality that Uniloc asserts is relevant to the '106, '207 and '049 patents. Mr. Giles and members of his team that work on Bluetooth Accused Technology are located in the NDCA. None are located in the WDTX.

32. Rob Mayor is currently a Director in the Location Motion and Wireless group at Apple and was involved with the creation of iBeacon, which is a feature that Uniloc asserts is relevant to the '207 patent. Mr. Mayor and members of his team that work on the iBeacon accused feature are located in the NDCA. None are located in the WDTX.

33. Rebecca Ling is currently a Software Engineer in the Wireless Technologies and Ecosystems group at Apple and has been involved in Apple's implementation of the wireless cellular protocol stack (specifically the MAC and PHY layers), which concerns functionality that Uniloc asserts is relevant to the '079 and '487 patents. Ms. Ling and members of her team that work on the cellular protocol stack are located in the NDCA. None are located in the WDTX. Moreover, to the best of Ms. Ling's knowledge, none of the Intel engineers or employees with whom she communicates are located in the WDTX; they are located in the Bay Area (NDCA), San Diego, California (SDCA), or overseas.

34. Srinivasan Nimmala is currently a Software Development Manager in the Wireless Technologies and Ecosystems group at Apple and has been involved in Apple's

implementation of the wireless cellular protocol stack (specifically the MAC and PHY layers), which concerns functionality that Uniloc asserts is relevant to the '079 and '487 patents. Mr. Nimmala and members of his team that work on the cellular protocol stack are located in the NDCA. None are located in the WDTX. Moreover, to the best of Mr. Nimmala's knowledge, none of the Qualcomm engineers or employees with whom he communicates are located in the WDTX; they are primarily located in the Bay Area (NDCA) or in San Diego, California.

35. Xiantao Sun is currently a Software Development Engineer in the Wireless Technologies and Ecosystems group at Apple and has been involved in Apple's implementation of the wireless cellular protocol stack (specifically the MAC and PHY layers), which concerns functionality that Uniloc asserts is relevant to the '079 and '487 patents. Mr. Sun and members of his team that work on the cellular protocol stack are located in the NDCA. None are located in the WDTX. Moreover, to the best of Mr. Sun's knowledge, none of the Qualcomm engineers or employees with whom he communicates are located in the WDTX; they are in the Bay Area (NDCA) or San Diego, California.

36. Zhu Ji is currently a manager in the Wireless Technologies and Ecosystems group at Apple and has been involved in Apple's implementation of the wireless cellular protocol stack (specifically the PHY layer), which concerns functionality that Uniloc asserts is relevant to the '079 and '487 patents. Mr. Ji and members of his team that work on the cellular protocol stack are located in the NDCA. None are located in the WDTX. Moreover, to the best of Mr. Ji's knowledge, none of the Intel engineers or employees with whom he communicates are located in the WDTX; they are in the Bay Area (NDCA), San Diego, California, or overseas.

37. Paul Chinn is currently an Engineering Manager in the iOS System Experience group at Apple, and has been involved in the software that implements the lock screen functionality, which concerns functionality that Uniloc asserts is relevant to the '654 patent. Mr. Chinn and members of his team that work on the lock screen functionality are located in the NDCA. None are located in the WDTX.

38. Dana Dubois is currently an Engineering Manager in the App Store Frameworks group at Apple, and has been involved in the technology that relates to how third party applications are updated on iOS devices, which concerns functionality that Uniloc asserts is relevant to the '088 patent. Mr. DuBois and members of his team that work on the Accused App Store Update Technology are located in the NDCA. None are located in the WDTX.

39. Nick Fraioli is currently a Software Developer Engineer at Apple and has knowledge of Apple Continuity, which is a functionality that Uniloc asserts is relevant to the '116 and '298 patents. Mr. Fraioli and members of the team that currently work on Apple Continuity are located in the NDCA. None are located in the WDTX.

40. Gokul Thirumalai is currently an Engineering Manager in the iCloud Messaging group at Apple and has been involved with Apple Push Notifications, FaceTime and iMessage services, which are functionalities that Uniloc asserts are relevant to the '925, '877, '116 and '298 patents. Mr. Thirumalai and members of his team that work on these services are located in the NDCA, with the exception of one individual. None are located in the WDTX.

41. Heather Mewes is Principal Counsel for IP Transactions at Apple and is knowledgeable about licensing of intellectual property, including patent rights, by and to Apple. Ms. Mewes and her team members are all located in the NDCA. None are located in the WDTX.

42. Patrick Murphy is Principal Counsel for Standards in the Intellectual Property and Licensing Group and is knowledgeable regarding a patent license agreement between Apple and Koninkjlijke Philips Electronics N.V., concerning some of the asserted patents. Mr. Murphy and his team members are all located in the NDCA. None are located in the WDTX.

43. Supriya Gujral is currently a Director in Apple's Worldwide Partner Marketing group and is knowledgeable about any marketing of the Cellular Baseband Accused Technology. Ms. Gujral and the members of the marketing team who work on Apple products using the Cellular Baseband Accused Technology, aside from a few individuals who are located overseas, are located in the NDCA. None are located in the WDTX. All of the relevant documents

generated concerning the marketing, if any, of the Cellular Baseband Accused Technology in the United States reside in the NDCA.

44. Deidre Caldbeck works as a Product Marketing Manager in Apple's Marketing group and is knowledgeable about any marketing of the Bluetooth Accused Technology, APNS Accused Technology, Passcode Lock Accused Technology and iOS Update Accused Technology. Ms. Caldbeck and the members of the marketing team who work on Apple products using these accused technologies are located in the NDCA. None are located in the WDTX. All of the relevant documents generated concerning the marketing, if any, of these accused technologies in the United States reside in the NDCA.

45. Prior to December 2017, and while in the Northern District of California, Stuart Montgomery worked on Apple Continuity. Mr. Montgomery ceased working on Apple Continuity in December 2017. On April 16, 2018, Mr. Montgomery moved from the NDCA to Austin, Texas. It is my understanding that Mr. Montgomery does not have any unique information relevant to this case.

46. Based on my communications with the individuals identified above, all of the documents and source code generated concerning the Accused Technology in the United States resides on local computers and servers either located in or around Cupertino, California.

47. I am knowledgeable about the sales and financial information concerning the Accused Products. Documents concerning sales and financial information for the Accused Products reside on local computers and/or servers either located in or around Cupertino or accessible in Cupertino. I work and live in NDCA.

48. All of the relevant witnesses and documents generated concerning any marketing of the Accused Technology in the United States reside in or around Cupertino, California. None are located in the WDTX.

49. I am not aware of any relevant documents or anticipated witnesses of Apple located in the WDTX.

50. To my knowledge, Apple does not have any employees in the WDTX with any unique information relevant to this case.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 11 day of June, 2018, in Sunnyvale, California.

Michael Jaynes

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNILOC 2017 LLC, Plaintiff, v. APPLE INC., Defendant.	§ § § § § § § § §	Civil Action No. 6:19-cv-532-ADA PATENT CASE JURY TRIAL DEMANDED

DECLARATION OF JOHN M. GUARAGNA IN SUPPORT OF APPLE INC.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

I, John M. Guaragna, hereby declare as follows:

1. I am an attorney at DLA Piper LLP (US), counsel of record in this action for Defendant Apple Inc. I am a member of the Bar of the State of Texas and have been admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. Attached as Exhibit 1 is a true and correct copy of the Memorandum Order and Opinion [Dkt. No. 104] in *Uniloc v. Apple*, 2:17-CV-00258 (EDTX), granting Apple's Inc.'s Motion to Transfer Venue to the Northern District of California.

3. Attached as Exhibit 2 is a true and correct copy of Excerpts from Deposition of Drake Turner, dated January 15, 2019.

4. Attached as Exhibit 3 is a true and correct copy of the Declaration of Amanda Tekell [Dkt. No. 103] filed in *Uniloc USA, Inc. et al. v. Google LLC* (Oct. 17, 2019).

5. Attached as Exhibit 4 is a true and correct copy of the Redacted Version of Apple Motion to Dismiss [Dkt. No. 168-3] in *Uniloc USA et al v. Apple Inc.*, No. 3:18-cv-00360-WHA, (N.D. Cal.), filed on October 25, 2018.

6. Attached as Exhibit 5 is a true and correct copy of search results showing the distance from Cupertino, California to San Jose, California and from Cupertino, California to Waco, Texas using Google Maps.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 12th day of November, 2019, in Austin, Texas.

/s/ John M. Guaragna
John M. Guaragna

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNILOC USA, INC., UNILOC LUXEMBOURG, S.A.,	§	
	§	CIVIL ACTION NO. 2:17-CV-00258-JRG
Plaintiffs,	§	
v.	§	
APPLE INC.,	§	
Defendant.	§	

MEMORANDUM ORDER AND OPINION

Before the Court is Defendant Apple Inc.'s Motion to Transfer Venue to the Northern District of California (Dkt. No. 25). This Motion is brought pursuant to 28 U.S.C. § 1404(a). Having considered the Parties' arguments and for the reasons set forth below, the Court finds that the Motion should be and hereby is **GRANTED**. It is therefore **ORDERED** that the above-captioned case be transferred to the Northern District of California.

I. BACKGROUND

A. The Parties

Plaintiff Uniloc USA, Inc. is a Texas corporation and has maintained offices in Plano since 2007 and in Tyler since 2009. (Dkt. No. 30 at 2–3.) Defendant Apple Inc. ("Apple") is a California corporation with a principal place of business in the Northern District of California. (Dkt. No. 25 at 1.)

B. Procedural History

On April 3, 2017, Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg, S.A. ("Uniloc") filed suit against Apple, alleging infringement of U.S. Patent Nos. 9,414,199; 8,838,976; and

8,239,852. (Dkt. No. 1.) On June 16, 2017, Apple filed this Motion to Transfer Pursuant to § 1404(a) ("Motion to Transfer"). (Dkt. No. 25.) Five days later, Apple filed a Motion for Leave to Propound Venue Discovery ("Motion to Propound"). (Dkt. No. 27.) In its Motion to Propound, Apple asserted that Uniloc's representations in its § 1404(a) briefing in this case (and in prior cases before this Court) appeared "inconsistent with a host of public evidence." (*Id.* at 1.) Apple specifically directed the Court's attention to discrepancies with respect to the residences of Uniloc Luxembourg S.A.'s CEO and Uniloc USA, Inc.'s president. (Dkt. No. 44 at 1–2.)

On July 21, 2017, this Court granted Apple's Motion to Propound, allowing for limited discovery in the form of a four-hour deposition and responses to pre-approved interrogatories. (*Id.*) The Court also granted Apple and Uniloc leave to file supplemental briefs related to venue, after such discovery was completed. (*Id.* at 4.) The Court held a hearing on the instant Motion on October 27, 2017. (Dkt. No. 88.)

C. Uniloc's Representations and Contradictions

1. Uniloc's Representations

Uniloc made the following representations in its § 1404(a) briefing prior to venue discovery:

Uniloc represented that its principal place of business is in Plano, Texas. (Dkt. No. 30 at 2; Dkt. No. 30-7, Burdick Decl. ¶ 7.) According to Uniloc's Response, Mr. Craig Etchegoyen, the CEO of Uniloc Luxembourg S.A., and Mr. Sean Burdick, Uniloc USA, Inc.'s president and general counsel, have resided in Kona, Hawaii and Plano, Texas, respectively, "since well before [the date of the Complaint]." (Dkt. No. 30 at 2.) Mr. Etchegoyen specifically represented in his declaration in this case that as of April 3, 2017, he has not resided or maintained a residence in the State of California. (Dkt. No. 36 at 1.) Similarly, according to Uniloc, Mr. Burdick does not live or work in California. (Dkt. No. 43 at 2 n.3 ("Oddly, Apple also repeats its erroneous assertion that Uniloc's

IP counsel lives and works in California. As stated in the Declaration of Uniloc's IP counsel, Sean Burdick, he resides and works in Plano, Texas.") (citations omitted).) Uniloc also represented that in April 2017, it had "only one" full-time employee, Tanya Kiatkulpiboone, working out of its Irvine, California office. (Dkt. No. 30-7, Burdick Decl. ¶ 10.)

In addition to Mr. Burdick, Uniloc identified two potential witnesses who work at its Plano office: Sharon Seltzer and Kristina Pangan. (Dkt. No. 30 at 8; Dkt. No. 30-7, Burdick Decl. ¶ 12.) Uniloc made similar representations in its response to a § 1404(a) motion in another case before this Court, *Uniloc v. Apple*, Case No. 2:16-cv-638 ("*Apple 1*"). Response to Motion to Change Venue, *Uniloc v. Apple*, Case No. 2:16-cv-638, Dkt. No. 21, at 8 (E.D. Tex. Nov. 29, 2016) ("Uniloc's declarant identifies three potential party witnesses who work at its Plano office (its President Mr. Burdick, Sharon Seltzer and Kristina Pangan)."). In its Reply (Dkt. No. 40), Apple argued that Uniloc's identification of Sharon Seltzer and Christina Pangan as party witnesses carried no weight because in *Apple 1*, after this Court denied Apple's motion to transfer under § 1404(a), Uniloc later represented to Apple that Ms. Seltzer and Ms. Pangan had "relatively little information to provide." (Dkt. No. 40-2, Ex. 33 at 29 ("Kris Pangan and Sharon Setzler [sic] each have relatively little information to provide. As such, Uniloc recommends that you withdraw their notices.").) However, in its Sur-Reply (Dkt. No. 43) to the instant Motion, Uniloc insisted that Ms. Seltzer and Ms. Pangan "have some relevant knowledge" in this case. (Dkt. No. 43 at 5 ("As Uniloc only has four full-time employees, three of which are based in Plano, it should not be surprising that Ms. Seltzer and Ms. Pangan have some relevant knowledge of Uniloc's business.") (citations omitted).)

In addition to witnesses, Uniloc represented it has "physical documents relating to the patents asserted in this case" at its Plano office. (Dkt. No. 30-7, Burdick Decl. ¶ 11.) In its Response

(Dkt. No. 3) and Sur-Reply (Dkt. No. 43), Uniloc did not explain what types of documents were stored in its Plano office. (*Id.*) Uniloc has made these same representations with respect to Uniloc's witnesses and relevant documents before the Court in multiple cases. *See, e.g.*, Response to Motion to Change Venue, *Uniloc v. Apple*, Case No. 2:16-cv-638, Dkt. No. 21 (E.D. Tex. Nov. 29, 2016); Declaration of Sean Burdick in Support of Plaintiff's Opposition to Defendant VoxerNet LLC's Motion to Transfer Venue, *Uniloc USA, Inc., et. al v. Voxernet LLC,* Case No. 2:16-cv-644, Dkt. No. 21-1, ¶ 11 (E.D. Tex. Oct. 10, 2016); Declaration of Sean Burdick in Support of Plaintiff's Opposition to Defendant's Motion to Transfer Venue to the Northern District of California, *Uniloc USA, Inc., et. al v. Huawei Enterprise Inc.*, 6:16-cv-99, Dkt. No. 28-1, ¶ 12 (E.D. Tex. July 22, 2016).

2. Facts Revealed After Venue Discovery

After the Court ordered venue discovery, responses to Apple's interrogatories and Sean Burdick's 30(b)(6) deposition revealed the following facts about Uniloc's witnesses, places of business, and relevant documents:

Uniloc has three offices: a Plano, Texas office, a Tyler, Texas office, and a Newport Beach, California office (relocated from its prior Irvine, California office). (Dkt. No. 60-1, Ex. A at 47:14–20, 57:4–10, 94:1–10.) Although Uniloc asserted on multiple occasions that Mr. Etchegoyen and Mr. Burdick have not resided or maintained a residence in the State of California as of April 3, 2017, and filed signed declarations affirming such representations in this case, Mr. Burdick testified in its 30(b)(6) deposition that Mr. Etchegoyen currently maintains a residence in Newport Beach. (Dkt. No. 60-1, Ex. A at 160:3–16.) Mr. Etchegoyen uses the single-family residence in Newport Beach "when he is doing business in Orange County." (*Id.* at 160:15–16.) He has owned this property "at least since 2010." (*Id.* at 160:3–7.) Since 2017, Mr. Etchegoyen has spent about twenty percent of his time in either Newport Beach or Irvine, California. (Dkt. No. 60-2, Ex. B at

2.) Similarly, since 2015, Mr. Burdick has spent only "about 1/3 of his time in Plano, Texas." (*Id.*) The remainder of his time is spent in Boise, Idaho, Newport Beach, California, and Irvine, California. (*Id.*) Although Uniloc originally stated that it had "only one" full-time employee, Tanya Kiatkulpiboone, in Irvine, California,[1] (Dkt. No. 30 at 2), discovery has revealed that Mr. Drake Turner, Uniloc Luxembourg's chief financial officer, resides and works in southern California, albeit from home rather than Uniloc's Irvine and Newport Beach offices. (Dkt. No. 60-1, Ex. A at 153:2–154:11.) Mr. Turner, who prepares Uniloc's financial documents and negotiates terms with lending companies that have security interests in Uniloc's patents, is in a position to have relevant and material information in this case. (Dkt. No. 60-1, Ex. A at 153:2–25 ("He negotiates terms with companies like Fortress that lend money."); Order Denying Motion to Change Venue, *Uniloc v. Google*, Case No. 2:16-cv-566, Dkt. No. 75, at 7 (E.D. Tex. May 15, 2017) ("Fortress, located in the Northern District of California, has a security interest in all three [of Uniloc's] asserted patents.").)[2]

In 2016, Uniloc's CEO represented to Chief Judge Clark that "Uniloc USA has two headquarters," the office in Plano and the office presently located in Newport Beach (that was relocated from Irvine). (Dkt. No. 25, Ex. 5 ¶ 2.) In its Response (Dkt. No. 30), Uniloc vehemently insisted that Uniloc's principal place of business is only in Plano, Texas. (Dkt. No. 30 at 1–2 ("Although Uniloc has been based in Plano for years, Apple attempts to exaggerate Uniloc's ties to California.").)[3] However, discovery has expanded the Court's understanding of the use and implementation of Uniloc's Newport Beach office. According to Mr. Burdick:

[1] Ms. Kiatkulpiboone, one of the prosecuting attorneys of the patents-in-suit, currently resides in Napa, California, which is in the Northern District of California. (Dkt. No. 60-1, Ex. A at 50:10–19.)

[2] In addition to Mr. Turner, an additional Uniloc Luxembourg board member, Mr. Chad Meisinger, resides in southern California. (Dkt. No. 60-1, Ex. A at 59:6–17.)

[3] When asked why Mr. Etchegoyen represented that Uniloc had a headquarters in California in a signed declaration in 2016, Mr. Burdick testified that Mr. Etchegoyen "has dozens of documents to sign every day, and my belief is and my testimony today is that he just simply didn't scrutinize [the declaration] as closely as he should have before authorizing

> A. The Newport Beach office is primarily an executive office for meetings, in-person meetings, [and] phone conferences. We discuss at the executive levels the business of the company, both Uniloc USA business and Uniloc Luxembourg business.

(Dkt. No. 60-1, Ex. A at 47:14–25.) Despite Mr. Burdick's assertion that Uniloc does not have a principal place of business in southern California, he admitted that Uniloc has held around 100 "top-level strategy meetings" in southern California in the last three years alone. (*Id.* at 54:8–55:11.) During these meetings, Uniloc strategizes both "for whom [Uniloc] acquires patents," and how to "negotiate and prepare for negotiations with outside counsel with other factions that do due diligence for us." (*Id.* at 54:20–55:10.) In *addition* to these management meetings, Uniloc Luxembourg's CEO holds monthly meetings in southern California with its CFO. (*Id.* at 175:4–13.) Uniloc's Newport Beach office "is primarily an executive office," used for meetings to discuss "at the executive levels the business of the company, both Uniloc USA business and Uniloc Luxembourg business." (*Id.* at 47:18–25.)

Discovery has revealed that there are no full-time employees working out of Uniloc's Plano office with knowledge of information relevant to case. Mr. Burdick, who spends approximately one-third of his time in Plano, does not work full-time out of Uniloc's Plano office. (Motion Hearing, October 27, 2017, Dkt. No. 98 ("Hearing Tr.") at 27:9–14 ("[Mr. Burdick] indicated he spends as much of his time in California, roughly, as he does [in the Eastern District of Texas]. Second reason he's not a full-time Uniloc employee is that he doesn't actually spend all his working time at Uniloc. Mr. Burdick . . . runs a private law practice up in Boise, Idaho, and devotes about as much of his time to that as he spends [] in this district.").) In addition, Ms. Pangan and Ms. Seltzer do not have information relevant to this case. Despite Uniloc's earlier representation

outside counsel to attach his signature to it." (Dkt. No. 60-1, Ex. A at 71:1–25 ("[T]his statement about two headquarters, which is nonsense, is now rearing its ugly head again. And, you know, all I can testify to is that it's an error.").)

in its Sur-Reply that Ms. Seltzer and Ms. Pangan "have some relevant knowledge of Uniloc's business," (Dkt. No. 43 at 5), Uniloc failed to identify either employee as a Uniloc employee "whom Uniloc contends has information relevant to the Patents-in-Suit or to Uniloc's claims in this case" in its Responses to Apple's Interrogatories (Dkt. No. 60-2, Ex. B at 1–2). When questioned on Ms. Pangan's work, Mr. Burdick admitted that Ms. Pangan's role as a patent paralegal for Uniloc is limited to tasks such as "filing documents" and preparing "shell responses." (Dkt. No. 60-1, Ex. A at 45:5–21.) Ms. Pangan is not involved in analyzing "the substance of responses to office actions," analyzing the "substance of claim amendments," or the "drafting of claims." (*Id.* at 45:17–21.)

Finally, the documents that Uniloc has continuously represented are "relevant, physical documents" are not solely available from its Plano office. (Dkt. No. 30 at 7.) Uniloc has three categories of documents related to the patents-in-suit or to this case: (1) patent prosecution history files; (2) prior art files in the same general technology fields as the patents-in-suit; and (3) Uniloc's settlement agreements in prior cases with similar patented technologies. (Dkt. No. 60-1, Ex. A at 93:5–94:10.) During Uniloc's 30(b)(6) deposition, Mr. Burdick admitted that Uniloc's patent prosecution history files and prior art files in this case do not contain "anything substantive beyond what's contained in [Public] Pair," the Patent and Trademark Office's website that "allows the general public to access and download copies of the prosecution histories for patents." (*Id.* at 95:1–23, 107:12–22.) Ultimately, Uniloc's patent prosecution and prior art files are hard copy files, maintained in Plano, that "more or less mirror" the files readily available on Public PAIR. (*Id.* at 94:3–24.) Approximately ninety-five percent of the prior art that Uniloc stores in its "prior art library" was originally acquired in electronic form. (*Id.* at 119:11–15.)

In addition, the electronic versions of the prosecution histories for Uniloc's patents-in-suit are kept on a file server located in Irvine, California. (*Id.* at 103:8–104:6.) The electronic version of Uniloc's library of settlement agreements are similarly located on the file server in Irvine. (*Id.* at 128:5–13.) The Irvine file server contains certain directories or areas that are accessible only to Uniloc Luxembourg employees, as well as areas that are only accessible to Uniloc USA employees. (*Id.* at 145:10–19.)

II. LEGAL STANDARD

Section 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). However, a motion to transfer venue should only be granted upon a showing that the transferee venue is "clearly more convenient" than the venue chosen by the plaintiff. *In re Nintendo Co.*, 589 F.3d 1194, 1197 (Fed. Cir. 2009); *In re Genentech, Inc.*, 566 F.3d 1388, 1342 (Fed. Cir. 2009).

The first inquiry when analyzing a case's eligibility for § 1404(a) transfer is "whether the judicial district to which transfer is sought would have been a district in which the claim could have been filed." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*"). Once that threshold is met, courts analyze both public and private factors relating to the convenience of parties and witnesses, as well as the interests of particular venues in hearing the case. *See Humble Oil & Ref. Co. v. Bell Marine Serv., Inc.*, 321 F.2d 53, 56 (5th Cir. 1963); *In re Nintendo Co., Ltd.*, 589 F.3d at 1198. The private factors are: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *Volkswagen I*, 371 F.3d at 203. The public factors are: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized

interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Volkswagen I*, 371 F.3d at 203. These factors are to be decided based on "the situation which existed when suit was instituted." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960). Though the private and public factors apply to most transfer cases, "they are not necessarily exhaustive or exclusive," and no single factor is dispositive. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314–15 (5th Cir. 2008) ("*Volkswagen II*").

In the Fifth Circuit, the plaintiff's choice of venue has not been considered a separate factor in this analysis. *Volkswagen II*, 545 F.3d at 314–15. However, "[t]he Court must also give some weight to the plaintiffs' choice of forum." *Atl Marine Const. Co. v. U.S. Dist. Court for W. Dist. Of Texas*, 134 S. Ct. 568, 581 n.6 (2013) (citing *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955)). "Plaintiffs are ordinarily allowed to select whatever forum they consider most advantageous (consistent with jurisdictional and venue limitations), [and the Supreme Court has] termed their selection 'the plaintiff's venue privilege.'" *Id.* at 581 (citing *Van Dusen v. Barrack*, 376 U.S. 612, 635 (1964)). In the Fifth Circuit, the "venue privilege" contributes to the defendant's elevated burden of proving that the transferee venue is "clearly more convenient" than the transferor venue. *Volkswagen II*, 545 F.3d at 315; *Nintendo*, 589 F.3d at 1200; *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

III. ANALYSIS

The Court will examine each of the applicable private and public factors listed above, addressing the Parties' specific arguments where applicable.

A. The Suit Could Have Been Brought in the Northern District of California

The parties do not dispute that this action could have been brought in the Northern District of California. Thus, the threshold requirement for a § 1404(a) transfer has been satisfied.

B. Private Interest Factors

1. Relative Ease of Access to Sources of Proof

When considering the relative ease of access to sources of proof, a court looks to where documentary evidence, such as documents and physical evidence, are stored. *Volkswagen II*, 545 F.3d at 316. Relevant evidence in patent cases often comes from the accused infringer and may weigh in favor of transfer to that location. *Genentech*, 566 at 1345.

Uniloc asserts that it has physical documents relating to the patents-at-issue in its Plano office. (Dkt. No. 30-7, Burdick Decl. ¶ 11.) However, the vast majority of Uniloc's documents are publicly available on the PTO's Public PAIR website. (Dkt. No. 60-1, Ex. A at 107:7–22, 118:2–24.) Uniloc's physical documents in Plano consist of prosecution history, prior art, and settlement documents. (*Id.* at 93:5–94:10.) Uniloc's prosecution history records for the provisional patent applications in this case do not contain "anything substantive[]" beyond what is reflected in the publicly available versions of those file histories on PAIR. (*Id.* at 95:4–23, 107:17–22.) In addition, approximately ninety-five percent of the Uniloc's prior art documents are cited in some form of patent office prosecution, downloaded from PAIR. (*Id.* at 107:7–16, 118:13–24, 119:11–22 ("Q. Can you ballpark for me the proportion of the prior art in Uniloc's prior art library that it originally acquired in electronic form? A. It's probably that same 95 percent approximation.").) The remaining documents, Uniloc's settlement documents, are not publicly available. However, all of Uniloc's physical documents in Plano are also electronically stored in Uniloc's file server, located in Irvine, California. (*Id.* at 103:8–104:6.)

Although the Internet and the availability of online storage have significantly lightened the relative inconvenience of transporting large amounts of documents across the country, the physical accessibility to sources of proof remains a private interest factor to be considered. Until the appellate courts address this reality, trial courts must continue to apply this factor consistent with current precedent. *See Volkswagen II*, 545 F.3d at 316; *In re TS Tech USA Corp.*, 551 F.3d 1315, 1320–21 (Fed. Cir. 2008); *Genentech*, 566 F.3d at 1345–46. Accordingly, this Court must give Uniloc's Plano documents some weight, regardless of their availability online and through their servers. However, Uniloc's Plano documents are not the only physical documents relevant to this inquiry.

Uniloc's infringement case relates to Apple's Maps destination-prediction functionality, Apple's iOS software update process, and Apple's use of Unique Device Identifiers ("UDIDs"). (Dkt. No. 1 at 2–13; Dkt. No. 25-1, Michael Jaynes Decl. ¶ 6.) The electronic and paper records of these technologies are located in or near Cupertino, California, within the Northern District of California. (Dkt. No. 25-1, Michael Jaynes Decl. ¶ 7.) Documents concerning the marketing of the accused technologies in the United States all reside in or near Cupertino. (*Id.* ¶ 14.) In addition, physical alleged prior art, such as Google's Google Now technology and its corresponding products, are likely in the Northern District of California. (Dkt. No. 25 at 7 ("[T]he relevant Google Now source code and design documents, and sample products running Google Now (such as the Nexus 4 phone and Nexus 10 tablet) are likely located there."); Dkt. No. 25-21, Ex. 19, D. Hoffman Decl. ISO Google's Mtn. to Transfer ¶¶ 6, 12.) Uniloc argues that Apple maintains "an admittedly 'massive' 1.1 million square feet facility in Austin, Texas at which it could also download documents from its California headquarters." (Dkt. No. 64 at 1.) For the same reasons that this Court must give Uniloc's physical documents in Plano some weight, regardless of the relative

inconvenience of downloading electronic copies from a website or Uniloc's servers, this Court must give weight to Apple's physical documents and relevant physical prior art technologies situated in the Northern District of California. *See Genentech*, 566 F.3d at 1345–46 (rejecting the district court's argument that the physical location of relevant documents is somewhat antiquated in the era of electronic storage and transmission "because it would render this factor superfluous").

Although Apple argues that it "identified a much greater volume of documents in the Northern District than Uniloc did here," this evidence does not support a finding that this factor favors transfer. (Dkt. No. 40 at 3.) The Federal Circuit has stated that "[i]n patent infringement cases, the bulk of the relevant evidence usually comes from the accused infringer. Consequently, the place where the defendant's documents are kept weighs in favor of transfer to that location." *Genentech*, 566 F.3d at 1345 (quoting *Neil Bros. v. World Wide Lines, Inc.*, 425 F. Supp. 2d 325, 330 (E.D.N.Y. 2006)). However, as other courts have noted, a rigid application of this isolated statement from *Genentech* "would seem to require the transfer of every patent infringement action from the district of the victim to the district where the defendant is located, a patently absurd result." *Choon's Design, LLC v. Larose Indus., LLC*, No. 13-13569, 2013 WL 5913691, at *3 (E.D. Mich. Nov. 1, 2013). Taking the Federal Circuit's statement in *Genentech* to its extreme would result in a transfer analysis where, in almost every patent case, an accused infringer would have a built-in factor weighing in its favor. This should not be the proper result. Rather, when considered in its proper context, the statement simply provides another piece of helpful guidance to consider when evaluating this factor in the ordinary transfer analysis. In *Genentech*, the Federal Circuit explained that all of the defendant's documents were housed in the transferee venue, while no evidence whatsoever was housed in the transferor venue. *Genentech*, 566 F.3d at 1345. When considered in light of the other transfer factors, the circuit court concluded that the plaintiff's

chosen venue had "no connection to any of the witnesses or evidence relevant to the cause of action." *Id.* at 1340–41. The same kind of a tenuous connection with the transferor venue does not exist in this case.

Applying the law to the facts of this case, the Court finds that this factor is neutral. Uniloc has documents housed in this District, and Apple has documents in California. Uniloc's physical documents relating to prior art and settlement are likely relevant to the Parties' invalidity and damages positions in this case, and Apple's prior art and marketing physical documents are likely relevant to the Parties' infringement and invalidity positions. Although the relative volume of documents may tilt in favor of defendants in some cases, such as *Genentech*, it does not do so here, where the transferor District contains a substantial number of physical sources of proof.

2. Availability of Compulsory Process

This factor instructs the Court to consider the availability of compulsory process to secure the attendance of witnesses, particularly non-party witnesses whose attendance may need to be secured by a court order. *Volkswagen II*, 545 F.3d at 316. A district court's subpoena power is governed by Federal Rule of Civil Procedure 45. For purposes of § 1404(a), there are three important parts to Rule 45. *See VirtualAgility, Inc. v. Salesforce.com, Inc.*, No. 2:13-cv-00011-JRG, 2014 WL 459719, at *4 (E.D. Tex. Jan. 31, 2014) (explaining 2013 amendments to Rule 45). First, a district court has subpoena power over witnesses that live or work within 100 miles of the courthouse. Fed. R. Civ. P. 45(c)(1)(A). Second, a district court has subpoena power over residents of the state in which the district court sits—a party or a party's officer that lives or works in the state can be compelled to attend trial, and nonparty residents can be similarly compelled as long as their attendance would not result in "substantial expense." Fed. R. Civ. P. 45(c)(1)(B)(i)–(ii). Third, a district court has nationwide subpoena power to compel a nonparty witness's attendance

at a deposition within 100 miles of where the witness lives or works. Fed. R. Civ. P. 45(a)(2), 45(c)(1).

Apple has named multiple third-party witnesses residing within the Northern District of California who are said to have worked on asserted prior art. (Dkt. No. 25 at 8; Dkt. No. 25-27, Ex. 25.) Apple argues that these witnesses all worked on technology related to the functionalities asserted in Uniloc's patents-at-issue, and that all of these witnesses are subject to either the absolute or trial subpoena power of the Northern District of California. (Dkt. No. 25 at 8–10.) Apple has specifically identified each non-party witness it plans to call to trial, explained why that witness's testimony would be material and relevant to the case, and has submitted evidence before this Court as to the current locations of such witnesses. (*Id.*; Dkt. No. 25-27, Ex. 25.) Further, Apple identified Ms. Kiatkulpiboone, a prior Uniloc employee currently residing in the Northern District of California, as one of the prosecuting attorneys on the patents-in-suit. (Dkt. No. 60 at 4; Dkt. No. 25-13, Ex. 11 at 2.) Ms. Kiatkulpiboone is subject to the absolute subpoena power of the Northern District. Although Uniloc argues that "all substantive papers" for the patents-in-suit were signed by Mr. Burdick, Ms. Kiatkulpiboone, as the prosecuting attorney, likely has information relevant to the issue of infringement or invalidity. *Genentech*, 566 F.3d at 1344 ("The petitioners have identified witnesses relevant to those issues of [inequitable conduct, infringement, and invalidity,] and the identification of those witnesses weighs in favor of transfer.").

In contrast, Uniloc has not named any third-party witnesses residing within the Eastern District of Texas with information "material or relevant" to the case. (Dkt. No. 30 at 9–11; Dkt. No. 43 at 2–3; Dkt. No. 64 at 3–4.) Uniloc's only reference to any potential third-party witnesses are those "several former employees" referenced in Mr. Burdick's declaration. (Dkt. No. 30-7, Burdick Decl. ¶ 14.) However, Uniloc does not even identify what relevant information such

witnesses would have. (*Id.*); *Genentech*, 566 F.3d at 1343 ("A district court should assess the relevance and materiality of the information the witness may provide."). Rather, Uniloc generally asserts that these witnesses have "historical knowledge regarding Uniloc's business." (*Id.*) In fact, Uniloc has not disputed Apple's assertion that Uniloc failed to present evidence of any third-party witness within this District with "relevant and material information" to this litigation. (Dkt. No. 25 at 10; Dkt. No. 30 at 9–11; Dkt. No. 43 at 2–3; Dkt. No. 64 at 3–4.)

Based on such evidence, the Court finds that this factor weighs in favor of transfer.

3. Cost of Attendance for Willing Witnesses

"The convenience of the witnesses is probably the single most important factor in a transfer analysis." *Genentech*, 566 F.3d at 1342. "When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be travelled." *Id.* at 1343 (citing *Volkswagen II*, 545 F.3d at 317).

Uniloc has only one party witness who resides within the Eastern District of Texas: Mr. Sean Burdick. Although Uniloc has represented, both in this case and in prior cases, that it has three potential witnesses working from its Plano office, discovery has revealed that Uniloc does not consider two of the three witnesses to have relevant information. (Dkt. No. 60-2, Ex. B at 1–2.) Indeed, the record reflects that Uniloc has been aware of the actual number of relevant witnesses residing in the Eastern District of Texas for some time, despite contradictory representations. *Compare* (Dkt. No. 40-2, Ex. 33 at 29 ("Kris Pangan and Sharon Setzler [sic] each have relatively little information to provide. As such, Uniloc recommends that you withdraw their notices.")), *with* (Dkt. No. 30 at 8 ("In any event, Uniloc's declarant identifies three potential party witnesses who work at its Plano office (its President Mr. Burdick, Sharon Seltzer and Kristina Pangan).")), *and* (Dkt. No. 30-7, Burdick Decl. ¶ 12 ("In addition to myself[, Sean Burdick,] there are two other

employees, Sharon Seltzer and Kristina Pangan, who work full-time at Uniloc's Plano, Texas office who have knowledge regarding Uniloc's day-to-day businesses.")), *and* Declaration of Sean Burdick in Support of Plaintiff's Opposition to Defendant VoxerNet LLC's Motion to Transfer Venue, *Uniloc USA, Inc., et. al v. VoxerNet LLC*, Case No. 2:16-cv-644, Dkt. No. 21-1, ¶ 11 (E.D. Tex. Oct. 10, 2016) ("[T]here are two other employees, Sharon Seltzer and Kristina Pangan, who work full-time at Uniloc's Plano, Texas office who have knowledge regarding Uniloc's business and royalties received by Uniloc from licensing its patents."), *and* Declaration of Sean Burdick in Support of Plaintiff's Opposition to Defendant's Motion to Transfer Venue to the Northern District of California, *Uniloc USA, Inc., et. al v. Huawei Enterprise Inc.*, 6:16-cv-99, Dkt. No. 28-1, ¶ 12 (E.D. Tex. July 22, 2016) ("[T]here are two other employees, Sharon Seltzer and Kristina Pangan, who work full-time at Uniloc's Plano, Texas office who have knowledge regarding royalties received by Uniloc from its licensing activities."), *and* Declaration of Sean Burdick in Support of Plaintiff's Opposition to Defendant's Motion to Transfer Venue to the Northern District of California, *Uniloc USA, Inc., et. al v. Tangome, Inc.*, 6:16-cv-380, Dkt. No. 19-1, ¶ 12 (E.D. Tex. July 22, 2016) ("[T]here are two other employees, Sharon Seltzer and Kristina Pangan, who work full-time at Uniloc's Plano, Texas office who have knowledge regarding royalties received by Uniloc from its licensing activities.").

The Court finds such contradictory representations troubling, particularly because they are not isolated exceptions. Mr. Burdick, Uniloc's only party witness residing within the Eastern District of Texas, does not spend the majority of his time in the Plano office. (Dkt. No. 60-2, Ex. B at 2.) Mr. Burdick spends equally as much time in Plano, as he does in Boise, Idaho and in southern California. (*Id.*) In addition, Mr. Etchegoyen spends about twenty percent of his time in either Newport Beach or Irvine, California and owns a residence in Newport Beach, which he uses

when he "is doing business in Orange County." (*Id.*; Dkt. No. 60-1, Ex. A at 160:15–16.) Both Mr. Burdick and Mr. Etchegoyen have held around one hundred "top-level strategy meetings" in southern California, for Uniloc business purposes. (Dkt. No. 60-1, Ex. A at 54:2–55:11.) Mr. Etchegoyen separately travels to southern California every month to meet with Mr. Turner, Uniloc Luxembourg S.A.'s CFO. (Dkt. No. 60-1, Ex. A at 47:18–25.) All of these facts fly in the face of Uniloc's prior representations: that Uniloc had only one full-time employee, Tanya Kiatkulpiboone, working at its office in Irvine, California as of April 2017 (Dkt. No. 30-7, Burdick Decl. ¶ 10);[4] that Mr. Etchegoyen has lived in Hawaii since well before the filing date of the Complaint and does not maintain a residence in California (Dkt. No. 30 at 12);[5] and that Mr. Burdick does not work in California (Dkt. No. 43 at 2 n.3 "Apple also repeats its erroneous assertion that Uniloc's IP counsel lives and works in California.");[6] and that Apple "attempts to exaggerate Uniloc's ties to California" (Dkt. No. 30 at 1–2).[7] The Court finds that these Uniloc witnesses, witnesses that likely have information relevant to the case, would incur at least the same amount of inconvenience traveling to the Eastern District of Texas as they would to the Northern

[4] Mr. Turner, Uniloc Luxembourg S.A.'s CFO, and Mr. Meisinger, another Uniloc board member, both reside and work in southern California. (Dkt. No. 60-1, Ex. A at 59:6–11, 153:2–154:11.) Uniloc's failure to note that it has multiple employees residing and working in southern California, albeit from home and not from Uniloc's Irvine office, is misleading, given that travel within California is more convenient than travel from southern California to the Eastern District of Texas.

[5] Mr. Etchegoyen owns a single-family residence in Newport Beach which he uses "when he is doing business in Orange County," and spends about twenty percent of his time in either Newport Beach or Irvine, California. (Dkt. No. 60-1, Ex. A at 160:3–16.)

[6] Mr. Burdick testified in his deposition that he spends approximately one-third of his time in Newport Beach or Irvine, California, and has participated in approximately one-hundred executive meetings in southern California. (Dkt. No. 60-2, Ex. B at 2; Dkt. No. 60-1, Ex. A at 54:8–15.)

[7] Mr. Burdick testifying that at Uniloc USA's southern California meetings:

> [W]e acquire patents. We do due diligence on these acquisitions. We strategize in preparation for our negotiations with parties, both, you know, for whom we acquire patents and we negotiate and prepare for negotiations with outside counsel with other factions that do due diligence for us. They're top-level strategy meetings."

(Dkt. No. 60-1, Ex. A at 54:20–55:11.)

District of California. Furthermore, Ms. Kiatkulpiboone, a prosecuting attorney of the patent-in-suit, would incur substantially more inconvenience traveling to the Eastern District of Texas as she now resides in the Northern District of California. (Dkt. No. 60-1, Ex. A at 50:10–19.)

On the other hand, Apple has identified nine party witnesses that have relevant knowledge with respect to the accused products, six of whom are engineers. (Dkt. No. 25 at 11–12.) Uniloc argues that it would be unnecessary for all six of the engineer witnesses to testify at trial, and that "in reality, "Apple needs one or, at most two, engineers at trial." (Dkt. No. 30 at 12.) However, Apple explains that all of its witnesses are necessary to this case because "Uniloc's complaint asserts three unrelated patents against at least five separate pieces of Apple software (Maps, iTunes, iCloud, the App Store, and iOS software updates)." (Dkt. No. 40 at 4.) Each party witness has a different position, each related to one of the multiple accused functionalities. (Dkt. No. 25 at 11–12 (describing each party witness's position at Apple, ranging from an "Apple Software Engineering Manager for the Maps Predictions and Extensions team" to the "Engineering Manager on Apple's iOS Restore Team" to "an Apple Senior Software Engineer who is knowledgeable about Apple's UDID and how it is generated").) Apple's counsel "personally interviewed" the engineers who work on the accused functionalities, and represented that the identified party witnesses are the witnesses who can offer testimony in support of Apple's non-infringement case. (Hearing Tr. at 8:5–23.) Uniloc responds that it is willing to take the videotape deposition of Apple's party witnesses for use at trial in this Court. (Dkt. No. 43 at 3.) However, it is improper to discount a party's stated desire to present live witness testimony even when deposition testimony is available. *See, e.g.*, *McDowell v. Blankenship*, 759 F.3d 847, 852 (8th Cir. 2014) ("While live witness testimony is axiomatically preferred to depositions, particularly where credibility is a central issue, Rule 32(a)(4) balances that preference against the practical need for some testimony

in situations where live testimony is impracticable." (citations omitted)). Apple has represented that it is Apple's intention to bring these witnesses in-person to testify to the jury. (Hearing Tr. at 9:18–25 ("It's not our intention to present them via videotape, and it's not our intention to—to make representations to you and then not provide these witnesses.").) In addition, even if the Court entertained Uniloc's assertion that "[*a*]*t most*, three engineers would be required at trial in this case," Apple's three engineer witnesses and three additional party witnesses are more than Uniloc's one party witness, who only resides part-time in the Eastern District of Texas.

Uniloc separately argues that Apple's Austin campus likely includes "numerous witnesses having knowledge relevant to this case," and that could "conveniently attend trial in this Court." (Dkt. No. 30 at 8.) However, Apple has provided unrebutted evidence that none of the engineers or teams working on the accused functionalities work out of Apple's Austin campus. (Dkt. No. 25-1, Michael Jaynes Decl. ¶¶ 7–13 ("As described below, no Apple employees who work on the functionalities described above are located in Texas.").) Indeed, Uniloc's own initial disclosures do not list any Apple Austin employees as potentially having relevant information. (Hearing Tr. at 33:3–25 ("And nowhere on Uniloc's initial disclosures is there anyone listed as potentially having relevant information who's located in Texas . . . every single person that they put on here has got California after their [] location.").)

Apple has named multiple party and non-party witnesses residing within the Northern District of California, while Uniloc has named only one employee who resides part-time in the Eastern District of Texas. Having considered the weight of the evidence, discussed herein, the Court finds that this factor weighs in favor of transfer.

4. All Other Practical Problems

"Practical problems include those that are rationally based on judicial economy. Particularly, the existence of duplicative suits involving the same or similar issues may create

practical difficulties that will weigh heavily in favor or against transfer." *Eolas Techs., Inc. v. Adobe Sys., Inc.*, 6:09-cv-446, 2010 WL 3835762 (E.D. Tex. Sept. 28, 2010), *aff'd In re Google, Inc.*, 412 Fed. Appx. 295 (Fed. Cir. 2011). The Court agrees with the Parties that this factor is neutral. (Dkt. No. 25 at 13–14; Dkt. No. 30 at 13.)

C. Public Interest Factors

1. The Administrative Difficulties Flowing From Court Congestion

"To the extent that court congestion is relevant, the speed with which a case can come to trial and be resolved may be a factor." *Genentech*, 566 F.3d at 1347. Though the statistics vary slightly by source, this Court has consistently found that median time to trial in this District is several months faster than the Northern District of California. *See, e.g., ContentGuard Holdings, Inc. v. Amazon.com, Inc.*, 2:13-cv-1112, 2015 WL 1885256, at *10 (E.D. Tex. Apr. 24, 2015); *ContentGuard Holdings, Inc. v. Google, Inc.*, No. 2:14-cv-61 (Dkt. No. 38) (E.D. Tex. Apr. 16, 2014) ("The six-month difference in median time, though not substantial, is not negligible."). Accordingly, the Court finds that this factor weighs slightly against transfer.

2.Local Interest in Having Localized Interests Decided at Home

Apple argues that the Northern District of California has a greater local interest in this dispute than the Eastern District of Texas. Apple contends that the Northern District has a "strong local interest" in this case because the cause of action calls into question "the work and reputation of several individuals residing in or near that district." (Dkt. No. 25 at 14 (quoting *In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1336 (Fed. Cir. 2008).) However, this District similarly has an interest in protecting the intellectual property rights of its residents. *See ThinkTank One Research, LLC v. Energizer Holdings, Inc.*, No. CV M-15-0389, 2015 WL 4116888, at *3 (E.D. Tex. July 7, 2015). Regardless of the number of Uniloc's employees in comparison to Apple's employees, Uniloc has maintained offices in this District since 2007 and has had its principal place of business

in this District since April 2012. (Dkt. No. 30-7, Burdick Decl. ¶ 7.) As a Texas corporation with multiple office locations within the Eastern District of Texas, Uniloc has an equally proportional connection to this District. Such connection should not be disoriented by focusing on the disparity in size of these different corporations.

Thus, given that both this District and the Northern District of California have localized interests in these cases, the Court finds that this factor is neutral.

3. Avoidance of Unnecessary Conflicts of Law

The Court agrees with the parties that there are no conflict-of-law issues apparent in this case. This factor is also neutral.

4. The Familiarity of the Forum with the Governing Law

The Court agrees with the parties that both courts are equally familiar with patent law. The final public factor is neutral.

IV. CONCLUSION

While five of these factors are neutral, two favor transfer, and one disfavors transfer, the Court finds that the significant number of both party and non-party witnesses in California have shown that the convenience of the witnesses weighs strongly in favor of transfer. This is especially true where Uniloc has no such witnesses in the Eastern District of Texas. In fact, the majority of Uniloc's relevant party witnesses reside at least part-time within the State of California, within the Northern District of California's subpoena power. Ultimately, this tips the scales in this particular case towards transfer.[8]

For the reasons stated above, Apple's Motion to Transfer Venue (Dkt. No. 25) is **GRANTED**.

[8] Having considered the relevant factors, the Court is of the opinion that Apple has satisfied its "significant burden" to show good cause as to why this case should be transferred. *Volkswagen II*, 545 F.3d at 315 n.10.

So ORDERED and SIGNED this 22nd day of December, 2017.

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNILOC USA, INC. And UNILOC LUXEMBOURG, S.A., Plaintiffs,	)	CIVIL ACTION NOS: 1:18-cv-00158, 1:18-cv-159, 1:18-cv-161, 1:18-cv-163, 1:18-cv-164, 1:18-cv-166, 1:18-cv-293 LY
VS.	)	
APPLE, INC. Defendant.	)	

ORAL AND VIDEOTAPED DEPOSITION OF

DRAKE TURNER

TUESDAY, JANUARY 15, 2019

VOLUME 1

ORAL AND VIDEOTAPED DEPOSITION OF DRAKE TURNER, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and -numbered cause on the 15th day of January, 2019, from 9:13 a.m. to 3:25 p.m., before Natasha Duckworth, a CSR in and for the State of Texas, reported by machine shorthand at the offices of DLA Piper, LLP, 1717 Main Street, Suite 4600, Dallas, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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ALSO PRESENT:

Terry van der Hayden, videographer

A. Drake Lee Turner.
Q. Where do you currently work?
A. In Hermosa Beach, California.
Q. Who do you work for?
A. Uniloc Luxembourg.
Q. Is Uniloc Luxembourg your only current employer?
A. Yes.
Q. Is Hermosa Beach your physical address?
A. Yes.
Q. Does Uniloc Luxembourg have an office in Hermosa Beach?
A. No.
Q. Do you work from your home?
A. Yes.
Q. How long have you worked for Uniloc Luxembourg?
A. Since June of 2014.
Q. Since June of 2014 and today, have you had any other employers besides Uniloc Luxembourg?
A. No.
Q. What were you doing before June of 2014, immediately before?
A. I had my own CPA practice.
Q. What is your current job title with Uniloc Luxembourg?

for space somewhere?

A. Uniloc 2017 is considering space in Plano and in California. I don't believe it's currently negotiating anything.

Q. Where in California?

A. Newport Beach.

Q. Do you understand the timeline for decision on whether or not to obtain new space in Plano or Newport Beach?

A. I don't know a specific timeline, but I do know there's conversations with leasing agents about potential space.

Q. You described it as an exigent circumstance. Right?

A. Well, the year was closing and it was important to get a closing process in place towards the end of 2018 rather than let it spill deep into 2019. I wish we had done it earlier. And I'm trained as a CPA, and I like to have processes in place in advance for closing books.

Q. You mentioned that Mr. Burdick has left Uniloc USA. Is that your testimony?

A. Yes, he resigned.

Q. When did that happen?

A. Effective December 31st, 2018.

Q. Last month?
A. Yes.
Q. Did you speak with Mr. Burdick about his resignation?
A. Very briefly.
Q. What did you discuss?
A. I spoke to him on the phone maybe 60 seconds, and I thanked him for the relationship in the service over the years and asked him what his plans were.
Q. What did he tell you his plans were?
A. He said he needed to be in Boise, Idaho more than in the past and that he was moving into private practice of patent prosecution.
Q. Did Mr. Burdick identify a reason for his resignation?
A. That he enjoyed patent prosecution the most and enjoyed the freedom of being in private practice. And I was also under the impression there might be other nonprofessional reasons that he needed to be in Boise.
Q. Prior to his resignation, was Mr. Burdick working on patent prosecution for Uniloc?
A. Yes.
Q. Do you anticipate he will continue the work of patent prosecution for Uniloc post resignation?
A. I hope that he will; though I haven't heard

A. There's a name Michelle Moreland. Again, these are signature lines. I'm not certain they're managers, but if they are these are the names. Erez, E-r-e-z Levy, L-e-v-y; James Palmer. There's probably a couple of others. I can't think of the names.

Q. So it's your testimony that there may be six managers, and you can recall four as you're sitting here today. Mr. Etchegoyen, Ms. Moreland, Mr. Levy, and Mr. Palmer. Is that fair?

A. That sounds about right, yep.

Q. Anyone else you can recall?

A. I know that -- again, I see this from the Uniloc Luxembourg side, and I'm very familiar with Craig being on that group. And then all the other people were designated as managers from the CF Holdings side, and that's the side that I'm not super familiar with.

Q. Have you ever met Ms. Moreland?

A. I have.

Q. Do you know where she lives?

A. I don't know where she lives, but I know she's based out of the Fortress office in San Francisco.

Q. What about Mr. Levy?

A. I've met him.

Q. Where does he live?

A. Same answer as Michelle Moreland.

Q. He works out of the Fortress office in San Francisco?

A. Yes.

Q. What about Mr. Palmer?

A. Same answer as the prior two.

Q. And with regard to the other names that you couldn't recall, is it your understanding that they also work out of the Fortress offices in San Francisco?

A. I would draw that conclusion, yes. I'll also add that I'm not sure if they're managers. They may just be on a committee.

Q. Whether it's a manager or committee member, they have duties and responsibilities with regard to Uniloc 2017. Correct?

MR. GANNON: I'm going to object. Mr. Turner is here on behalf of Uniloc USA and Uniloc Luxembourg. And these -- I've been giving you quite a bit of leeway asking questions with respect to Uniloc 2017, and this deposition is limited to venue. Venue is determined at the time of the complaint being filed, which would be for the Uniloc 2017 transaction.

Q. (BY MR. GUARAGNA) Do you have the question in mind, sir?

A. What's the question again?

Q. Whether it's a manager or committee member,

A. It was in 2018.
Q. And that also took place in San Francisco?
A. Yes.
Q. Who did you meet with?
A. I met with the same people I just noted as possible managers.
Q. That's Ms. Moreland, Mr. Levy, Mr. Palmer?
A. Yes.
Q. Do you remember any others who were in the meeting?
A. There was another individual named Yoni Shtein, Y-o-n-i S-h-t-e-i-n and one or two others that I don't know their names at this point.
Q. Were you the only representative of Uniloc Luxembourg in the meeting?
A. No.
Q. Who else was there?
A. Craig Etchegoyen.
Q. How long did that meeting last?
A. 45 minutes.
Q. What was the nature of that meeting?
A. We were discussing the potential transaction that ultimately came to fruition in May of 2018.
Q. Who is Mr. Shtein?
A. He's a guy who works at Fortress.

property would meet with the property manager to discuss the property and repairs or, you know, any significant outlays of cost or relationship or the employees of one who -- of the other company that might be irritating tenants, etcetera, status reports, you'd have to have those meetings somewhere.

So typically, you know, in this case, the company -- Luxembourg company being based in Luxembourg and Uniloc USA being based in Texas, when the people happen to be in the same place in California, it's more convenient for them to meet there in California. So it was really a matter of convenience and not that it was set aside as an executive location for purposes of these Uniloc USA meetings or Uniloc Luxembourg meetings. It was used I guess periodically when Sean might meet with Craig and discuss that relationship between Uniloc USA as a service provider and Uniloc Luxembourg as the asset owner.

Q. So fair to say that that California location was a convenient place for Uniloc people to meet?

A. Yes, and Uniloc USA was paying for it so why not use it.

MR. GUARAGNA: We'll take five.

THE VIDEOGRAPHER: We're going off the record at 11:32 a.m.

Texas?

A. I will answer that in the sense that none of them maintains any office. But to the extent that any of them have a Texas presence, it would be listed as the Tyler, Texas location.

Q. That's the only one that you're aware of?

A. Yes.

Q. All right. How many employees does Uniloc USA currently have?

A. Four.

Q. Can you list them for me?

A. Yes. The three I mentioned earlier Sharon Setzler, Sarah Gallegos, and Kris K, and then there's Michael Ford, is that his name, as well. And until recently, of course, Sean.

Q. So who is Mike Ford?

A. I've never met him, but I am aware that he is an employee of Uniloc USA and performs some specialized services relative to some technology and research.

Q. What type of specialized services does he provide?

A. I'm not clear about that.

Q. What type of research does he do?

A. Again, not clear about that.

Q. Did you attempt to figure that out for purposes

yes.

Q. And that would include patents its asserting against Apple. Right?

A. It's my -- yes, yes.

Q. And Mr. Ford is currently working on that platform in Roseville, California. Right?

A. He works on that in Roseville in his supporting role.

Q. Who does he support in that role?

A. Until now it was Sean Burdick.

Q. As of today he is -- withdrawn.

As of today, is he the only Uniloc employee working on the Centurion platform?

A. When you say working on it, are you meaning maintaining it, developing it, adding to it, or what?

Q. As of today, what is your understanding as to Mr. Ford's duties and responsibilities vis-a-vis the Centurion technology platform?

A. I believe his responsibilities are to maintain, add, and augment as Mr. Burdick may request and as Craig Etchegoyen may ask Burdick to request.

Q. Have you asked Mr. Ford to utilize the Centurion platform for any Uniloc work?

A. I have not.

Q. Are you aware of Mr. Etchegoyen asking him to

A. Yes.
Q. Okay. When did Uniloc Luxembourg take ownership of the Centurion platform?
A. It was developed internally by Uniloc Luxembourg.
Q. Internally by whom?
A. Craig outsourced to software developers the job of developing it.
Q. Which software developers?
A. I don't know the names of them. This was mostly accomplished prior to 2014 when I came on board.
Q. Do you know where they were located?
A. I do not.
Q. Does Uniloc Luxembourg still own the Centurion platform?
A. No.
Q. Who owns the Centurion platform?
A. Uniloc 2017.
Q. When did the ownership of the Centurion platform shift from Uniloc Luxembourg to Uniloc 2017?
A. It was part of the asset sell from Uniloc Luxembourg to Uniloc 2017 in early May of 2018.
Q. Is Uniloc Luxembourg still able to utilize the Centurion platform now owned by Uniloc 2017?
A. With permission from Uniloc 2017, I bet it can.

But there would be no reason for it -- them to -- there would be no reason to ask or to be granted permission. I can't envision why they would.

Q. Is that because the activities of searching for and asserting patents is no longer within the province of Uniloc Luxembourg?

A. Yes, that's my conclusion.

Q. It's now within the province of Uniloc 2017.

A. Yes.

Q. Does anyone at Uniloc USA presently have access to the Centurion platform for the work of Uniloc USA?

A. Now that Sean is gone, I think the answer is in practice, no. Not because it's prohibited, just because it's not relevant to anyone's job description.

Q. Is not relevant to Mr. Ford's job description today?

A. Oh, of course he has access. Sorry. I don't think of him as having access to use it. I think of him as having access to maintain it.

Q. So he maintains the platform?

A. Yes.

Q. Does Uniloc USA have to pay Uniloc 2017 to use the Centurion platform?

A. I -- if I had to guess, it's the opposite. Uniloc 2017, probably we should seek to be reimbursed

A. Just based on my awareness of where he is at any given time in terms of if I'm calling him or talking to him or saying, hey, can we get together. Oh, no, I'm not back to California until three weeks from now. It's just kind of the pattern of my observations.

Also I know his wife and the kids and stuff, so there's a little bit of -- I'm more aware than most.

Q. Is Mr. Etchegoyen married?

A. Yes.

Q. Does his family reside in Hawaii?

A. Yes.

Q. You mentioned he also spends time in Texas. Is that right?

A. Off and on, yes.

Q. In the last six months, how much time has Mr. Etchegoyen spent in Texas?

A. If I had to guess, he might have been here once or twice.

Q. I'm not asking you to guess. Do you have an understanding as to how much time Mr. Etchegoyen spent in Texas in the last six months?

A. In the last six months, it's -- I would have to say once if -- if he had a reason to come here for a deposition, but I'm not aware of any specific instance.

Q. You can only think of one time he's been in Texas --

A. Probably, uh-huh.

Q. What about in the last 12 months? Can you think of any other times he's traveled to Texas within the last 12 months?

A. I'm not specifically aware of his Texas travels off and on. Again, he and I don't see each other that much. We just correspond by phone and by e-mail. I see him about once or twice a month in a good month for about 15 minutes or an hour.

Q. So if you only see him once or twice a month, how confident are you in your estimate as to what time he spends in Hawaii versus California?

A. Much more confident than the Texas element because I -- if I'm going to see him face to face, generally it's going to be in California because I'm not going to go to Hawaii to meet with him. I'm in California; he's in California from time to time. So I'll pay much more closer attention to his whereabouts as it relates to California than anything else.

Q. Okay. Would it be a fair summary of your testimony to say Mr. Etchegoyen spends more time in Hawaii but not specifically more than he spends in California?

A. I would say he spends meaningfully more but not significantly more. But at the same time, he's clearly more in California than in Texas in my book.

Q. And he only comes to Texas from time to time. Correct?

A. I think as needed, yes.

Q. Okay. Flipping over to Page 9 of Exhibit 2. It says that "Mr. Etchegoyen was also the CEO of Uniloc Luxembourg (the prior owner of Uniloc of 2017's patents) and held the same responsibilities in that role as well."

And I understand that to be referring to the responsibilities from the previous sentence. Is that your understanding?

A. Yes, that's how I read it.

Q. Okay. And this statement in the brief indicates that Mr. Etchegoyen was the CEO of Uniloc Luxembourg. Do you understand him to still have that role?

A. That's a good question. I believe he holds that role effectively, but he's no longer -- let's try this again.

In the transaction that occurred in May of 2018, the asset sell, Craig resigned his -- he -- I'm sorry. He signed a new employment agreement for Uniloc

Q. Okay. And that's the Centurion platform we discussed earlier that Mr. Ford is responsible for maintaining. Right?

A. For the maintenance, yes.

Q. Did he participate at all in the design and development of that?

A. No.

Q. That was all done by outside contractors.

A. Yes, before it came into the company.

Q. Do you know which additional patents the company acquired using the Centurion platform that are referenced -- that is referenced in this document?

MR. GANNON: I'm going to caution you not to reveal any conversations or discussions with outside counsel.

Q. (BY MR. GUARAGNA) The question was do you know?

A. I believe that the platform started being put into use to some degree beginning in 2015, and therefore all patents that were acquired since then probably had some use of the platform but I don't know to the degree, which the decisions made by those recommending it were influenced by the platform. But I do know that as time went along, it became more and more important and that allowed us to reduce the head count of people.

STATE OF TEXAS)
COUNTY OF DALLAS)

I, Natasha Duckworth, a Certified Shorthand Reporter duly commissioned and qualified in and for the State of Texas, do hereby certify that there came before me on the 15th day of January, 2019, at DLA Piper, LLP, located at 1717 Main Street, Suite 4600, Dallas, Texas, the following named person, to-wit: DRAKE TURNER, who was duly sworn to testify the truth, the whole truth, and nothing but the truth of knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon examined upon oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness.

I further certify that pursuant to FRCP Rule 30(e)(1) that the signature of the deponent:

___ was requested by the deponent or a party before the completion of the deposition, and that signature is to be before any notary public and returned within 30 days from date of receipt of the transcript;

_X_ was not requested by the deponent or a party before the completion of the deposition.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

CERTIFIED TO BY ME on this the 28th day of January 2019.

Natasha Duckworth

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNILOC 2017 LLC, Plaintiff, v. APPLE INC., Defendant.	Civil Action No. 6:19-CV-00532-ADA PATENT CASE JURY TRIAL DEMANDED

APPLE INC.'S MOTION TO STAY PENDING TRANSFER

Apple respectfully moves for a stay of all case activity unrelated to transfer pending a decision on Apple's pending Motion to Transfer to the Northern District of California ("the NDCAL").

I. INTRODUCTION

Both the Federal Circuit and the Fifth Circuit have instructed district courts to prioritize transfer motions and to address transfer before addressing other substantive issues. However, in this case, Uniloc is seeking unnecessary and time consuming venue discovery that will cause the transfer issues to be decided after the *Markman* proceedings are well underway. In light of the appellate mandate to make transfer a "top priority," the *Markman* proceedings should be stayed pending a decision on transfer.

II. BACKGROUND

The detailed background of the extensive history between Apple and Uniloc is set forth in Apple's pending Motion to Transfer (DKT. No. 15), which is attached as Exhibit A to the Declaration of John M. Guaragna is support of Apple's Motion to Stay ("Guaragna Decl."). However, several key items bear noting here as they are particularly relevant to the instant Motion to Stay.

- Apple timely filed its Motion to Transfer this case to the NDCAL on November 12, 2019, nearly 8 weeks ago. Apple's arguments were nearly identical to those that resulted in the transfer of 12 prior Uniloc WDTX cases against Apple in early 2019.
- This case is a repeat of a case that Uniloc previously filed against Apple in the WDTX in 2018, but Uniloc voluntarily dismissed while Apple's prior motions to transfer were pending with Judge Yeakel. There is no reason to believe this case would not have been transferred with all the others if Uniloc had not voluntarily dismissed it.

- Instead of responding to Apple's current Motion, Uniloc has sought to take extensive discovery of Apple, ostensibly related to transfer but really much broader, which is largely duplicative of the venue discovery Uniloc took of Apple a year ago in the prior WDTX cases.
- Apple has resisted this duplicative discovery but, to date, Uniloc has insisted on taking overly broad, irrelevant and time-consuming discovery from Apple.
- The parties have initially agreed on some limited discovery, including Rule 30(b)(6) depositions, that will take place in January 2020; however, the transfer briefing that will follow this discovery will not be completed until February or March. In the meantime, the case schedule is proceeding with claim construction activity starting in January 2020 and culminating with a *Markman* hearing in April 2020.

Given the overlapping deadlines, the parties will be simultaneously briefing both transfer and *Markman* issues in early 2020.

III. ALL CASE ACTIVITY UNRELATED TO TRANSFER SHOULD BE STAYED PENDING RESOLUTION OF APPLE'S MOTION TO TRANSFER

A. The Court Has Inherent Authority to Issue a Stay to Ensure that a Motion to Transfer Venue is Given Top Priority

"The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."). *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55, 57 S. Ct. 163 (1936).

Both the Federal Circuit and the Fifth Circuit have instructed district courts, and the parties, to prioritize transfer motions and to address transfer before addressing other substantive issues. See *In re Apple Inc.*, 456 F. App'x 907, 908 (Fed. Cir. 2012) (faulting Apple for "delay" and having "failed to employ any strategy" to have the motion handled at the outset of litigation); *In re EMC Corp.*, 501 F. App'x 973, 975-76 (Fed. Cir. 2013) (recognizing "the importance of addressing motions to transfer at the outset of litigation"); *In re Horseshoe Entm't*, 337 F.3d 429, 433 (5th Cir. 2003) ("[I]n our view disposition of that [transfer] motion should have taken a top

priority in handling of this case by the . . . District Court."); *see also In re Fusion-IO, Inc.*, 489 F. App'x 465, 466 (Fed. Cir. 2012) ("We fully expect, however, for Fusion-IO to promptly request transfer in the lead case along with a motion to stay proceedings pending disposition of the transfer motion, and for the district court to act on those motions before proceeding to any motion on the merits of the action").

To effectuate this appellate mandate, district courts have agreed to stay cases pending decisions on transfer. *See Secure Axcess, LLC v. Nintendo of Am., Inc.*, No. 2:13-cv-00032, Dkt. No. 133 (E.D. Tex. Feb. 10, 2014) (granting a stay pending resolution of severance and transfer issues where case was in early stages and claim construction briefing had just begun); *DSS Tech., Mgmt. Inc., v. Apple Inc.*, No. 6:13-cv-919, Dkt. No. 83 (E.D. Tex. Oct. 28, 2014); *Anza Tech., Inc., v. Xilinx, Inc.*, 17-cv-687, 2017 WL 10379350 (D. Col. Oct. 16, 2017); *Univ. of S. Florida Res. Found. Inc. v. Fujifilm Med. Sys. USA, Inc.*, No. 8:16-cv-1194, 2017 WL 4155344, at *1 (M.D. Fla. Aug. 29, 2017) (granting motion to stay deadlines pending resolution of whether venue was proper in the district); *B.E. Tech., LLC v. Sony Computer Entm't Am., LLC*, No. 12-cv-2828, 2013 WL 524893, at*1 (W.D. Tenn. Feb. 11, 2013) ("Staying the proceedings--including the Local Patent Rule disclosures and fact discovery--will allow the Court to properly decide the pending Motions to Change Venue in light of judicial economy and comity."). [1]

The Federal Circuit has recognized the importance of staying cases during the pendency of transfer motions as a means of upholding 28 U.S.C. 1404(a)'s intent to "prevent the waste 'of time, energy, and money' and protect litigants, witnesses and the public against unnecessary inconvenience and expense [. . .] when defendants are forced to expend resources litigating

[1] This Court has also recognized the utility of a stay in the context of multi-district litigation. S*ee also Sparling v. Doyle*, 2014 WL 12489985 (March 3, 2014) (granting temporary stay until MDL panel renders decision on motion for transfer and consolidation).

substantive matters in an inconvenient venue while a motion to transfer lingers unnecessarily on the docket." *In re Google Inc.*, 2015 WL 5294800, at *1-2 (Fed. Cir. 2015) (internal citation omitted) (granting writ of mandamus and ordering a magistrate judge in the Eastern District of Texas to stay proceedings pending final resolution of a transfer motion filed 8 months prior and issue a decision on transfer within 30 days). Indeed, this is the very same procedure -- a stay pending a decision on transfer -- that Judge Yeakel employed in resolving Apple's recent motions to transfer 12 prior Uniloc cases from the WDTX to the NDCAL. Guaragna Decl., Ex. B June 12, 2018 Hearing Transcript at pp. 7-8, and 19.

B. All Relevant Factors Favor a Stay Pending a Decision on Transfer

In this District, courts typically consider three factors in determining whether a stay is warranted: (1) any potential prejudice to the non-moving party; (2) the hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources saved by avoiding duplicative litigation. *Yeti Coolers, LLC v. Home Depot U.S.A., Inc.*, 1:17-cv-342, 2018 WL 2122868, at *1 (W.D. Tex. Jan. 8, 2018); *B & D Produce Sales, LLC v. Packman1, Inc.*, No. SA-16-CV-99-XR, 2016 WL 4435275, at *1 (W.D. Tex. Aug. 19, 2016). Here, all three factors favor a stay.

1. Factor One: A Stay Will Not Prejudice Uniloc

Uniloc will not suffer any prejudice as a result of a stay pending a decision on transfer. In fact, should the case be transferred, Uniloc will benefit from proceeding once under the *Markman* procedures employed by the transferee forum. Avoiding duplication will benefit both Apple and Uniloc.

Uniloc will undoubtedly claim that even a short stay will cause prejudice by delaying recovery of the damages Uniloc is seeking. But this knee-jerk argument lacks merit for two simple reasons. First, a delay in recovering money damages cannot, of itself, constitute

sufficient prejudice to deny a stay because a plaintiff will always face that possibility when a stay is ordered. *SanDisk Corp. v. Phison Elecs. Corp.*, 538 F. Supp. 2d 1060, 1067 (W.D. Wisc. 2008) ("plaintiff's only real 'injury' is that it will have to wait for any money damages, which is always the case when a stay is imposed."). Second, Apple is seeking a stay of a very limited duration so that transfer issues are decided before other substantive issues are addressed. Given the current anticipated schedule, the stay will last approximately 2 to 3 months. In contrast, more than 17 months passed between when Uniloc first filed suit against Apple on this patent and when it filed this case asserting the same patent again.

In light of the overall case schedule and the ability to adjust several upcoming deadlines, even assuming a 90-day stay, this case could still go to trial within two years of filing. Uniloc cannot seriously claim that a two year schedule to trial is prejudicial, especially given its own delays. Therefore, this factor strongly favors a stay.

2. Factor Two: Apple Will Suffer Hardship Absent a Stay

The Federal Circuit and Fifth Circuit agree that deciding transfer should be the Court's top priority in handling the case. *EMC Corp.*, 501 F. App'x at 975-76; *Horseshoe Entm't*, 337 F.3d at 433. Moving forward now with claim construction activities in this case will risk the very same "waste of time, energy and money" the Federal Circuit cautioned against in *EMC. EMC Corp.*, 501 F. App'x at 975-76. Indeed, if this case is transferred to the NDCAL, that court has its own local rules and *Markman* procedures that differ from those employed by this Court. In all likelihood, Apple will need to redo its claim construction submissions to comply with the NDCAL rules. In addition, should this Court issue claim constructions before deciding transfer, the transferee court may wish to conduct its own analysis and hearing, thus causing additional burden and expense. Conversely, by staying the *Markman* activity in this case for a short period of time while first deciding transfer, the risk of undue hardship is completely eliminated.

3. Factor Three: A Stay Will Conserve Judicial Resources

A stay pending a decision on transfer will conserve judicial resources as it eliminates the risk that the *Markman* proceedings will be conducted twice in two different courts. A stay will also avoid potential confusion as, absent a stay, a decision on transfer could be issued during the middle of claim construction briefing in this case. That could leave Apple and Uniloc in a situation where one set of briefs is filed in accordance with this Court's Order Governing Proceedings only to have subsequent briefing procedures governed by the NDCAL patent local rules, which differ from this Court's. A stay would also eliminate this likely confusion and uncertainty.

IV. CONCLUSION

For the foregoing reasons, the Court should stay all case activity unrelated to transfer until a decision on transfer is rendered.

Dated: January 9, 2020

Respectfully submitted,

By: */s/ John M. Guaragna*

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(i), counsel for Apple has conferred with counsel for Uniloc in a good-faith effort to resolve the matter presented herein. Counsel for Uniloc opposes the instant Motion.

/s/ John M. Guaragna
John M. Guaragna

CERTIFICATE OF SERVICE

The undersigned certifies that on this 9th day of January, 2020, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3). Any other counsel of record will be served by a facsimile transmission and/or first class mail.

/s/ John M. Guaragna
John M. Guaragna

[redacted]

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TEXAS
WACO DIVISION

Uniloc 2017 LLC	§	
	§	
Plaintiff	§	
	§	
v.	§	Case No. 6:19-cv-532-ADA
	§	
Apple Inc.,	§	
	§	
Defendant	§	Jury Trial Demanded
	§	
	§	

PLAINTIFF UNILOC 2017 LLC'S RESPONSE IN OPPOSITION TO APPLE INC.'S MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

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I. INTRODUCTION

Apple has failed to carry its heavy burden of proving that the Northern District of California ("NDCA") is a clearly more convenient venue. Instead of focusing on this case, Apple relies on the transfer of other cases between it and three Uniloc entities, including cases outside this District. But those cases are not this one, and discretionary decisions by other courts in other cases do not force transfer in this case. And, when it comes to this case, Apple fails to show that transfer is warranted. It ignores that this case is materially distinct from the other cases. This case involves a different asserted patent and different technology, and the relevant facts are unique. Apple's Motion does not speak to those facts, instead relying on vague assertions and an incomplete record. Because the NDCA is not a clearly more convenient venue, Apple's Motion should be denied.

II. BACKGROUND

Uniloc alleges that Apple infringes U.S. Patent No. 6,467,088 ("the '088 Patent"). Dkt. 1. Uniloc previously filed suit against Apple in the Western District of Texas ("WDTX") alleging infringement of the '088 Patent. *Uniloc USA, Inc. v. Apple Inc.*, No. 1:18-CV-296 (W.D. Tex. April 9, 2018). During the pendency of that suit, Apple filed a petition for *inter partes* review. After the IPR filing, Uniloc voluntarily dismissed its suit against Apple. *Uniloc USA*, No. 1:18-CV-296 (Dkt. 37) (W.D. Tex. July 16, 2018). On April 29, 2019, the Patent Trial and Appeal Board found no reasonable likelihood that Apple would prevail on its assertions of invalidity and denied to institute *inter partes* review. Ex. 1, Decision at 21. Uniloc then filed this suit. Dkt. 1.

The '088 Patent is generally directed at "a reconfiguration manager that may be implemented on a computer or other data processing device to control the reconfigurations of software or other components of an electronic device . . . ." Ex. 2, '088 Patent at 2:22-25. The claimed invention addresses the difficulty in "determin[ing] if a new or improved component is

[redacted]

compatible with the rest of the device . . . ." *Id*. at 1:22-25. The Accused Products include at least the Apple macOS, iOS, and iPadOS operating systems and associated servers implementing iOS/macOS/iPadOS update functionality, Mac desktop and notebook computers, iPad, iPhone, and iPod devices running macOS, iOS, iPadOS, the App Store and associated servers implementing App Store functionality. Dkt. 1 at ¶ 10; Ex. 3, Claim Chart at 1. Since 2013, Apple (through a contractor, Flextronics) has manufactured the accused Mac Pro computers in Austin. Ex. 4, "Apple's new Mac Pro to be made in Texas"; Ex. 5, Jaynes Depo. at 131:4-133:10.

Apple employs over 8,000 people in this District while currently building an additional $1 billion facility in Austin to accommodate 5,000 additional employees, which will make Apple the largest private employer in this District, performing a "broad range of functions including engineering, R&D, operations, finance, sales and customer support." Ex. 5, Jaynes Depo. at 35:18-36:8; Ex. 6, "Apple to build new campus in Austin and add jobs across the US."

Apple concedes that venue is proper. Apple moves to transfer on the basis of convenience.

III. LEGAL STANDARD

Under Section 1404(a), the Court applies "an 'individualized, case-by-case consideration of convenience and fairness'" to determine if transfer is appropriate. *Stewart Org., Inc. v. Ricoh Corp*., 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). The movant carries the burden of demonstrating good cause to justify transfer. *In re Volkswagen of Am., Inc*., 545 F.3d 304, 314 (5th Cir. 2008) ("*Volkswagen II*"). The movant also has the "evidentiary burden" to establish "that the desired forum is clearly more convenient than the forum where the case was filed." *Babbage Holdings, LLC v. 505 Games (U.S.), Inc.*, No. 2:13-CV-749, 2014 U.S. Dist. LEXIS 139195, at *12-14 (E.D. Tex. Oct. 1, 2014).

[redacted]

The inquiry is "whether the party requesting the transfer has demonstrated the 'convenience of parties and witnesses' requires transfer of the action, considering various private and public interests." *1-Stop Fin. Serv. Ctrs. of Am., LLC v. Astonish Results, LLC*, No. A-13-CA-961, 2014 U.S. Dist. LEXIS 8117, at *9 (W.D. Tex. Jan. 23, 2014). In conducting this analysis, a Court '"must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party.'" *Fintiv, Inc. Apple Inc.*, No. 6:18-CV-372, 2019 U.S. Dist. LEXIS 171102, at *4-5 (W.D. Tex. Sep. 10, 2019) (quoting *Weatherford Tech. Holdings v. Tesco Corp.,* No. 2:17-CV-456, 2018 U.S. Dist. LEXIS 231592, at *6 (E.D. Tex. May 22, 2018)).

IV. ARGUMENT

A. The Private Interest Factors Weigh Against Transfer.

1. The Relative Ease of Access to Sources of Proof

"In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored." *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *5. "[T]he question is *relative* ease of access, not *absolute* ease of access." *In re Radmax*, 720 F.3d 285, 288 (5th Cir. 2013) (emphases in original). "As a general practice, this Court gives little weight to the location of the documents given the ease with which documents may be produced. . ." *FreshHub, Inc. v. Amazon.com Inc.*, No. 1:19-CV-885, Dkt. 29 (W.D. Tex. Sept. 9, 2019). Here, the location of relevant evidence, from Apple and critical third parties, weighs against transfer.

Third Party Sources of Proof. An important source of third-party evidence is present in this District. Nearly all of the accused hardware devices are made in China except for the accused Mac Pro desktop computer, which has been manufactured for Apple, via third-party contract manufacturer Flextronics, in Austin since 2013. The Mac Pro contains the accused MacOS

[redacted]

operating system and App Store. Apple does not engage in any manufacturing in NDCA. Information regarding Flextronics is important to this case because, as a contract manufacturer, Flextronics is Apple's agent to make the Accused Devices, resulting in each device manufactured in Austin constituting an infringement for which Apple is liable (regardless of whether the ultimate Mac Pro customer is in the United States or overseas). For that reason, Uniloc expects to seek at least documents and corporate representative testimony from Flextronics regarding the manufacturing of the Mac Pro and its relationship with Apple. That important source of proof is located within this District.

Uniloc's Sources of Proof. [redacted] Ex. 7, Turner Declaration at ¶ 2. [redacted] *Id*. [redacted] *Id*. These files are not merely printed copies of electronic documents; they are the original documents that will need to be physically transported to trial, such as the ribbon copy of the '088 Patent.

Apple's flawed analysis focuses on potential Uniloc witnesses and Uniloc's office in Newport Beach, California. Dkt. 15 at 10. First, "witnesses are not sources of proof; sources of proof are sources of 'document[arty] and physical evidence.'" *Seven Networks, LLC v. Google LLC*, No. 2:17-CV-442, 2018 U.S. Dist. LEXIS 146375, at *13 (E.D. Tex. Aug. 14, 2018) (quoting *Volkswagen II*, 545 F.3d at 316). The proper focus is on "the actual *physical* location" of documents and the burden incurred by a party in having to transport physical evidence to the trial

court. *Implicit, LLC v. Palo Alto Networks, Inc.*, No. 6:17-CV-336, 2018 U.S. Dist. LEXIS 88076, at *7 (E.D. Tex. Feb. 20, 2018) (emphasis in original). And, on that question, Apple is simply wrong: the actual physical location of Uniloc's documents is in Tyler, Texas, not in Newport Beach.

Apple's Sources of Proof. Apple does not dispute that it employs over 8,000 people in this District. Using Apple's office-based analysis to determine if transfer is appropriate (*i.e.*, its focus on Uniloc's Newport Beach, CA office), Apple's significant presence in this District heavily weighs against transfer.

Apple practically ignores that significant presence in this District. All of Apple's evidence concerning its "sources of proof" is instead found within Michael Jaynes' declarations. Dkt. 15-1 at ¶ 62; Dkt. 151-2 at ¶¶ 5, 21, 23, 44, 47. The factual allegations in Mr. Jaynes's declaration are insufficient to transfer this case. The declarations only identify certain business activities and explain in vague terms that related documents are located in the NDCA. Lacking from the declarations is any specificity of where any *physical* documents actually are. And they fail to distinguish between electronically stored documents and any hard copy documents or show how it is "relatively" easier to access those documents at Apple's Northern California headquarters than at its Austin campus. *See Utterback v. Trustmark Nat'l Bank*, 716 F. App'x 241, 245 n.10 (5th Cir. 2017) *cert. denied*, 138 S. Ct. 1699 (2018) ("Utterback fails to identify with any specificity *which witnesses* and *what evidence* would be inaccessible in Mississippi but readily available in Florida. Without more, we cannot credit vague and conclusional assertions.") (emphasis in original).

Scratching the surface to go beyond the allegations of Mr. Jaynes's allegations shows that Apple has sources of proof in and near this District—and not exclusively in the NDCA. This Court has recognized that "in modern patent litigation, all (or nearly all) produced documents exist as

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electronic documents on a party's server," and thus "there is no difference in the relative ease of access to sources of proof from the transferor district as compared to the transferee district." *Fintiv, Inc.,* 2019 U.S. Dist. LEXIS 171102, at *12. This is true of Apple's documents.[1] Uniloc deposed Mr. Jaynes and uncovered that which Apple left unaddressed in its Motion—Apple can remotely access documents from its offices in this District, including: (1) sales data and other financial records pertaining to the accused App Store and other Accused Products, Ex. 5, Jaynes Depo. at 70:18-25, 71:18-75:4, 179:1-24, 228:11-230:8; (2) Marketing documents about the Accused Products, *id*. at 178:5-20, 228:11-230:8. (3) Network-stored records of Dana Dubois (Engineering Manager) and his team members within the App Store Frameworks group, *id*. at 163:20-164:20. (4) source code, which resides in repositories that are accessed remotely*, id*. at 164:21-165:22. This is not to mention the run-of-the-mill electronic documents (*e.g.*, PDFs, Word documents, Excel spreadsheets, and PowerPoint presentations) that are transported over the Internet and produced electronically. Apple has not alleged that it would be difficult, burdensome, or make any difference if its documents were produced from either Cupertino or Austin.[2]

In addition, Apple employee Kayla Christie testified that many aspects of Apple's finances are performed at Apple's Parmer Lane campus ***in Austin*** including revenue reporting for "all of Apple" as well as accounting activities pertaining to royalties arising from Apple's relationships with app developers. Ex. 9, Christie Depo. at 133:13-134:15. Documents concerning such

[1] Notably, in denying a § 1404(a) motion by Apple to transfer to the NDCA, Judge Schroeder of the Eastern District of Texas observed: "Apple does not genuinely dispute [plaintiff's] mirror argument that [Apple's relevant] documents can be accessed from any of Apple's facilities, *including its Austin location*." *Papst Licensing GmbH & Co., KG v. Apple, Inc*., No. 6:15-CV-1095, 2016 U.S. Dist. LEXIS 177687, at *10 (E.D. Tex. Sep. 30, 2016) (emphasis added).

[2] Belying any implication that the physical location of documents actually matters, Apple's proposed protective order in this case provides that Apple's source code would be produced on a computer at the office of its outside counsel. Ex. 8, Proposed Agreed Protective Order at 12.

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activities are relevant to at least damages and Uniloc's inducement claim. Mr. Jaynes did not determine which Apple employees in this District deals with the royalties arising from Apple's relationships with its app developers. Ex. 5, Jaynes Depo. at 185:10-192:19, 194:12-24.

Apple also provides AppleCare documents that instruct users how to update their apps (which are relevant to Uniloc's inducement claim; Dkt. 1 at ¶¶ 16-18). Apple has not alleged that those documents are in NDCA, and Mr. Jaynes was unable to identify their location. Ex. 5, Jaynes Depo. at 180:24:181-6, 181:19-182:2.

Lastly, Apple uses a content delivery network (CDN) to store and distribute apps (including updates) and other content of the accused App Store. *Id.* at 137:3-13, 141:14-25. There are Apple-owned CDN servers located in Dallas. *Id*. at 137:14-138:21, 140:8-12, 142:18-21, 144:11-25. Seven Apple employees in this District have job duties pertaining to Apple's CDN. *Id*. at 221:24-222:8. Given these facts, it is highly likely that documents and records relevant to Apple's CDN are located in this District and in Dallas.

The above facts further show that Mr. Jaynes's declaration should not be credited. Mr. Jaynes continued to ignore these sources at proof at his deposition, insisting that, "I'm not aware of any relevant documents or anticipated witnesses of Apple located in the Western District of Texas." *Id*. at 180:1-7. He narrowly defined "relevant documents" to reach that result-driven testimony, again revealing Apple's cherry-picking of the evidence. *Id*. at 180:16-23, 181:7-18 ("[S]ource code related to Dana Dubois' team, marketing documents for Deidre Caldbeck's team," "relevant patent or other licenses from the IP transactions team," "financial documents from me or his [Dubois'] team," "documents that I spoke to individuals about or like documents that I would know about in some fashion."). The scope of relevant documents is far broader than Apple and Mr. Jaynes are willing to admit. And that evidence, viewed in total, weighs against transfer.

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The cases that Apple relies on do not change that result. Apple cites *In re Genentech* for the proposition that "the bulk of the relevant evidence usually comes from the accused infringer." Dkt. 15 at 10. While that may be true in general, this case involves significant Texas-based evidence from Uniloc's Tyler office. Ex. 7, Turner Decl. at ¶ 2. Further, two of its employees—

[redacted] *Id*. And Apple has a significant presence in this District relevant to this case, including a 244,000-square-foot facility that manufactures Apple's Mac Pros. Ex. 10, "Apple expands in Austin." Apple has had a presence in Austin for about 26 years and employs over 8,000 individuals in the area, making Austin its second-largest corporate hub. Ex. 5, Jaynes Depo. at 35:18-36:8; Ex. 11, "Apple makes 'Texas-sized investment . . .'" Under these facts, *Genentech* does not require transfer. *See also In re Barnes & Noble, Inc.*, 743 F.3d 1381, 1383 (Fed. Cir. 2014) (finding *Genentech* distinguishable because "[t]his is . . . not a situation where the district court has no meaningful connection to the case"); Ex. 22, *Uniloc USA, Inc. et al., v. Apple Inc*., No. 2:17-cv-258, Dkt. 104, at 12 (E.D. Tex. Dec. 22, 2017) (explaining that *Genentech* does not provide an accused infringer with a "built-in factor weighing in its favor" and holding that case did not apply where the "same kind of tenuous connection with the transferor venue [in *Genentech*] does not exist in this case").

The *Polaris v. Dell* case also does not apply. That case involved a plaintiff based in Ireland that filed suit against a defendant based in the NDCA—a presence that "dwarve[d] its presence in Texas." No. SA-16-CV-451, 2016 U.S. Dist. LEXIS 167263, at *16 (W.D. Tex. Dec. 5, 2016). That disparity is not present in this case. Uniloc has a presence in Texas; Apple has a significant presence in this District. This case is not *Polaris*.

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In sum, Uniloc's evidence shows that its physical records are located in Texas while the evidence and supporting declarations that Apple proffered is incomplete and inadequate to support transfer. Uniloc had to depose Apple's witnesses to uncover what Apple should have already disclosed—that financial and sales data pertaining to the Accused Products, source code, and records of certain team members of the App Store Frameworks group can be accessed remotely, including from this District, thereby greatly diminishing the significance of the actual physical location of the documents. And revenue reporting for all of Apple occurs in Austin and accounting activities pertaining to royalties arising from Apple's relationship with app developers occur in Austin, which provides a strong inference that documents related thereto are located in Austin as well. Accordingly, this factor weighs against transfer.

2. The Availability of Compulsory Process to Secure the Attendance of Witnesses

"In this factor, the Court considers the availability of compulsory process to secure the attendance of witnesses, particularly non-party witnesses whose attendance may need to be secured by a court order." *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at * 13-14 (W.D. Tex. Sep. 10, 2019). Here, relevant non-party witnesses (which Apple fails to identify altogether) are geographically dispersed and further from NDCA than this District. From public information, both listed inventors of the patent-in-suit (Yasser alSafadi and J. David Schaffer) appear to reside in New York. Ex. 12, AlSafadi LinkedIn profile; Ex. 13, Schaffer LinkedIn profile. The attorney that prosecuted the '088 Patent, Daniel J. Piotrowski, also appears to reside in New York. Ex. 14, Piotrowski OED. Apple has asserted that the location of patent prosecutors matter for transfer, arguing that "[t]he availability of compulsory process also favors transfer or is at least neutral . . . . For example, prosecuting attorneys [listing attorneys located in Northern California]."

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Ex. 15, Apple's Motion in *Evolutionary Intelligence, LLC v. Apple, Inc*, No. 6:12-CV-783, Dkt. 18, at 6 (E.D. Tex. December 21, 2012).

Apple has also sought discovery from Koninklijke Philips Electronics, a Dutch corporation from which the '088 Patent originated. Dkt. 26. Uniloc has also [redacted] Fed. R. Civ. P. 45(c)(1)(B)(ii); [redacted]

There are also prior art witnesses that appear located in or near this District, a fact Apple ignores. For example, prior artist Garritt W. Foote (listed on a reference cited on the face of the '088 Patent) appears to reside in Austin. Ex. 17, Foote LinkedIn profile. Further, an inventor of another reference—Thomas Van Weaver—is listed on the patent as residing in Dripping Springs, Texas. Ex. 18, '531 Patent. Apple has previously urged that the location of prior art witnesses matter under a § 1404(a) analysis. Ex. 22, *Uniloc USA, Inc.,* No. 2:17-cv-258, Dkt. 104, at 14 ("Apple has named multiple third-party witnesses residing within the Northern District of California who are said to have worked on asserted prior art."). The location of these witnesses weighs against transfer.

Apple points to three Uniloc employees and three Uniloc board members that it contends reside in the NDCA. But this identification fails to show that this factor favors transfer because (1) it only includes party witnesses and (2) it lacks the required evidence relating to the individual's unwillingness to testify in the WDTX. *See Realtime Data LLC v. Dropbox, Inc.*, No. 6:15-CV-465, 2016 U.S. Dist. LEXIS 3874, at *15 (E.D. Tex. Jan. 12, 2016) ("In order for the Court to

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meaningfully assess the weight that should be attached to a third-party witness, it is incumbent upon the advancing party to demonstrate the likelihood of that witness actually testifying at trial.").

Messrs. Etchegoyen, Turner, and Ford are Uniloc employees and thus party witnesses that fall outside this factor. Ex. 7, Turner Decl., at ¶¶ 4-6; *Peteski Prods. v. Rothman*, No. 5:17-CV-122, 2017 U.S. Dist. LEXIS 220980, at *8 (E.D. Tex. Nov. 13, 2017) (reasoning that "Rothman [the defendant] is a party witness, and is . . . excluded" from consideration under this factor.). As for the remaining individuals—Mr. Levy, Ms. Moreland, and Mr. Palmer, they are board members of Uniloc. Ex. 19, Levy Declaration; Ex. 20, Moreland Declaration; Ex. 21, Palmer Declaration.

Apple does not provide any facts about their willingness of to testify. Dkt. 15, at 11-13. This is an omission of evidence critical for a showing that this factor favors transfer. *See In re Barnes & Noble*, 743 F.3d at 1383 (finding no error in the district court requiring defendant to show an inability or an unwillingness of the witnesses to travel); *Wise v. CB Richard Ellis, Inc.*, No. 3:03-CV-1597, 2003 U.S. Dist. LEXIS 22597, at *16 (N.D. Tex. Dec. 9, 2003) (factor neutral because of lack of evidence showing witness' unwillingness to testify). In any event, although Uniloc disputes that these individuals are relevant witnesses,[3] Mr. Levy, Ms. Moreland, and Mr. Palmer are willing to testify in person at trial in this District if the parties request their live testimony. Ex. 19, Levy Decl.; Ex. 20, Moreland Decl.; Ex. 21, Palmer Decl.

Given Apple's insufficient evidentiary showing, Uniloc's identification of multiple geographically dispersed third-party witnesses, the willingness of Uniloc employees and Uniloc board members to appear at trial in Texas, and the fact that neither forum can claim either a greater

[3] Apple contends that it needs testimony from Mr. Levy, Ms. Moreland, and Mr. Palmer concerning Uniloc's finances, including the value attributed to the '088 Patent, but Apple has not explained why it could not obtain such testimony directly from Uniloc. *See Uniloc USA Inc. v. Google, Inc.*, No. 2:16-CV-566, Dkt. 75, at 7 (E.D. Tex. May 15, 2017) ("[Defendant has not] explained why [the patent valuation] information could not come directly from Uniloc.").

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amount of witnesses generally or a greater number of specific critical witnesses within its subpoena power, this factor weighs against transfer. *See Vlsi Tech. v. Intel Corp.*, No. 6:19-CV-254, 2019 U.S. Dist. LEXIS 155287, at *21 (W.D. Tex. Aug. 6, 2019) (determining result under this factor based on which forum has more usable subpoena powers).

3. The Cost of Attendance for Willing Witnesses

"The convenience of witnesses is the single most important factor in the transfer analysis." *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *17. "When the distance between an existing venue for trial of a matter and a proposed venue § 1404(a) is more than 100 miles, the factor of inconvenience of witnesses increases in direct relationship to the additional distance to be traveled." *Id*. (quoting *Genentech*, 566 at 1342).

The non-party witnesses identified by Uniloc above are knowledgeable on a number of case issues, including infringement, validity, and damages. The fact that the witnesses are disparately located from the two forums means that a transfer to the NDCA would not result in a clear incremental increase of convenience as compared to litigating the case here. *See Novartis Vaccines & Diagnostics, Inc. v. Hoffmann-La Roche, Inc*., 597 F. Supp. 2d 706, 713 (E.D. Tex. 2009) (concluding that the decentralization of the witnesses resulted in this factor not weighing in favor of transfer).

In fact, the types of witnesses that Apple has itself deemed significant in previous cases would incur a greater burden in the event of a transfer. *See* Ex. 15, Apple's Motion, No. 6:12-CV-783 (E.D. Tex.), at 6; Ex. 22, *Uniloc USA, Inc.,* No. 2:17-cv-258, Dkt. 104, at 14. For instance, Mr. Piotrowski (the prosecutor of the asserted patent) lives in Briarcliff Manor, NY. Ex. 14, Piotrowski OED. A trip from his residence to Waco would be approximately 1,680 miles. Ex. 23, Briarcliff Manor to Waco Map. In comparison, his trip to San Francisco would be approximately

2,927 miles. Ex. 24, Briarcliff to San Francisco Map. Attending trial in the NDCA would also impose a greater burden on Mr. Foote (a prior art witness), as he appears to reside in Austin. Ex. 17, Foote LinkedIn profile.

Whereas Uniloc has identified non-party witnesses, Apple did not; instead, it has identified only party witnesses; specifically, four of its employees residing in NDCA: Dana DuBois, Deidre Caldbeck, Brian Ankenbrandt, and Michael Jaynes. Dkt.15, at 7.[4] Apple also points to three Uniloc employees: Craig Etchegoyen, Drake Turner, and Mike Ford. "The convenience of party witnesses," however, "is given little weight." *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *18.

The "little weight" allotted to these party witnesses is further eroded by Apple's previous representation that litigating near the WDTX—specifically, in the Eastern District of Texas—is no less "convenient" than any other district where it litigates patent infringement cases. While testifying at trial, Apple's then Chief Technical Officer was asked: "Is it inconvenient for Apple to go to the Eastern District of Texas for a patent infringement trial?" He responded: "I don't think it's any less convenient than any other place we go." Ex. 25, *VirnetX Inc. v. Apple, Inc.*, No. 6:10-CV-417, Morning Hearing Tr. at 37:19-39:16 (E.D. Tex. Nov. 2, 2012). Even if some weight is to be given to party witnesses, as mentioned above in the discussion of private factor two, the Uniloc employees (Etchegoyen, Turner, Ford) and Uniloc board members (Levy, Moreland, Palmer) are each willing to provide live trial testimony in Texas, which will not inconvenience them.

[4] Notably, Apple did not submit declarations from Mr. DuBois, Ms. Caldbeck, or Mr. Ankenbrandt, relying only on Mr. Jaynes. This means that Apple's Motion is supported largely by knowledge Mr. Jaynes gained through hearsay, *e.g.*, "I *have been informed* and understand. . . all design, development, and implementation of the Accused Technology has occurred or currently occurs in or around Cupertino, California." Dkt. 15-2, at ¶ 21 (emphasis added). This is another reason to discount Apple's evidence. *See Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *10 n.2.

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The probative value, if any, of Apple's evidence is outweighed by Uniloc's identification of third-party witnesses. *See ADS Sec. L.P. Advanced Detection Sec. Servs., Inc.*, No. 1-09-CA-773, 2010 U.S. Dist. LEXIS 27903, at *4 (W.D. Tex. Mar. 23, 2010), report and recommendation adopted in A-09-773, 2010 U.S. Dist. LEXIS 148396, at Dkt. 20 (Apr. 14, 2010) ("[I]t is unclear whether Defendant is contending that the transfer would be more convenient for non-party witnesses or merely for their own employee witnesses. If the Defendant is referring to employee witnesses, then their convenience would be entitled to little weight."); *Zimmer Enters. v. Atlandia Imps., Inc.*, 478 F. Supp. 2d 983, 991 (S.D. Ohio 2007) (applying "the rule that . . . the convenience of witnesses who are a party's employees will not ordinarily be considered, or at least, that the convenience of such employees will not generally be given the same consideration as given to other witnesses").

While only "little weight" should be given to party witnesses, the facts pertaining to the convenience to party witnesses, on balance, do not favor transfer under this factor. It is undisputed that Apple has a major and growing presence in this District. According to Apple's vice president of people, Deirdre O'Brien, the roles in Austin span nearly the company's entire business. Ex. 11. And Apple is also in the process of constructing a new Austin facility that will initially house 5,000 employees and will have the capacity to grow to 15,000. Ex. 10. This new facility—which will surpass the square footage of Apple's Apple Park campus in Cupertino—"will include a broad range of functions including engineering, R&D, operations, finance, sales and customer support." Ex. 6 at 3.

Apple employees with relevant knowledge reside in this District such that attending trial in Waco is not inconvenient for them. Given that many aspects of Apple's finances are performed at Apple's Parmer Lane campus in Austin including revenue reporting for "all of Apple" as well

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as accounting activities pertaining to royalties arising out of Apple's relationships with app developers, there are surely Apple employees in this District who perform those duties and have relevant knowledge. Ex. 9, Christie Depo. at 133:13-134:15. Uniloc tried to obtain their specific identities, but Mr. Jaynes testified that he did not try to determine which Apple employees in this District deals with the royalties arising from Apple's relationships with its app developers. Ex. 5, Jaynes Depo. at 185:10-192:19, 194:12-24. With respect to Apple's content delivery network (CDN) that stores and distributes the apps and updates from the accused App Store, there are likely relevant witnesses located at the Apple-owned CDN servers in Dallas. *Id*. at 137:14-138:21, 140:8-12, 142:18-21, 144:11-25. Moreover, seven Apple employees in this District have job duties pertaining to Apple's CDN. *Id*. at 221:24-222:8. These employees likely have relevant knowledge concerning at least the operation of the CDN.

Currently, employees in Austin "help run Apple's iTunes music and *app stores*, handle billions of dollars going in and out of the company's American operations and continuously update the Maps software that is integral to iPhones and iPads." Ex. 26, "How Apple Empowers . . ." at 1 (emphasis added). Further, prior to the filing of this suit, Apple listed job openings within teams located in Austin that are involved in software—including in areas encompassed by Uniloc's infringement contentions. *See* Ex. 27, Apple Job listing for an "iOS Developer" ("[t]his is your chance *to join a sizable team of iOS app developers* that is focused on delivering . . . enterprise *iOS apps* . . . .") (emphasis added). These facts are incompatible with Apple's representation that *none* of its employees in this District have knowledge relevant to "how third party applications are updated on iOS devices" or any other areas related to the accused technology. Dkt 15-2 at ¶ 38.

At its Austin complex, Apple also fields "about 8,000 customer tech-support calls a day, manages the company's vast network of suppliers and figure[s] out how to move around millions

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of iPhones a week . . . .” Ex. 26 at 1. This includes “AppleCare operations,” which is used as a warranty protection program by customers to receive technical support on all “consumer products,” whether “that be an iOS device or a Mac device.” Ex. 28, Nash Depo. (01/09/19), at 100:21-101:12. For example, “Stephanie Dumareille” is a “senior adviser on iOS issues” located in Austin. Ex. 26 at 2. These individuals, operations, and related documentation are highly relevant to Uniloc’s indirect infringement claims.

Further, filings in the *Grace v. Apple* case show Deirdre Caldbeck—a “Product Marketing Manager” that Apple admits as having knowledge relevant to this suit—emailing another Apple employee, Liz Titus. Ex. 29, Emails – *Grace v. Apple, Inc.*, No. 5:17-00551, Dkt. 285-58 (N.D. Cal.). Included in these emails are discussions concerning the iOS update functionality: “iOS automatically presents *the most recent compatible update* for your device.” *Id*. at APL-GRACE_00003931 (emphasis added). Ms. Titus’ LinkedIn page provides that she is an Apple employee that resides in the Austin, TX area. Ex. 30, Titus LinkedIn profile.

The end result of the analysis is this: Apple only identified party witnesses that fit its NDCA-centric narrative. The little weight allotted to such witnesses is fully offset by the weight attributed to the geographically dispersed nonparty witnesses. Uniloc’s party witnesses will not be inconvenienced by testifying at trial in Texas. If Apple’s party witnesses are to be considered, Uniloc has identified party witnesses in this District with relevant knowledge for whom appearing at trial in the NDCA would be less convenient. Apple’s and Mr. Janyes’s disclaimer of relevant evidence in the WDTX is contradicted by public information and the sworn testimony of Apple’s own employees. Given these facts, this factor weighs against transfer.

4. All Other Practical Problems that Make Trial of a Case Easy, Expeditious and Inexpensive

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Apple contends that "nearly two dozen Uniloc cases against Apple have already been transferred from Texas to the NDCA and are being litigated there." Dkt. 15, at 17. However, only a few of these cases are **actively** being litigated. Specifically, twenty-one Uniloc cases against Apple were transferred to the NDCA from either WDTX (11 cases) and EDTX (10 cases). But two of the cases[5] were dismissed; leaving 19 pending cases. Chin Declaration at ¶ 2. Of the 19 pending cases, only 4 cases[6] are actively being litigated because the other 15 cases[7] are presently stayed pending a resolution of ongoing IPRs, a decision to institute IPR, or a resolution of an appeal to the Federal Circuit. *Id*. And of the 4 cases that are actively being litigated, none have a trial date; one of the cases (5:19-CV-1692) has a dispositive motion deadline of January 7, 2021 so it will not be tried for at least several months after that. *Id*.

None of the pending NDCA cases involve the '088 Patent. The uniqueness of the asserted patent means that the issues of claim construction, validity, infringement, and damages would be original to the NDCA. Thus, the concern of "requir[ing] the same issues to be litigated in two places" is not implicated. *Balthasar Online, Inc. v. Network Sols., LLC*, 645 F. Supp. 2d 546, 553 (E.D. Tex. 2009); *see also Vlsi Tech*, 2019 U.S. Dist. LEXIS 155287 at *23 (finding that cases pending in the transferee forum that involved "patents deriving from the same third-party patent portfolio and some overlapping accused products" failed to weigh in favor of transfer.) (internal quotations omitted).

Apple speculates that the NDCA has a superior understanding of the parties' "business methods and activities" and that if this case were transferred to the NDCA that one of the judges

[5] 4:19-CV-1696, 3:18-CV-359
[6] 3:19-CV-1905, 5:19-CV-1929, 5:19-CV-1692, 3:18-CV-358
[7] 3:19-CV-1904, 4:19-CV-1949, 4:19-CV-1691, 4:19-CV-1693, 4:19-CV-1694, 5:19-CV-1695, 3:19-CV-1697, 5:18-CV-357, 3:18-CV-365, 3:18-CV-363, 3:18-CV-572, 3:18-CV-360, 4:18-CV-364, 4:18-CV-361, 4:18-CV-362

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with a pending Uniloc case would be assigned this case. Under the NDCA's Local Patent Rule 2-1(a), actions are only "deemed related" if they are filed within two years of each other by the same plaintiff and concern the same patent. NDCA Local Patent Rules, 2-1(a)(1). Consequently, this case would fall within NDCA's General Order No. 44—under which, cases are "assigned blindly and at random by the Clerk by means of an automated system . . . ." Ex. 31, General Order No. 44.

In addition, as of June 30, 2019, the number of civil cases pending in the NDCA was 9,332. Ex. 32, Civil Statistics Table C-1 (06/30/19). The number of civil cases pending at this same time in the WDTX was 2,959. *Id*. The transfer of a case to another forum that has a significantly higher level of case congestion only because a large group of factually distinct cases is pending there, is an act against, not in the interest of, judicial economy.

Accordingly, this factor weighs against transfer and is, at worst, neutral. *See Vlsi Tech.*, 2019 U.S. Dist. LEXIS 155287 at *26-27 ("The Parties will benefit by having the Delaware Court continue to prosecute its case under its current schedule, and this Court is entirely capable of prosecuting the instant patent case here.").

B. The Public Interest Factors Weigh Strongly Against Transfer.

1. The Administrative Difficulties Flowing from Court Congestion

"The relevant inquiry under this factor is actually '[t]he speed with which a case can come to trial and be resolved.'" *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *19 (quoting *Genentech*, 566 F.3d at 1347). During the 12-month period ending June 30, 2019, the median time interval for the filing of a civil case to its disposition in during trial was 25.3 months for the WDTX. Ex. 33, Civil Statistics Table C-5 (06/30/19). In this same time period, this figure was 25.9 months for the NDCA. *Id*. Consistent with these statistics, this Court concluded in *Fintiv* that the WDTX had less court congestion compared to the NDCA. *Fintiv*, 2019 U.S Dist. LEXIS 171102. For this case

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specifically, a *Markman* Hearing has been set for April 24, 2020 and trial is scheduled to occur February 26, 2021 through March 19, 2021 (or as soon as practicable). Dkt. 18. There is an interval of about 18.3 months that exists between this case's filing and when it will be disposed of during trial, outpacing both median figures by around seven months. This factor weighs against transfer.

2. The Local Interest in Having Localized Interests Decided at Home

The facts here align with those before the Court in *Fintiv*, which resulted in a finding that that "Apple's contribution to this factor is neutral." *Fintiv*, 2019 U.S. Dist. LEXIS 171102, at *22. As shown in SECTION IV.A.3 *supra*, Apple's connections in and near this forum—including relevant Apple employees, *e.g.*, Ms. Titus, seven employees in Austin with duties concerning Apple's CDN, employees at Apple's CDN location in Dallas, Apple employees involved in accounting activities pertaining to royalties arising from Apple's relationships with app developers, the manufacturing of the accused Mac Pro in Austin via third-party Flextronics Americas, Apple retail store and AppleCare team members who encourage and train others to use and upgrade apps via the accused App Store —create a substantial local interest. Similarly, Uniloc has contacts near this forum through its Tyler office, sources of proof, and Plano-based employees. Ex. 7, Turner Decl. at ¶ 2.

These facts, in combination with this District's "significant interest in preventing patent infringement within its borders and in protecting rights of its citizens" result in this factor remaining neutral or weighing against transfer. *Uniloc USA Inc. v. Box, Inc.,* No. l:17-CV-754, 2018 U.S. Dist. LEXIS 94966, at *12 (W.D. Tex. June 6, 2018). Notably, neither Judge Gilstrap nor Judge Yeakel (who both found this factor to be neutral) took into consideration the presence of Flextronics, thus a stronger case is presented here that this factor weighs against transfer. *See*

[redacted]

Fintiv, 2019 U.S. Dist. LEXIS 171102 (recognizing the presence of a third-party manufacturer of accused products weighs against transfer).

3. Remaining Public Interest Factors: (3) Familiarity of the Law and (4) Conflicts of Laws

The two remaining public factors are neutral, as both forums are equally familiar with the governing patent law.

V. CONCLUSION

For the foregoing reasons, Uniloc respectfully requests that the Court deny Apple's Motion to Transfer Venue.

DATED: February 7, 2020

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 7th day of February 2020, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(b)(1). Any other counsel of record will be served by a facsimile transmission and/or first-class mail.

/s/ William E. Davis, III

William E. Davis, III

CERTIFICATE REGARDING MOTION TO SEAL

Pursuant to L.R. CV-5.2, the undersigned certifies that this brief and all attachments are filed herewith a Motion to Seal.

/s/ William E. Davis, III

William E. Davis, III

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNILOC 2017 LLC, Plaintiff, v. APPLE INC., Defendant.	§ § § § § § § § § §	Civil Action No. 6:19-cv-532 PATENT CASE JURY TRIAL DEMANDED

APPLE INC.'S REPLY IN SUPPORT OF MOTION TO TRANSFER VENUE

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I. INTRODUCTION

Uniloc's Opposition amounts to nothing more than mudslinging, but none of it sticks because: (1) Uniloc has not identified a single, relevant trial witness in the WDTX, even after Uniloc had full and unfettered access to venue discovery; (2) Uniloc does not and cannot dispute that the likely trial witnesses from both Uniloc and Apple live and work in or around the NDCA, and (3) Uniloc's *speculation* about potential relevant information in the WDTX is belied by the evidence of record.

II. ARGUMENT

A. All Relevant Sources of Proof Are Located In Or Around The NDCA

Uniloc speculates and relies on irrelevant information and arguments that already have been rejected by courts in the EDTX and WDTX who have determined that 21 prior cases between Apple and Uniloc should be transferred to the NDCA.

First, this a software case where the accused functionality resides in the operating system (Opp. at 1-2), which is designed and developed by engineers in the NDCA. To try to resist transfer, Uniloc relies on the presence of Flextronics – a third party that assembles the Mac Pro desktop computer. Uniloc has no basis to rely on Flextronics as there is no evidence suggesting that witnesses from Flextronics will be likely trial witnesses in this case, which Uniloc admits concerns software updates. Uniloc was free to obtain discovery from Flextronics to try to identify a trial witness, but did not (because there are no such witnesses).

Second, the presence of Uniloc's physical documents in the EDTX does not warrant keeping this case in the WDTX. Indeed, Judge Gilstrap previously determined that Uniloc's prosecution history and prior art files were publicly available, acquired electronically, and – along with settlement documents – kept electronically on servers located in California. *See Uniloc USA, Inc. v. Apple Inc.*, 17-cv-258, Dkt. 104, at 7-8 (E.D. Tex. Dec. 22, 2017).

Third, there is no dispute that all of the relevant Apple documents are located in the NDCA. Jaynes Decl., ¶¶ 23, 24, 28, 59-64. There also is no dispute that the relevant source code is located in the NDCA, and will be made available for inspection in the NDCA. Opp., Ex. 8 at ¶ 11. Uniloc's reliance on the fact that documents can be accessed remotely improperly eviscerates the entire first transfer factor – "relative ease of access to sources of proof" – in every case involving digital records. *See Fintiv, Inc. v. Apple Inc.*, 18-cv-372-ADA, 2019 WL 4743678 at *4 (W.D. Tex. Sept. 10, 2019) ("[U]nder current Fifth Circuit precedent, the physical location of electronic document[s] does affect the outcome of this factor.") (citation omitted). The undisputed facts demonstrate that the relevant Apple sources of proof are located in California. Jaynes Decl., ¶¶ 5, 21, 23, 44, 47, 62.

B. The Availability of Compulsory Process to Secure Attendance At Trial Favors Transfer

In an ironic (and meritless) twist, Uniloc identifies and attempts to rely on two prior art inventors, purportedly located in the WDTX, on patents that Apple did not even identify in its invalidity contentions (Garritt W. Foote and Thomas Van Weaver). Opp. at 10; Guaragna Decl., Ex. 6. There are no likely third-party witnesses in the WDTX subject to compulsory process and Uniloc's attempted reliance on alleged prior art witnesses that Apple did not even identify can't change that fact.

C. All The Likely Trial Witnesses Are Located In Or Around The NDCA

Uniloc agrees that "the convenience of witnesses is the single most important factor in the transfer analysis." Opp. at 12. There also is no dispute that all of the individuals who have been identified as likely trial witnesses are located in or around the NDCA. And, despite having venue discovery from Apple, both in the -296 Case and this one, Uniloc has not identified a single, relevant trial witness located in the WDTX.

Apple Witnesses. Apple identified four Apple employees with specific information

relating to the accused technology who reside in the NDCA. Mot. at 7, Ex. A, Jaynes Supp. Decl., at ¶¶ 59-64. Uniloc does not dispute that these individuals are relevant and that they are located in the NDCA, and did not even attempt to depose them. Instead, Uniloc claims that Apple cherry-picked these NDCA witnesses, but the unrebutted evidence shows that there is not a single relevant trial witness located in the WDTX. This is not surprising. Since 2013, sixty-two of the seventy-one (87%) times that Apple employees have testified live in patent trials across the United States, the employee was based in the NDCA. The other nine times (13%) involved Apple employees in Oregon, Kansas, Washington D.C., New York, Colorado or in Europe.

To try to undermine Apple's overwhelming evidence, Uniloc responds with speculation and conjecture about persons who *might* be relevant – despite having an opportunity to collect any evidence to prove up its theories during venue discovery. Each of Uniloc's speculative arguments should be rejected as they are refuted by the evidence Apple did provide.

First, Uniloc's reference to trial testimony from an unrelated, seven year old case should be disregarded. The case and witness have no relevance here. And Uniloc omitted the testimony confirming the inconvenient "time trade off" required when California-based employees working on products instead have to travel to Texas to support litigation. Opp., Ex., 25 at 37:22-38:2.

Second, there is no evidence in the record to suggest that any of the Apple employees with the acronym CDN in their job title are likely trial witnesses. However, there is evidence in the record refuting this assertion as Apple has testified that all of the team members who work on the accused technology are located in the NDCA. Jaynes Decl., at ¶¶ 24, 59-64; Guaragna Decl., Ex. 7, Jaynes Depo., at 116:8-14, 127-2:11, 143:23-144:10, 155:25-156:22, 166:19-167:20, 177:11-178:3. Consistent with this fact, CDN servers are not even identified in Uniloc's infringement contentions. If Uniloc truly believed that any of these individuals might actually be

trial witnesses it could have deposed them, but again, it did not.

Third, none of the publicly available articles or job postings Uniloc identifies show that witnesses relating to the accused technology are located in the WDTX. Again, the uncontroverted evidence demonstrates that the teams who work on the accused technology are all in the NDCA. Jaynes Decl., at ¶¶ 24, 59-64.

Fourth, Uniloc has not established that Ms. Dumareille, "senior advisor on iOS issues" in the AppleCare department has any knowledge relevant to this case or will ever be called to testify at trial. Again, Uniloc could have, but did not, depose Ms. Dumareille. *See Uniloc USA Inc. v. Box, Inc.*, No. 1:17-cv-754-LY, 2018 WL 2729202 (W.D. Tex. June 6, 2018) (declining to rely on identification of witnesses who had no involvement with the accused product).

Lastly, Uniloc's reliance on filings from the NDCA *Grace* case is actually consistent with Apple's identification of Deidre Caldbeck as an appropriate marketing witness. The cited exhibit shows that Ms. Caldbeck was the person with product knowledge providing content and direction to a technical writer. *See e.g.,* Opp., Ex. 28. Uniloc's conclusion about Ms. Titus seems to be that Apple has employees in Texas; that is neither contested nor relevant.

Uniloc Witnesses. Three of Uniloc's board members live and work in the NDCA. Opp., Ex. 19 at ¶ 2, Ex. 20 at ¶ 2, Ex. 21 at ¶ 2. One of Uniloc's employees lives in Northern California and the other two live in Southern California. Mot. at 6. Rather than acknowledging these facts, Uniloc offers self-serving declarations from its board members professing their willingness to travel to Waco. Allowing a plaintiff to ground a case in a jurisdiction based on its employees' willingness to travel there would allow plaintiff's preference of jurisdiction to trump Section 1404(a) in all cases. *In re TS Tech USA Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008). And because such declarations are non-binding, courts have declined to factor the plaintiff's "willingness to travel to Texas into its transfer analysis." *See, e.g., PersonalWeb Tech., LLC v.*

Google, Inc., 2013 WL 9600333, at *8 n.14 (E.D. Tex. Mar. 21, 2013).

Uniloc also identifies two of its employees, Sarah Gallegos and Sharon Seltzer, located in Plano, Texas. Opp. at 8. Setting aside the fact that neither of these witnesses are located in the WDTX, Uniloc never indicates any intention to call them as trial witnesses. In fact, after Uniloc identified Ms. Seltzer in past cases to avoid transfer, Apple sought to depose Ms. Seltzer, and Uniloc responded by demanding Apple "put off" her deposition and "withdraw [the] notices" because she had "relatively little information to provide." *See Uniloc USA, Inc. v. Apple*, 17-cv-258, Dkt. 40-2 (E.D. Tex. July 14, 2017). And, courts have rejected Uniloc's representations that its Plano-based witnesses, including Ms. Seltzer were likely trial witnesses. *See Uniloc USA, Inc. v. Apple*, 17-cv-258, Dkt. 104, at 15 (E.D. Tex. Dec. 22, 2017) (contrary to Uniloc's representations, discovery revealed that Uniloc does not consider Sharon Seltzer to have relevant information).

D. All Other Practical Problems That Make Trial Of A Case Easy, Expeditious and Inexpensive Favors Transfer

Contrary to Uniloc's representations, transferring this case to the NDCA will be more efficient. For example, the parties are disputing protective order provisions in this case that have already been resolved by the Courts in the NDCA; conflicting protective order provisions might require re-production of documents and source code, possibly with different production protocols, and differing access control to a variety of overlapping people. The same discovery disputes, already litigated, may be re-hashed in front of different judges. Substantive disputes like standing and subject matter jurisdiction may be duplicated as well. There will be little opportunity to align schedules with the 19 NDCA cases. In addition, all of the NDCA cases have been referred to Magistrate Judge Spero for mediation purposes.

III. CONCLUSION

For the foregoing reasons, this case should be transferred to the NDCA.

Dated: February 20, 2020

Respectfully submitted,

By: */s/ John M. Guaragna*

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on February 20, 2020, pursuant to Local Rule CV-5(a) and has been served on all counsel whom have consented to electronic service. Any other counsel of record will be served by first class U.S. mail on this same date.

/s/ John M. Guaragna
John M. Guaragna

EXHIBIT 7

[redacted]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

WACO DIVISION

UNILOC 2017 LLC,

Plaintiff,

-vs- Case No. 6:19-cv-532

APPLE INC.,

Defendant.
_____/

VIDEOTAPED DEPOSITION OF MICHAEL JAYNES

Rule 30(b)(6) FOR APPLE INC.

[redacted]

Date and Time: Friday, January 24, 2020
9:14 a.m.

Location: 2000 University Street
Suite 1000
East Palo Alto, California

Reported By: Martha Ruble, CSR-5145

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	***	
Also Present:	Daniel Gavern, videographer	
	Mark Rollins	

THE VIDEOGRAPHER: Good morning. We are going on the record. The time is 9:12 a.m. on Friday, January 24th, 2020.

This is the video deposition of Michael Jaynes in the matter of Uniloc versus Apple, Inc., filed in the U.S. District Court for the Western District of Texas, Waco Division. This is Case Number 6:19-cv-532-ADA.

This deposition is being held at 2000 University Avenue, East Palo Alto, California. My name is Dan Gavern, and I'm the videographer. The court reporter is Martha Ruble. We are both from the firm Talty Court Reporters with offices in San Jose.

Will counsel please state their appearance and affiliation for the record, starting with taking counsel.

MR. CHIN: Edward Chin of the Davis Firm for plaintiff Uniloc 2017, LLC.

MR. FUEHRER: Erik Fuehrer from DLA Piper on behalf of Defendant Apple. And with me is Ryan Moran, in-house counsel for Apple, and Mark Rollins from Apple.

THE VIDEOGRAPHER: Thank you. Will the court reporter please swear in the witness, and we can begin.

MICHAEL JAYNES,

having been first duly affirmed to tell the truth, the whole truth, and nothing but the truth, testified as

Q. Or anywhere in Texas?

A. At the time I spoke with him, I don't believe there was anybody in Texas, no.

Q. Did you actually ask him?

A. I believe I did. Every one of these interviews I'll ask if any of the relevant team members would be in Texas.

Q. Did you ever ask Mr. DuBois whether he has ever had any of the members of his team work out of Texas anywhere?

A. Yes.

Q. Okay. And what did he tell you?

A. He said no. The team has -- is in Cupertino and always has been.

Q. Do you know if he or his team -- Mr. DuBois, do you know if he or his team ever traveled to Texas?

A. I asked him if there was any interaction with folks in Texas, and I believe the answer was no. I don't recall then following up to ask if he has been to Texas before.

Q. Okay.

A. He said there is no professional connection to Texas.

Q. Okay. But so you don't -- I mean, either you know or you don't know. That's why I'm asking these

BY MR. CHIN:

Q. Well, you know -- you've seen damages expert reports, right?

MR. FUEHRER: Objection. Scope.

THE WITNESS: I don't know that I have seen any at my time at Apple in the last five years, but certainly before that I have, yes.

BY MR. CHIN:

Q. Right. And you know that the way those are done is they assume infringement for the purposes of the report, right?

MR. FUEHRER: Objection. Calls for a legal conclusion. Scope. Foundation.

THE WITNESS: It would certainly depend on the specific report. But that's a fair assumption, yes.

BY MR. CHIN:

Q. And so you know financial documents and financial data, sales data, revenue data, expense data, all that is relevant in a patent infringement case? Generally you know that, right?

MR. FUEHRER: Same objections.

THE WITNESS: It would depend on what's produced. But there is financial data that would be produced in a typical patent infringement case. That's fair.

BY MR. CHIN:

Q. So in terms of financial data relevant to the App Store, are there people based in Texas -- are there Apple employees based in Texas who have those responsibilities as part of their work duties?

MR. FUEHRER: Objection. Scope.

THE WITNESS: I'm not aware of any as far as financial teams being in Texas related specifically to the App Store. The individuals I work with related to the App Store and myself, in particular, my team, are all based in California.

BY MR. CHIN:

Q. Did you investigate whether there are people -- Apple employees based in Texas who work with sales data, financial data, pertaining to the App Store?

MR. FUEHRER: Objection. Scope.

THE WITNESS: I have a general idea of the responsibilities of the finance individuals in Texas. But I did not inquire for every single individual down there if they have responsibilities related to the App Store.

BY MR. CHIN:

Q. You don't need to interview every single person to figure out if there are Apple employees based in Texas who deal with financial and sales data pertaining to the

App Store, right?

MR. FUEHRER: Objection. Scope.

THE WITNESS: Depends on your questions.

BY MR. CHIN:

Q. So, for example, are there people in -- are there Apple employees based in Texas who work with the app developers?

A. I don't know if there is anyone in Texas who works with app developers. And I don't know that that would be a finance individual, in any case.

Q. Did you investigate whether there are Apple employees based in Texas who work with the app developers?

A. I, previous to the initial declaration, spoke to two individuals in Texas that are in finance and asked them if they had any relevance, any information related to all the accused technologies within the first declaration, and they said no. I did not talk to every single finance person in Texas.

Q. That's not what I asked. And I'm asking a question broader than just the financial data.

I'm asking are there any Apple employees --

As part of your investigation, did you find out if there are any Apple employees based in Texas who work with the app developers?

BY MR. CHIN:

Q. And how long has Apple had the CDN node in Dallas?

A. I don't know how long the CDN node exists in Dallas.

Q. Lionel Gentil would know, likely?

A. I don't know if he would know. But he -- Lionel is who I spoke to about the Dallas location for CDN servers.

Q. Are all the nodes on the CDN Apple-owned servers, or is it a mix? Certain are Apple and other ones involve third party?

MR. FUEHRER: Objection. Misstates prior testimony.

THE WITNESS: The content delivery network servers are a mix of Apple-owned servers as well as third-party servers.

BY MR. CHIN:

Q. Okay. So the ones in Dallas, the CDN, are Apple-owned, right?

A. Correct.

Q. And are there other nodes in the CDN that are third-party owned or operated that are physically in Texas?

A. As I mentioned, the third parties don't share

the locations of the CDN servers with Apple.

Q. Who are the third parties that are involved with the CDN?

A. I believe Lionel said third parties such as Akamai or Azure are the names I recall. But I would have to confirm those names.

Q. Azure is run by Microsoft, right?

A. I believe so. But, again, that's publicly available. I suggest you look to confirm that.

Q. And your understanding is that no one at Apple knows where Akamai or Azure hosts or have their nodes that are used for the CDN that the App Store operates through?

A. My understanding is that third parties don't share that information with Apple.

Q. Okay. So one would have to ask Akamai or Microsoft? Does that sound right?

A. Again, confirming with Lionel that those are the right third-party CDN providers, yes.

Q. Do you know if Amazon web services is being used as part of the CDN?

A. I don't recall that specifically yes or no.

Q. Is there anybody -- is there any Apple employee in Texas that is involved in the operation of the update and commerce servers?

A. Not that I'm aware of.

Q. Just so I'm clear, not that you are personally aware of? Or are you saying you've investigated it and you've come to the conclusion there are none?

A. For the app update and commerce servers, I spoke to three individuals listed on Exhibit 3, all three of which were located, you know, around Cupertino. And I specifically spoke to them about the location of the servers but also the fact that they are located in Cupertino.

Q. Do you know how many people are -- or how many Apple employees, if any, are at the CDN node in Dallas to maintain and operate that node?

A. I don't know if that's an Apple facility specifically, the one in Dallas or not.

Q. So you know that the node is there, but you are not able to tell us how many Apple employees work at that node; is that right?

A. I know the node is in Dallas. As I mentioned, I don't know if the servers are in Apple's Dallas office or another location within Dallas.

Q. I think we are on the same page in terms of that node being physically in the Dallas area, right? Yes?

A. The CDN servers in the Dallas area, they are Apple-owned, yes.

Q. In terms of the number of Apple employees that work at that CDN node in the Dallas area, do you know how many there are?

A. I do not know if there is any or how many there are.

Q. If there are any Apple employees working at that CDN node, they ought to be reflected in the HR count spreadsheet that you reviewed in preparing for the deposition?

A. The head count report, if there is Apple employees in, I believe it was, the Western District of Texas. So the Western District is not Dallas.

Q. You don't have a -- that HR spreadsheet does not include anybody that might be working out of Dallas; is that right?

A. I defer to the spreadsheet that I don't have in front of me. But I believe it was the Western District of Texas, which does not include Dallas.

Q. That CDN node, is that used solely for the App Store, or is it used for other things too?

MR. FUEHRER: Objection. Vague.

THE WITNESS: I don't know if there is any other content besides the App Store content.

BY MR. CHIN:

Q. So you know it's at least the App Store content,

Q. How would we -- how would you go about finding that out? Do any of the finance people in Austin deal with the App Store in any way?

A. As I mentioned, I've spoken to individuals in Austin finance before, specifically about the accused technology in this case. I did not go as broad as the entire Apple store. So I could call one of those individuals up and ask them if they have any knowledge of App Store in general for finance.

Q. When you say that you ask the people in Austin but you were asking in a way specific to the accused -- did you say "technology"?

A. Yes, sir.

Q. When you were doing that, were you excluding in your mind activities such as the finance people dealing with the financial transactions involving Apple developers, their cut of the 30 percent, how that gets paid to them?

MR. FUEHRER: Objection. Foundation.

THE WITNESS: It would be, as far as the financial piece, the -- more pointed to the accused technology. I wasn't asking about the entire App Store or the specific cut to developers versus Apple.

BY MR. CHIN:

Q. So if we wanted to find out where all the

locations of all the financial data pertaining to how Apple sends money to developers as part of the 30 -- or receives money, you know, as part of the 30 percent cut and communicate that to the app developers, how would you -- how would you figure out where that financial data was at?

MR. FUEHRER: Objection. Scope.

THE WITNESS: I've dealt with App Store financial data many times in the past, and I've always worked with individuals here in Cupertino. I have been to their offices. I have met with them. I spoke to them. So I would start with all the individuals in Cupertino first.

BY MR. CHIN:

Q. You're saying you would ask people in Cupertino whether there are people in Austin that have such financial data? Is that what you're getting at?

A. I would go to the source of the individuals that I know related to app finances who reside in Cupertino.

Q. Are you aware of a team in Austin that deals with app finances?

A. I'm not.

Q. Is there even a team or department at Apple anywhere called app finances?

A. I don't if they are called app finances.

Q. So what team or group would deal with app finances?

A. They changed names over time. But essentially the services, or it used to be called the iTunes finance team. We don't have an org chart, so this is my terminology for that group.

Q. So let's just call it the iTunes financing for the time being. Is that okay since you don't have a different name that we should use?

A. That's fine.

Q. Are there members of the iTunes finance team in Austin?

A. I'm not aware of any specifically, but I don't know. All the iTunes finance folks that I've worked with are in Cupertino.

Q. If you wanted to find out if there are any members of the iTunes finance team located in Austin, how would you go about finding that?

A. I would, again, either ask the iTunes finance folks in Cupertino, who I do know, or I mentioned I spoke to a couple individuals in Austin finance.

Q. Do you think that's something that can be determined by reviewing the HR report?

A. No, not necessarily.

Q. Okay. Possibly but not -- the data may not

Cupertino. But, again, just to be transparent, I'm not talking about backup copies or anything like that as far as servers go.

Q. So you're really saying one copy of the source code is in Cupertino, right?

A. My understanding is the primary copy is in Cupertino. But there could be disaster recovery sites, things like that. Just to be clear, I'm not speaking to those pieces.

Q. Can the source code be remotely accessed?

A. It would be the same answer, that I would have to confirm with Mr. DuBois. But I'm not aware of anything specifically prohibiting that.

Q. So, for example, you're not aware of any policy in place at Apple that if one wants to look at the source code, let's say, relating to the App Store or the accused technology, as you framed it, you have to be physically in Cupertino in a particular office or building? There is no such policy, right?

MR. FUEHRER: Objection. Vague.

THE WITNESS: I'm not aware of that particular hypothetical policy.

BY MR. CHIN:

Q. In Exhibit 3 one of the names you had there was Patrick Thomas. Is that a different person than Eric

Thomas that you mentioned earlier?

A. Yes, it is.

Q. Is Eric Thomas part of a team called Core OS, C-o-r-e OS?

A. I don't recall his team name.

Q. Have you heard of Core OS before?

A. I have seen it on the head count report.

Q. What's your understanding of it?

A. I recall Ms. Kayla Christie -- I believe it was Ms. Christie testifying about the Core OS.

Q. You can't confirm if Mr. Thomas is part of that team or not?

A. Patrick Thomas is not part of that team.

Q. I meant Eric Thomas. I apologize.

A. Eric Thomas is in Cupertino, so he's not part of that particular team to the extent it exists on the head count report. But I don't recall Eric Thomas's precise group.

Q. Now, paragraph 64 in Exhibit 4 refers to a Mr. Brian Ankenbrandt, who is senior legal counsel for IP transactions at Apple. Do you see that?

A. I do.

Q. He is located in Cupertino?

A. He is located in Sunnyvale actually but -- which is adjacent to Cupertino.

Q. And you mention his team members. What team is that?

A. It would be the IP transactions team.

Q. Is the entire -- well, what does the IP transactions team do at Apple?

A. The IP transactions team would negotiate and analyze presuit license deals.

Q. What do you mean by that?

A. Work with various entities or individuals to negotiate and analyze patent licenses or enter into patent licenses before a litigation would be filed.

Q. By the other party or by Apple?

A. I suppose it could go either way.

Q. But that team -- is that team involved in licensing Apple's patents to others?

A. It could be. Oftentimes it's the reverse, but it could be.

Q. Are there any members of the IP transactions team located in the Western District of Texas?

A. Not that I'm aware of, no.

Q. Are there any Apple employees located in the Western District of Texas who deal with licensing of intellectual property?

MR. FUEHRER: Objection. Vague. Scope.

THE WITNESS: As far as like the IP transactions

team, no, I'm not aware of any.
BY MR. CHIN:
Q. Well, putting aside people in that specific team, are there any Apple employees in the Western District of Texas that deal with intellectual property license?
MR. FUEHRER: Objection. Vague.
THE WITNESS: Not that I'm aware of.
BY MR. CHIN:
Q. What about intellectual issues pertaining to the App Store?
MR. FUEHRER: Objection. Vague.
THE WITNESS: Not that I'm aware.
BY MR. CHIN:
Q. What about contracting? Are there any Apple employees located in the Western District of Texas that deal with contractual negotiations involving app developers?
MR. FUEHRER: Same objection.
THE WITNESS: I don't know. I'm not aware of anything, but I don't know.
BY MR. CHIN:
Q. Are there written agreements between Apple and the app developers?
MR. FUEHRER: Objection. Scope.

A. The marketing group or product marketing group at Apple that Deidre is a part of will come up with features to be marketed within Apple products. So they are driving the decisions of what types of features to market and communicate to customers for our products.

Q. And what type of marketing, if any, does that marketing group do in relation to the iOS update accused technology that you refer to there in paragraph 44?

A. I don't recall if Deidre said we do any marketing related to the iOS update specifically. But if we did, it would have run through her and the general product marketing team.

Q. Now, you're aware that part of the value proposition of buying Apple iOS and macOS devices is that, for example, the operating system and updates to it are provided for free, right?

MR. FUEHRER: Objection. Scope and lacks foundation.

THE WITNESS: I would agree that's one of many value drivers.

BY MR. CHIN:

Q. Right. And that's implemented through the App Store or through the app-update capability, right?

MR. FUEHRER: Same objections.

THE WITNESS: As I mentioned earlier, I don't

know if iOS software apps are technically run through the App Store or separately. But I agree there are software updates made free to Apple product owners.

BY MR. CHIN:

Q. Are all of Apple's marketing group located in the Northern District of California, or are they spread out around the country?

A. The product marketing group, what I'm referring to as the marketing group, are all in or around Cupertino, to my knowledge.

Q. As part of your investigation, did you try to find out if there were any Apple employees in the Western District of Texas who work on marketing related to Apple's products?

MR. FUEHRER: Objection. Scope.

THE WITNESS: I asked Deidre Caldbeck that specific question. She said no. The product marketing group is here in Cupertino.

In addition, I looked at the head count report. And if you do searches on that, you will find a few individuals, a couple, that have the word "marketing" in their title in some fashion. And so I took the step to look into those couple individuals, and they actually roll up, from my recollection, into the sales group. It's just a marketing term within their title, not

actually within the marketing group or certainly not a product marketing group that makes the marketing decisions that I'm referring to.

BY MR. CHIN:

Q. In paragraph 44, the last sentence says, "All the relevant documents generated concerning the marketing of any of these accused technologies in the United States reside in the Northern District of California."

Do you see that?

A. Yes.

Q. Do they also reside elsewhere?

A. As far as backup copies, things of that nature, I'm not speaking to those. I don't know if there is disaster recovery or other areas like that. But I'm referring to specifically asking Deidre that question and her telling me that the marketing documents are here in Cupertino along with the full team.

Q. And those marketing documents, they are remotely accessible if they are on a network drive, right?

A. I think that's fair, to my knowledge.

Q. Does Apple have a sales team that works with the app developers?

MR. FUEHRER: Objection. Scope.

THE WITNESS: I don't know specifically.

BY MR. CHIN:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

UNILOC 2017, LLC	)	Docket No. WA 19-CA-532 ADA
	)	
vs.	)	Waco, Texas
	)	
APPLE, INC.	)	May 12, 2019

TRANSCRIPT OF TELEPHONIC MOTION HEARING
BEFORE THE HONORABLE ALAN D. ALBRIGHT

APPEARANCES:

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09:03:23 THE COURT: Good morning, everyone.

09:03:24 It's Alan Albright. How are you all this

09:03:26 morning?

09:03:27 MR. GUARAGNA: Good morning, your Honor.

09:03:28 John Guaragna for Apple. Doing well. Thanks.

09:03:32 MR. DAVIS: Good morning, your Honor.

09:03:34 Bill Davis for Uniloc.

09:03:35 THE COURT: Good morning.

09:03:36 Sorry. We're trying to get organized here. I

09:03:39 apologize. But I have to be in a different place that I'm

09:03:44 used to, and we're trying to get everything into shape.

09:03:46 So I apologize for us running a minute or two late.

09:03:48 My understanding is, and it's probably Mr.

09:03:52 Guaragna's concern for Apple, that there is an issue about

09:03:55 what to do with regard to how to protect any confidential

09:03:59 information.

09:04:00 Mr. Guaragna, your thoughts on that, or your

09:04:02 concerns.

09:04:03 MR. GUARAGNA: Yeah. Thank you, your Honor.

09:04:05 John Guaragna for Apple.

09:04:07 It's actually Uniloc s confidential information.

09:04:10 THE COURT: Oh, okay.

09:04:10 MR. GUARAGNA: That's been provided to the Court.

09:04:12 Typically these hearings are open, so I wasn't

09:04:14 anticipating we'd have to excuse our folks. We do have

09:04:17 three of our Apple client representatives on the line.
09:04:20 David Melaugh, Marc Breverman and Matt Clements.
09:04:24 So I did want to obviously address that issue,
09:04:27 but it is, I think, Mr. Davis' concern.
09:04:29 THE COURT: Okay. I apologize.
09:04:30 Mr. Davis.
09:04:31 MR. DAVIS: Yes, your Honor.
09:04:33 If I may, I think I have a solution. The
09:04:36 confidential information is really on slides 9 and 10 of
09:04:40 our presentation related to relevant nonparty witnesses
09:04:45 and their geographical locations. And I think I can make
09:04:48 those arguments without referring to the specifics of who
09:04:54 those folks are and what their, I guess, relevance is.
09:05:00 And so, I think as -- we had provided a redacted
09:05:04 copy of our presentation to Apple, so I believe the
09:05:08 inhouse folks have that. And I think if all of us are
09:05:13 just careful about slides 9 and 10 and don't refer to
09:05:17 specific licensees and their locations, then I think -- I
09:05:21 think we can solve it.
09:05:23 THE COURT: Okay. Well, I'll tell you, let's do
09:05:26 this. I will -- it's kind of a wonky -- I'm not sure how
09:05:32 my court reporter takes down that word, but we're kind of
09:05:35 in a unusual situation, given that we're doing this by
09:05:40 phone. I appreciate that, you all agreeing to do it by
09:05:43 phone, trying to get it done. I want to get this resolved

09:05:47 in advance of the Markman hearing, one way or the other.

09:05:52 And so, Mr. Davis, what I'll do is, if, for some
09:05:58 reason, while -- if something happens where you -- even if
09:06:03 Mr. Guaragna or I am speaking or something's going on that
09:06:07 you fear we are treading into information that should be
09:06:15 confidential and restricted, please feel free to interrupt
09:06:18 Mr. Guaragna or me just for the purposes of making sure we
09:06:20 can protect your information. I'm sure that the folks
09:06:23 from Apple will understand why we're doing that. I'm sure
09:06:26 there are hearings where they've got the same concerns and
09:06:29 they would want the same thing done for their information,
09:06:32 as well.

09:06:33 So all that being said, I have in front of me the
09:06:39 PowerPoints that were provided by the counsel in advance
09:06:42 of the hearing. Thank you very much for that.

09:06:45 If I could hear, Mr. Davis, if you'll tell me --
09:06:49 are you going to be arguing behalf Uniloc?

09:06:53 MR. DAVIS: Yes, your Honor.

09:06:54 THE COURT: Okay. And, Mr. Guaragna, will you be
09:06:55 arguing on behalf of Apple?

09:06:59 MR. GUARAGNA: Yes, your Honor.

09:06:59 THE COURT: Is there anyone else, Mr. Davis, who
09:07:02 will be arguing on behalf of Uniloc?

09:07:05 MR. DAVIS: No, your Honor.

09:07:05 THE COURT: Okay. Same for -- Mr. Guaragna, same

09:07:09 for Apple?

09:07:09 MR. GUARAGNA: Correct. No, your Honor.

09:07:11 THE COURT: Okay. Very good.

09:07:12 Mr. Guaragna, then the floor is yours. And my
09:07:17 sound quality is great. So whatever everyone is doing
09:07:19 right now, we can keep doing that, that would be terrific.

09:07:23 Mr. Guaragna, the floor is yours and I have your
09:07:26 presentation in front of me.

09:07:28 MR. GUARAGNA: Thank you, your Honor. I
09:07:30 appreciate that.

09:07:30 And right now, the sound quality here is great,
09:07:34 too. I think perhaps the threat of the injunction your
09:07:37 Honor raised on a prior call against leaf blowers did some
09:07:42 good for the moment. The background noise is at a
09:07:45 minimum, and let's hope it stays that way.

09:07:48 Your Honor, I want to start with a little bit of
09:07:49 a history. And Uniloc and Apple actually have a long
09:07:54 history; and, in fact, Uniloc has sued Apple in Texas more
09:07:57 than 20 times. All of those other cases were transferred
09:08:02 to the Northern District of California, except for two
09:08:05 that were stayed pending IPR. Two different Texas judges
09:08:10 have looked at the disputes between Apple and Uniloc, and
09:08:13 they've determined that the Northern District of
09:08:15 California is the more convenient venue for disputes
09:08:18 between the two parties.

09:08:19 And I'll start with Judge Gilstrap, and that's
09:08:23 slide 2 of the Apple deck that we've provided is some
09:08:28 excerpts from a Judge Gilstrap order. Judge Gilstrap
09:08:31 actually transferred 10 Uniloc cases against Apple to the
09:08:35 Northern District of California over Uniloc's strenuous
09:08:38 objections. And, importantly, I think, your Honor, is in
09:08:42 doing so, in Judge Gilstrap's order, he actually found it
09:08:45 troubling Uniloc had made contradictory representations
09:08:49 about who were the relevant witnesses for purposes of
09:08:51 transfer.
09:08:53 He also noted that those representations fly in
09:08:56 the case of Uniloc's prior representations, and that's
09:08:59 noted again on the slide No. 2 in our deck. He then
09:09:06 concluded that the Northern District of California was the
09:09:09 clearly more convenient venue and transferred all the
09:09:11 cases, shown on slide No. 3, to the Northern District,
09:09:13 again, except for the two that were stayed pending IPR.
09:09:16 So that's history with respect to Uniloc cases
09:09:19 that were filed in the Eastern District. But even more
09:09:22 recently, Judge Yeakel --
09:09:22 THE COURT: Mr. Guaragna.
09:09:26 MR. GUARAGNA: Yes, your Honor.
09:09:26 THE COURT: So -- and I'll let you get to what
09:09:29 Judge Yeakel did in a second. But what either weight may
09:09:39 be the right word -- or I'm trying to come up with the

right word. But the fact that other district judges have made this decision with respect to Uniloc vs. Apple, what legal impact does that have on me? Is it just that it should be persuasive that other district judges have looked at the factors and have determined that the Northern District of California is clearly more convenient and they transferred it, does that have any precedential effect on me?

What is Apple's position with respect to whether -- and I just don't know the answer. Is the fact that Judge Yeakel and Judge Gilstrap, who are both obviously very savvy judges with respect to patent cases, is it just persuasive that they've done it, or is it precedential that they have done it? What is the standard I should take from the fact that other district judges have made the same -- have made the decision that Apple is asking me to make?

MR. GUARAGNA: I understand the question, your Honor, and I think that there are three issues that I think we could point to for purposes of why these prior decisions are important.

Number one is the fact that there are now numerous cases pending in the Northern District between Apple and Uniloc, including cases where similar technology is at issue is relevant with respect to judicial economy

09:11:21 and the practical problems, which is a factor in the
09:11:24 analysis with regard to whether or not the case should be
09:11:26 transferred from -- this particular case should be
09:11:29 transferred from the Western District to the Northern
09:11:29 District.
09:11:33 So the fact that all these cases have been
09:11:34 transferred, number one, is a relevant factor in the
09:11:37 transfer analysis for this case.
09:11:39 THE COURT: Okay.
09:11:40 MR. GUARAGNA: Number two, I think it's important
09:11:43 to compare and contrast what Uniloc is now saying about
09:11:47 relevant witnesses with respect to certainly Apple's side
09:11:51 of the equation versus what prior judges have looked at
09:11:55 and concluded with respect to who, in fact, are the
09:11:59 relevant witnesses who are likely to testify at trial.
09:12:01 Two judges who have looked at it have said, I'm evaluating
09:12:06 the evidence presented and the Apple witnesses with who
09:12:09 have been identified by Apple are the likely witnesses to
09:12:13 be testifying at trial. Those are the folks who need to
09:12:16 focus on for purposes of the transfer analysis.
09:12:18 And because the technology overlaps between those
09:12:22 prior cases, in this case, I think that analysis is
09:12:26 instructive to whether the Court should credit any of the
09:12:28 information that Uniloc has pointed to in this case for
09:12:32 purposes of identifying any relevant witnesses.

09:12:38 So certainly not controlling. Certainly not
09:12:41 controlling on your Honor that these cases have been
09:12:43 transferred, but certainly persuasive and then, in
09:12:47 addition, directly relevant to the factors this court is
09:12:50 going to evaluate and analyze.
09:12:52 THE COURT: And not to skip ahead too much, but
09:12:55 I'm sure what I'll hear from the plaintiff, and have in
09:12:58 the briefing, and anticipate hearing this morning is your
09:13:03 point that is a relevant factor because the technology is
09:13:07 overlapping, I feel certain that the plaintiff is going to
09:13:11 argue that that doesn't matter because the plaintiff is --
09:13:15 I'm sorry. The patent is different in this case than in
09:13:18 those cases.
09:13:20 And I know that I have encountered this in other
09:13:26 cases not involving Apple, I don't think, but other cases
09:13:30 where litigants like Uniloc had sued a particular
09:13:37 defendant in northern California, they had sued them in
09:13:41 Delaware, they had sued them in the Western District of
09:13:45 Texas, and, again, what -- what precedential -- if there
09:13:51 is precedential, how is it relevant to me in terms of this
09:13:58 case that this patent is not -- has not been asserted in
09:14:04 those other cases? And help me out there.
09:14:09 I anticipate I'm going to hear the plaintiff make
09:14:12 that argument, and you may as well address it now.
09:14:16 MR. GUARAGNA: Understood, your Honor.

09:14:17 So I will point out in the first instance that
09:14:21 one of the cases that was transferred from the Texas
09:14:28 district court to the Northern District of California
09:14:30 actually asserts a patent that is directly overlapping
09:14:34 with regard to the technology asserted in this case. And
09:14:38 how do we know that? Well, we know that because in the
09:14:44 Northern District case now, one of the asserted patents
09:14:47 actually cites to the patent asserted in this case as
09:14:51 prior art. So there's no way that Uniloc can argue that
09:14:54 there is not technical overlap. And that case is
09:15:02 5:18-CV-357, which is set for a CMC in July.
09:15:05 So this isn't just speculation that this
09:15:07 technology overlap. We actually have direct technology --
09:15:12 direct patent overlap in the sense that a patent that is
09:15:16 being asserted in a case in the Northern District cites to
09:15:20 a -- to this patent being asserted in this case as prior
09:15:23 art.
09:15:24 THE COURT: Okay.
09:15:25 MR. GUARAGNA: So that's one issue.
09:15:26 The other thing that I think warrants mentioning,
09:15:30 your Honor, is there is nearly identical product --
09:15:33 accused product overlap in these cases. So we're not just
09:15:38 talking about the technology of the patent, but the same
09:15:41 products are being accused in all of these cases. Nearly
09:15:45 identical overlap.

09:15:46 So yes, the cases assert different patents by
09:15:50 their nature. A patent case is going to have to assert a
09:15:53 different patent. But here, we're looking at the same
09:15:56 parties, nearly identical overlapping witnesses,
09:16:00 overlapping accused products, in here, clearly overlapping
09:16:04 technology. So I think all of those issues are relevant
09:16:07 to your Honor's analysis as to whether this case belongs
09:16:11 in the Western or the Northern District of California.
09:16:14 THE COURT: Okay. And I'm sorry, I interrupted
09:16:17 you. You were about to go into a slide, I believe, with
09:16:22 respect to -- on slide 4, with respect to Judge Yeakel's
09:16:25 transfer order.
09:16:27 MR. GUARAGNA: That's right, your Honor.
09:16:30 And so, beyond Judge Gilstrap, Judge Yeakel
09:16:33 looked at cases even more recently between Uniloc and
09:16:36 Apple, and he ordered those transferred from the Western
09:16:38 to the Northern District of California. He found the
09:16:41 Northern District of California was clearly more
09:16:44 convenient as set forth in the slide.
09:16:47 He also noted -- and I think this is important --
09:16:49 that convenience of the witnesses weighs strongly in favor
09:16:52 of transfer. And so, as your Honor recognizes the
09:16:56 convenience of witnesses is the most important factor,
09:16:59 Judge Yeakel looked at the varying evidence submitted by
09:17:02 the parties and concluded that that was a factor that

09:17:05 weighed strongly in favor of transfer. The same is true
09:17:08 in this case and we'll get to that in just a minute.
09:17:13 So Judge Yeakel actually transferred all of the
09:17:15 Uniloc cases filed against Apple in the Western District
09:17:17 to the Northern District of California, except for one,
09:17:21 and if you look at slide 5, we can identify that. The one
09:17:25 case he did not transfer was a prior case, asserting the
09:17:31 same patent asserted in this case: but Uniloc voluntarily
09:17:34 dismissed that case during the transfer briefing. And we
09:17:37 call that out in slide 5 in the bubble to the right. But
09:17:42 there was nothing unique about that case in Uniloc's
09:17:46 arguments to Judge Yeakel. They simply escaped transfer
09:17:50 by dismissing that case before a decision on transfer was
09:17:54 rendered.
09:17:54 But now, Uniloc has come back and re-filed that
09:17:59 same case again in the Western District. You might call
09:18:03 that brazen, but there's really something untoward about
09:18:06 the whole scenario. But setting aside the appearances and
09:18:10 what the motives were, the case for transfer is even
09:18:15 stronger now, and this gets to the question that your
09:18:17 Honor asked.
09:18:18 The facts here in this case are nearly
09:18:21 indistinguishable from the cases that Judge Gilstrap and
09:18:25 Judge Yeakel transferred but -- and it's a big but -- I
09:18:28 think the case for transfer now is even stronger because

there are even more pending cases between Apple and Uniloc in the Northern District. So judicial economy is even more pronounced now than it was before when those prior cases were transferred.

So, Judge, I'm not one to easily --

THE COURT: Mr. Guaragna, let me ask you this.

MR. GUARAGNA: Yes.

THE COURT: And I'm -- if a plaintiff makes the decision -- if the plaintiff makes a decision as they see the filings that have been made by Apple in the case in front of Judge Yeakel and they make the decision that they know that if the case -- if Apple's motion is successful and one or more of the cases are transferred to the Northern District of California, and they have some particular reason to want to have that case handled in a manner that they believe might be more expeditious by not having it transferred and re-filing it, yes, in the Western District, but in a different division that they know has a set procedure that is going to get them to trial more quickly than they believe might happen with the remaining cases that get transferred -- and, in fact, the fact that there are a number of cases that are going to be transferred means the likelihood that all those cases are going to go more slowly; and they decide that for a particular case, they would like to have that one put in a

09:20:24 venue that they believe is best to their client because it
09:20:29 is the most expeditious. What's wrong with that?
09:20:34 MR. GUARAGNA: Your Honor, we're not arguing that
09:20:36 what Uniloc did is not permissible. That's not our
09:20:41 argument. What we're arguing here is that it is offensive
09:20:48 in the sense that the arguments that they made to Judge
09:20:52 Yeakel about all the cases were all made together. They
09:20:55 didn't distinguish anything about this prior case that
09:20:58 they dismissed that they've now re-filed, suggesting that
09:21:02 the results should be any different with that case.
09:21:04 So now, they come back, after Judge Yeakel looked
09:21:06 at all that evidence, and said it's clearly more
09:21:11 convenient to litigate these cases in the Northern
09:21:13 District. To come back and file in the Western District,
09:21:16 I think, is offensive in the sense that these issues were
09:21:20 already evaluated and determined by a federal district
09:21:25 judge.
09:21:25 And yes, they were able to dismiss it and come
09:21:29 back and file it. That's not impermissible, but I think
09:21:32 as we'll demonstrate here, it really does raise some
09:21:36 concerns about motives and appearances. And I'm not one
09:21:39 to jump to hyperbole, Judge, but if there ever was a case
09:21:43 that should be transferred, I think it's this case: and
09:21:47 the reason for that is that Uniloc can't point to any
09:21:50 material differences in this case to suggest that the

09:21:54 results should be any different from what Judge Gilstrap
09:21:57 and Judge Yeakel determined with regard to those prior
09:21:59 cases. So what we --
09:22:02 THE COURT: But there is a big difference. There
09:22:04 is a big difference between Apple's connection with
09:22:09 Western District, as opposed to the Eastern District, a
09:22:13 massive difference, in my opinion, and there is a
09:22:19 difference between the method of handling cases -- patent
09:22:29 cases between Judge Yeakel's docket and mine.
09:22:34 So, again, that's why I'm curious about the
09:22:36 precedential value because whereas one district judge --
09:22:41 for example, let me say it like this. The heaviest docket
09:22:44 we have in America, I think, for patent cases, we all
09:22:47 would agree, would be in Delaware. That's -- by numbers,
09:22:50 that's impossible to debate. Each of those judges has
09:22:55 three or four times, you know, the number of cases most
09:23:00 other judges in America have by a lot.
09:23:04 And so, if you were to say a Delaware judge or
09:23:10 Judge Yeakel, who has a very heavy docket in Austin, a
09:23:13 very heavy civil docket overall, or Judge Gilstrap, who's
09:23:18 in the Eastern District, which has a different
09:23:21 relationship with Apple, if a plaintiff wants to say, as
09:23:27 opposed to being in the Northern District of California,
09:23:33 I'm going to make an argument to a judge in a division
09:23:37 that has a set practice that is getting my case to court

09:23:43 in an efficient manner and will get it there in a more
09:23:47 expeditious manner than I believe can be done in the
09:23:52 Northern District of California, what is -- why wouldn't a
09:23:57 plaintiff do that?
09:24:01 MR. GUARAGNA: So let me address your Honor's
09:24:04 questions, and I'll try to address them in the order you
09:24:06 presented them, Judge.
09:24:07 So the first one was with respect to Apple's
09:24:11 presence in the Western District, and I think that issue
09:24:15 clearly was litigated in the order that Judge Yeakel
09:24:20 issued with respect to Apple's presence because obviously
09:24:24 that case was also filed in -- those cases before Judge
09:24:28 Yeakel obviously were filed in the Western District. So
09:24:30 the issue of Apple's presence in the Western District was
09:24:34 directly at issue in those cases that were transferred to
09:24:37 the Northern District.
09:24:38 It also was indirectly at issue in the cases
09:24:41 before Judge Gilstrap because the question of Apple's
09:24:45 presence in Texas was also presented and addressed in
09:24:49 Judge Yeakel's arguments -- I'm sorry, in Judge Gilstrap's
09:24:51 order in response to Uniloc's arguments. So I think with
09:24:55 respect to Apple's presence, I think those facts are
09:25:00 certainly indistinguishable from the arguments made to
09:25:02 Judge Yeakel and certainly relevant to the arguments that
09:25:05 Uniloc made to Judge Gilstrap.

09:25:08 With respect to Uniloc's decision to come back to
09:25:13 the Western District and try again, I think that, again,
09:25:17 it's not impermissible to give that -- to give that option
09:25:23 another try, but they're not writing on a blank slate. I
09:25:28 think the most important thing here, your Honor, is that
09:25:30 the arguments that were made in this briefing, in this
09:25:35 particular case, are really no different than those that
09:25:39 were addressed in the last 12 months to two years.
09:25:42 And so, I don't think that they can just -- we
09:25:46 can erase the prior history among the parties and all of
09:25:50 the arguments and issues that went before and say we're
09:25:52 just going to start over brand-new. That just can't do
09:25:55 it. This case was part of the package of cases that was
09:25:57 addressed previously.
09:25:59 But I do want to talk a little bit about the
09:26:01 issue of court congestion because I think if we look at
09:26:07 Uniloc's briefing, in their response brief at page 18,
09:26:12 they actually compared and contrast the number of civil
09:26:15 cases that were filed in the Northern District versus the
09:26:21 Western District. And I think it's instructive if we look
09:26:25 at court congestion because the cases that Uniloc points
09:26:30 out, they point to three cases that they claim are active
09:26:34 in the Northern District that were previously transferred
09:26:36 from the Western.
09:26:37 Well, if we look at the court congestion, there

09:26:40 really is no comparison as to which court has more patent
09:26:44 cases. We look at Judge Davila, who had two of the Uniloc
09:26:48 cases now pending in the Northern District. In 2019,
09:26:52 Judge Davila had 19 patent cases in total. The older
09:26:56 Judge, Judge Alsup, presiding over the other Uniloc case,
09:26:59 had 18 whereas your Honor had 246 in 2019. And then, if
09:27:06 we look at Q1 of 2020, Judge Davila only had two patent
09:27:10 cases filed in the entire quarter; Judge Alsup, one; but
09:27:15 your Honor had 156.
09:27:16 So if we're going to look at court congestion as
09:27:20 a factor, certainly your Honor's court has many, many more
09:27:24 patent cases than the judges in the Northern District.
09:27:28 THE COURT: Okay.
09:27:31 MR. GUARAGNA: And so, your Honor, on slide No.
09:27:35 6, really, I think, brings home the issue here, and that
09:27:39 is, we've got all of these cases between these parties
09:27:42 pending in the Northern District, again, overlapping
09:27:46 facts, overlapping issues, overlapping technology, and
09:27:49 we've got this one case sitting here in Waco, Texas with
09:27:53 no connection to the Western District, standing out like a
09:27:57 sore thumb.
09:27:59 I don't think you can square keeping this one
09:28:01 case in Texas when all the other cases have been
09:28:04 transferred to the Northern District, which is the more
09:28:07 convenient venue for disputes between these parties.

09:28:12 THE COURT: Okay.

09:28:13 MR. GUARAGNA: So, Judge, I'm going to flip over now to slide No. 7, which summarizes the key factors for transfer and the issues that the Court should prioritize and focus on in determining which is the proper venue, a more convenient venue. On the most important of those factors, the convenience of the witnesses, none of the likely witnesses are in the Western District of Texas. There is just no evidence suggesting that there is a single likely witness in Texas.

09:28:45 All of the Apple witnesses are in the Northern District of California. Uniloc witnesses are also located in the Northern District of California, including board members, along with an investment firm Fortress, which is located in San Francisco, with several individuals that Uniloc has admitted are relevant to this particular case.

09:29:07 So that factor also goes to the issue of compulsory process and the fact that there would be compulsory process over those third-party witnesses in the Northern District of California, but there would not be over those same witnesses in the Western District of Texas.

09:29:22 THE COURT: Mr. Guaragna.

09:29:24 MR. GUARAGNA: Yes, sir.

09:29:24 THE COURT: We looked and we couldn't find

anything, and we looked because it doesn't make immediate sense to me why I would -- why I would care about the convenience of the plaintiff's witnesses.

I mean, I get it's a helpful fact for your side that the witnesses are located -- the Uniloc folks are located in the Northern District of California, but I'm not sure why as a -- if Uniloc, which is a sophisticated company, made the decision to file -- you know, I they could have filed anywhere, but they filed in the Western District where, you know, you now -- Apple now has its, you know, essentially second headquarters and is about to add 15,000 employees.

Why would a court take into consideration the convenience of the plaintiff's witnesses who -- when they clearly made the decision to file in this court. I just -- I couldn't find a case and it doesn't make sense to me. And maybe it doesn't need to make sense to me. Maybe it's the point of this -- maybe the point of this particular prong is just that you look and say, are there witnesses, and you say yes or no, and that's enough.

But y'all appeared -- I read your briefs and y'all -- Apple appeared to rely somewhat substantially on the fact that the Uniloc folks are in the Northern District of California, and I'm just wondering why that should matter.

09:31:14 MR. GUARAGNA: Thank you for that question, your
09:31:16 Honor.
09:31:18 I think the answer comes straight out of
09:31:21 Volkswagen I and Volkswagen II because the issue is
09:31:26 whether the witnesses, party or nonparty, are going to be
09:31:31 inconvenienced by traveling to Texas. There clearly can
09:31:36 be no dispute that witnesses who live in San Francisco,
09:31:40 whether they be Apple witnesses or Uniloc witnesses, will
09:31:44 be less inconvenienced by traveling to trial in San
09:31:49 Francisco or San Jose than they would be by traveling to
09:31:52 Texas.
09:31:52 And so, I think the answer is, Volkswagen tells
09:31:57 us that we need to look at both party witnesses and
09:32:00 nonparty witnesses to determine, relatively speaking,
09:32:04 which is the more convenient venue. So I think it's
09:32:08 really not in dispute that it would be more convenient for
09:32:11 the California-based Uniloc witnesses to travel to the
09:32:17 Northern District than it would be to travel to Texas.
09:32:20 And Volkswagen tells us that is a consideration and,
09:32:23 frankly, it's the most important consideration.
09:32:25 So I hope that responds to your Honor's question.
09:32:28 THE COURT: I guess what I'm saying is, I
09:32:34 understand why the convenience -- I'm serious about this.
09:32:41 I understand why Apple is making its argument that the
09:32:45 relevant Apple witnesses are located in Northern District.

09:32:50 And I'll hear -- I guess, maybe I should hear from Mr.
09:32:52 Davis on this. But I don't know why I would even -- I've
09:32:56 read Volkswagen obviously. I think I read it in law
09:32:59 school.
09:33:01 But it doesn't make sense to me, I'll just say,
09:33:08 that the convenience of the party -- of the witnesses --
09:33:11 the party witnesses or the party that selects to file in a
09:33:18 jurisdiction other than where they live would injure their
09:33:22 ability to file in a different place because, clearly,
09:33:29 there is no concern -- if Uniloc was concerned about the
09:33:32 convenience of its party witnesses, they would not have
09:33:36 filed here. They would have filed originally in the
09:33:39 Northern District of California for purposes of
09:33:40 convenience.
09:33:41 So.
09:33:43 MR. GUARAGNA: So I think, your Honor, the risk
09:33:45 of going down that path and not recognizing that the party
09:33:49 witnesses, whether they be Uniloc or Apple, is a relevant
09:33:53 factor in the analysis would be to re -- to contradict
09:34:00 Volkswagen's teaching that the plaintiff's choice of forum
09:34:03 is not a factor in the analysis. Because it sounds like
09:34:05 we're approaching a point where, well, if they chose to
09:34:09 file there, then we disregard the convenience of their
09:34:11 witnesses.
09:34:12 Well, no. Volkswagen says that isn't a factor.

09:34:15 You don't factor in just the fact that they chose that
09:34:19 forum. You actually have to dig in and look at where the
09:34:22 witnesses are located and whether they're going to be
09:34:25 inconvenienced by traveling to trial in the transfer or
09:34:30 forum. And so, I do think that's a factor in the
09:34:33 analysis.
09:34:33 THE COURT: Let me try like this. Do you have
09:34:35 any evidence that the folks at Uniloc feel like they are
09:34:38 inconvenienced by being in the Western District, rather
09:34:41 than in the Northern District of California? Other than
09:34:45 surmise that it's not here.
09:34:51 MR. GUARAGNA: We have evidence -- I think, the
09:34:53 fact of -- yes, we do, your Honor. So we submitted
09:34:57 evidence showing that the distance that they would need to
09:35:00 travel and the flights that they would need to take would
09:35:03 be significantly more burdensome than if they were to have
09:35:07 trial at home. So we did submit that evidence as part of
09:35:10 our opening papers demonstrating the relative distance and
09:35:14 the inconvenience that would be for those witnesses
09:35:17 traveling from California.
09:35:19 THE COURT: Okay.
09:35:23 MR. GUARAGNA: So, your Honor, the other issue
09:35:25 obviously is that Apple is based in the Northern District
09:35:27 of California. That's where its -- majority of its
09:35:30 operations transpire. And, actually, before I get there,

09:35:31 your Honor, I want to go back to one of your other
09:35:35 questions, and that really relates to the nonparty
09:35:37 witnesses.
09:35:39 So setting aside the party witnesses and the fact
09:35:41 that we do think their convenience is relevant, there are
09:35:45 nonparty witnesses who are located in the Northern
09:35:48 District of California. Primarily, the investment firm
09:35:51 Fortress and several of the Fortress individuals are board
09:35:55 members of Uniloc. So, again, there would be compulsory
09:35:58 process over Fortress individuals in the Northern
09:36:01 District. It would not be compulsory process over them in
09:36:05 the Western District of Texas, which is an important
09:36:07 factor in the analysis.
09:36:08 THE COURT: Yeah, I -- I'm with you on that one
09:36:11 for sure.
09:36:12 MR. GUARAGNA: Thank you, your Honor.
09:36:13 And so, the fact that Apple is based in the
09:36:16 Northern District of California also supports the fact
09:36:18 that our witnesses are likely to come from there and which
09:36:21 we obviously back up with sworn testimony later, but
09:36:25 that's not a disputed fact that Apple is based in the
09:36:28 Northern District of California.
09:36:30 That also tells us that the sources of proof
09:36:34 factor weighs strongly in favor of transfer because, as
09:36:37 your Honor will note, it's clearly recognized that in

09:36:40 patent cases, the majority of the evidence comes from the
09:36:43 accused infringer. In this case, it's Apple. In this
09:36:47 case, Apple's based in the Northern District of
09:36:49 California. And in this case, the particularly relevant
09:36:52 witnesses are based at Apple's headquarters in the
09:36:55 Northern District.
09:36:56 That also suggests, Apple's presence in the
09:36:58 Northern District, that the local interest factor would
09:37:01 strongly weigh in favor of transfer because the Northern
09:37:04 District is Apple's home jurisdiction. It's where Apple
09:37:08 is based and it's where the likely witnesses in this case
09:37:11 reside.
09:37:12 Again, it's very similar to the analysis, your
09:37:15 Honor, performed in the Data Scape case where Dell had
09:37:20 operations both outside of Austin and in Austin, but your
09:37:24 Honor recognized that because Dell was based in the
09:37:28 Western District, the local interest was more prevalent in
09:37:33 that particular district. The same analysis holds true
09:37:35 here suggesting that the Northern District of California,
09:37:38 where Apple is based, would have the stronger local
09:37:40 interests.
09:37:41 THE COURT: Mr. Guaragna, I think you meant that
09:37:43 the interest for Dell was more -- in a different division
09:37:47 and not a different district, I think. But, I mean, I
09:37:53 think the decision we made was to move it from the Waco

09:37:56 Division to the Austin Division, and it wasn't a transfer
09:38:00 between districts with respect to the Dell case.
09:38:04 MR. GUARAGNA: Correct, your Honor.
09:38:05 And what I'm referring to is the Court's analysis
09:38:08 of the local interest factor. The argument in that case
09:38:12 was that Dell had operations in both places; however, the
09:38:17 fact that their home base was in the Austin Division
09:38:22 suggested that the local interest -- the relative local
09:38:24 interest would be stronger. And I think that analysis
09:38:27 would lead to the conclusion that the local interest in
09:38:31 this case would be stronger in the Northern District of
09:38:33 California, where Apple is based. But I do recognize that
09:38:35 was a transfer between divisions.
09:38:39 I do, however, think the analysis holds to
09:38:42 suggest that the local interest in this case would
09:38:44 strongly favor the Northern District of California.
09:38:47 THE COURT: Okay.
09:38:50 MR. GUARAGNA: So flipping, your Honor, to our
09:38:52 slide No. 8, these are the defense witnesses that we've
09:38:56 identified in a sworn declaration. And I think your Honor
09:38:59 will recognize that these are the categories of testimony,
09:39:04 engineering, licensing, marketing and finance, that the
09:39:09 Court is used to seeing live-witness testimony for during
09:39:13 trial. So these are not individuals who are taken from
09:39:17 areas that are foreign to what is typically presented via

live witness. These are actually those type of areas of testimony that you would expect to see a live witness testify to. And so, that's what we've identified here.

Uniloc doesn't dispute that any of these witnesses are relevant or could be likely trial witnesses, that they don't take that position at all. So this is really undisputed that these are likely trial witnesses from Apple.

I'll also note, Judge, that in a prior case, you've asked us about whether these identified witnesses had traveled to Apple's Austin facilities, we confirm that these folks had not. So the likely witnesses from Apple in this case reside in California, in the Northern District, and they are the folks we likely see testify at trial.

THE COURT: You anticipated a question Josh had written for me.

MR. GUARAGNA: I'm glad I could get to that, your Honor, and expedite things.

Slide 9, your Honor, is where we talk about the fact that there are no likely witnesses in the Western District of Texas. Clearly that's true of the plaintiff. They haven't even attempted to argue that there are plaintiff witnesses who reside in the Western District of Texas. They've pointed to two individuals in Tyler, an

09:40:43 office manager and an accounting assistant, but they're
09:40:45 not likely witnesses. And I don't think Uniloc can make
09:40:48 that argument with a straight face. And Judge Gilstrap,
09:40:51 in his prior order, even recognized that these individuals
09:40:55 are not likely to be witnesses, and that's noted in our
09:40:58 reply at page 5.
09:41:01 So then, what are we left with? Well, we're left
09:41:04 with speculation, your Honor, and conjecture. Uniloc
09:41:08 speculates about app developers, but external app
09:41:12 development is not an issue in this case. This case is
09:41:15 about Apple's internal software updates, not external app
09:41:20 development. And I think that's clear simply looking at
09:41:23 the complaint allegations, including paragraph 12 in
09:41:27 Uniloc's complaint.
09:41:28 Moreover, Uniloc has not identified anyone by
09:41:31 name that they think would be a relevant app developer to
09:41:36 testify. It was their burden to come forward with that
09:41:38 evidence, and they haven't.
09:41:41 So then, I'll turn to manufacturing, Judge, and I
09:41:43 think the same is true of manufacturing. We're not likely
09:41:47 to see a witness testifying about the manufacture of any
09:41:52 products in this case. It's a software case. Uniloc
09:41:56 doesn't dispute that it's a software case. The fact that
09:41:59 Flextronics individuals are involved in assembling Mac Pro
09:42:04 computers in the Western District of Texas is not an issue

09:42:06 to be tried. And they haven't identified any Flextronics
09:42:11 witnesses. They didn't ask to take their deposition.
09:42:14 They've made this allegation without any evidentiary
09:42:17 support.
09:42:19 Uniloc also points to job postings with
09:42:23 information in those postings about job titles, but as
09:42:27 your Honor will recognize, a job posting is not a person
09:42:31 who's likely to be inconvenienced that should be weighed
09:42:33 in favor of or against transfer in this instance. It's a
09:42:38 potential future role that may or may not ever be filled,
09:42:42 and it just isn't relevant evidence to refute the
09:42:44 inconvenience of the folks who are likely to be trial
09:42:47 witnesses.
09:42:48 The other point, your Honor, is -- I think your
09:42:52 Honor has recognized in other decisions is that transfer
09:42:54 is assessed at the time the complaint is filed. So a job
09:42:58 posting about something in the future is also irrelevant
09:43:00 for that reason. So where we get to after the external
09:43:07 witnesses that are speculated about is speculation about
09:43:11 Apple individuals.
09:43:13 And as a starting point, your Honor, we don't
09:43:16 dispute that there are Apple employees in Austin.
09:43:19 Obviously there are facilities in the Western District.
09:43:23 But our point is that Uniloc has not made any showing that
09:43:27 any Apple witness in the Western District of Texas is

09:43:30 relevant to this case or that they'll likely be a relevant
09:43:33 witness.
09:43:34 In fact, despite our offers and their ability to
09:43:38 do so, Uniloc didn't take a single deposition of anyone in
09:43:44 the Western District to try to prove up this speculation
09:43:47 and these theories. If they're going to point to
09:43:50 witnesses, they need proof. They need evidence.
09:43:53 And the Porto Tech case, Porto Tech vs. Samsung,
09:43:58 it's a Judge Gilstrap case from 2016 and it can be found
09:44:02 at 2016 West Law 937388. That case stands for that
09:44:08 proposition that those who are opposing transfer can't
09:44:12 just come forward with speculation, they have to come
09:44:15 forward with evidence. And there's no evidence here.
09:44:18 So then, let's look at what they speculate about
09:44:23 with regard to Apple witnesses. The first issue is, they
09:44:25 point to servers. As your Honor knows, servers are not
09:44:31 what this case is about. Perhaps if they were trying to
09:44:32 identify some operation or some reason to find proper
09:44:37 venue in the district, maybe then they could look to a
09:44:40 server. And even that's unclear, frankly.
09:44:43 But when they point to witnesses who have
09:44:47 responsibilities for servers and they point to folks with
09:44:50 CDN in their title, they've made no showing that there's
09:44:56 any reason why servers would be relevant to the analysis.
09:44:58 There's no mention of these CDNs in their infringement

09:45:02 contentions.

09:45:03 Your Honor, I take it, has recently been through
09:45:07 the Markman briefs. There's no reference to CDN in the
09:45:11 Markman briefs. Certainly no reference to it in the
09:45:13 tutorial. So again, speculation about things that are not
09:45:18 relevant and not likely to be tried in this case certainly
09:45:24 serves as in that category.

09:45:25 And I think the fact that Uniloc tries to point
09:45:28 to LinkedIn profiles highlights the weakness of this
09:45:32 argument. They could have asked to take the depositions
09:45:34 of people that they thought might be likely trial
09:45:37 witnesses; but instead, they were just content to make the
09:45:40 accusation without actually getting the evidence. That
09:45:44 stands in stark contrast to the evidence that Apple's
09:45:47 presented.

09:45:47 So I think it's both improper and unfair to allow
09:45:52 Uniloc to come in and say, well, we've found these things,
09:45:55 we think they might be relevant; therefore, we defeat this
09:45:58 transfer motion. That's not the way it works, your Honor.
09:46:01 They had to come forward with evidence and they didn't.

09:46:05 Another thing that they point to is AppleCare.
09:46:08 AppleCare is customer service. They even point out that
09:46:12 the questions asked to AppleCare relate to warranty
09:46:17 information. So the fact that help desk individuals might
09:46:19 be located in Austin does not serve to defeat a transfer

09:46:24 motion. Customer service is not at issue in this case. I
09:46:29 don't think it's credible to think that folks that man the
09:46:32 customer support line are actually going to come in and
09:46:34 testify at a trial such that we should evaluate their
09:46:37 convenience.
09:46:39 Moreover, your Honor, it actually supports
09:46:42 Apple's view that the functions that are being handled in
09:46:45 Austin are actually support roles. They're not the design
09:46:48 and development roles that are being handled in the
09:46:54 Northern District of California.
09:46:55 Uniloc also points to an e-mail exchange between
09:46:58 a technical writer and Ms. Caldbeck, who is a witness we
09:47:03 identified in the Northern District of California.
09:47:06 Similar to customer support, we're not going to expect,
09:47:09 and I can't imagine we ever have seen, a technical writer
09:47:13 be a trial witness in a patent case.
09:47:16 So the fact that they've identified a technical
09:47:19 writer is also consistent with Apple's position that these
09:47:23 are support functions primarily being handled in the
09:47:26 Austin facility. But in addition, your Honor, it actually
09:47:28 supports the fact that Ms. Caldbeck is likely to be a
09:47:31 relevant witness because when the technical writer needed
09:47:35 details about the technology, she went to a witness who
09:47:38 resides in the Northern District of California.
09:47:42 So no leaf blowers, but I've got lightning

09:47:46 cracking in the background, your Honor. Sorry if that's
09:47:49 interrupting things.
09:47:50 THE COURT: Well, we've heard that there may be a
09:47:52 tornado just east of Austin, so the weather may be dicey.
09:47:59 But no leaf blowers is always good.
09:48:00 MR. GUARAGNA: Thank you, your Honor. Hopefully
09:48:02 east and moving east would be my guess. Sorry, Mr. Davis.
09:48:08 So, your Honor, again, I think the point here is
09:48:12 that all Uniloc did was come forward with speculation
09:48:16 about things that are, I think, on their face, irrelevant.
09:48:21 And they just haven't satisfied their burden, which is to
09:48:24 come forward with evidence.
09:48:27 So I'd like to flip to slide 10. And I've made
09:48:31 reference to the fact about Uniloc's ability to get the
09:48:34 evidence they needed. And I think it's very fair to say
09:48:38 that Apple was an open book. And what Uniloc has really
09:48:43 done is, they've tried to throw up a smoke screen.
09:48:47 They've pointed to newspaper articles, job posting,
09:48:51 LinkedIn profiles, but none of this is reliable evidence
09:48:56 or backed up with any testimony from the alleged witnesses
09:48:59 themselves.
09:49:00 I hope it's transparent to your Honor from the
09:49:03 briefing that Uniloc had the ability to get any evidence
09:49:06 from Apple that it wanted during the transfer of discovery
09:49:11 period, but I don't think they really wanted it. Apple

09:49:13 was almost literally an open book when it comes to venue
09:49:18 discovery. They could have taken depositions of the
09:49:21 alleged relevant witnesses to prove up their speculation,
09:49:24 but they didn't. And that's really not the way it should
09:49:27 work. To say that we think in the future, we're going to
09:49:30 be able to show that these people are relevant is improper
09:49:34 and unfair. The time to come forward with evidence was
09:49:37 during the transfer period.
09:49:39 So I'd like to just shift, for a second, and show
09:49:43 what Apple actually did, your Honor. And I think it's
09:49:46 important to note that we really did two general things.
09:49:51 One is we did the affirmative. We presented evidence as
09:49:54 to who the likely witnesses were. We identified the
09:49:57 people who have responsibility for the accused products in
09:50:01 the relevant categories: Engineering, marketing,
09:50:05 licensing and finance.
09:50:07 Mr. Jaynes provided two sworn declarations and
09:50:11 sat for a full day of deposition where that information
09:50:14 was presented and was examined. He explained in detail
09:50:19 all the individuals who were relevant and where they were
09:50:22 located. But we did even more than that, your Honor. We
09:50:26 provided the listing of the direct reports to all of the
09:50:29 individuals that we identified as the likely witnesses.
09:50:33 Uniloc didn't take the depositions of those likely
09:50:35 witnesses. It didn't try to take the depositions of their

09:50:38 direct reports.

09:50:41 But not only did we do the affirmative by
09:50:44 demonstrating who the likely witnesses were in this case,
09:50:46 your Honor, we also went ahead and proved the negative.
09:50:51 We gave Uniloc information about what actually happens in
09:50:53 Austin to show that there's nothing happening in Austin
09:50:56 relevant to this case. And critically, we provided two
09:51:01 depositions of individuals in Austin, Kayla Christie and
09:51:05 Bodie Nash. And they also spoke with individuals in
09:51:10 Austin to confirm their understanding that there were no
09:51:14 folks working in the Austin facilities that have
09:51:16 responsibility for the accused technology in this case.

09:51:21 On top of that, we provided a listing of all our
09:51:24 Austin employees so that Uniloc could go ahead and
09:51:27 identify people that they might want to depose if they
09:51:29 felt that they were relevant. They chose not to do that.
09:51:33 But the information was there if they wanted to.

09:51:36 On top of that, Judge, we provided a list of all
09:51:39 the Apple trial witnesses who have testified since 2013.
09:51:45 Critically, none of those individuals who testified for
09:51:49 Apple at trial were from Texas. Eighty-seven percent of
09:51:54 the witnesses were from the Northern District of
09:51:57 California, and we cite this in our reply at page 3.

09:51:59 This utterly refutes the notion that Apple is
09:52:03 cherry-picking witnesses to serve its purposes for

transfer in this case. The evidence backs up the fact that Apple's likely witnesses are located in the Northern District. It's been the case going back almost 10 years. It's still the case today.

So slide 11, your Honor, summarizes who are going to be the likely witnesses in this case, again, looking at the most important factor in the analysis. This includes the Apple witnesses, it includes the Uniloc witnesses, and it includes Fortress individuals who are located in San Francisco. So we're left with eight folks in the Northern District of California, three in southern California, so 11 total in California, and none, not a single likely witness identified who resides in the Western District.

Slide 12 is a summary slide, your Honor, that provides our conclusions on the various factors, and I talked through each of these during the argument today. But I think for purposes of evaluating the private interest factors, they all strongly favor transfer. And we've pointed that out in our slides, and in the argument today, and in the briefing that we focused primarily on witnesses. And I think we've demonstrated beyond a doubt that the vast majority of likely witnesses are located in the Northern District of California.

We also have shown that the private interest -- sorry, the public interest factors favor transfer. Your

09:53:33 Honor, we had the decision about local interest and giving
09:53:36 the fact that Apple is located in the Northern District of
09:53:40 California and its likely witnesses are there, that factor
09:53:43 also strongly favors transfer. The other factors on the
09:53:47 public interest, we think, are neutral. And we talked a
09:53:50 little bit about court congestion as also being neutral.
09:53:54 So, your Honor, those are the factors that we
09:53:56 think are relevant. We think the factors that the Court
09:54:00 analyzes here strongly favor transfer, leading to the
09:54:03 conclusion that the Northern District is the clearly more
09:54:06 convenient venue. If your Honor has questions, I'm happy
09:54:09 to respond.
09:54:10 THE COURT: Mr. Guaragna, I think I've done that
09:54:14 throughout, and I appreciate you've done a great job of
09:54:17 responding to them. And I will turn to Mr. Davis and go
09:54:23 -- he can go through his slides. And as usual, I will --
09:54:26 I'll probably have questions for him, as well. And then,
09:54:29 Mr. Guaragna, I know you'll be listening, I'll give you an
09:54:32 opportunity to respond to anything that Mr. Davis says.
09:54:36 Mr. Davis, you have the floor.
09:54:38 MR. DAVIS: Thank you, your Honor. May it please
09:54:40 the Court. Bill Davis on behalf of the Plaintiff Uniloc.
09:54:46 Your Honor, I guess to start with, we believe
09:54:51 that Apple has failed to carry its burden to show that
09:54:54 California -- the Northern District of California is a

clearly more convenient venue. And Mr. Guaragna spent a lot of time at the beginning of his presentation talking about other cases that have been transferred out of the Western District and out of the Eastern District, and I'll talk about those more later in the presentation.

But I do believe that the value of those facts as they weigh in the balance of the convenience factors are, at best, persuasive and, in this case, really irrelevant. And they're irrelevant because this case does not involve or the case -- excuse me. The cases that were transferred do not involve this patent, the 088 patent that's been asserted in this case.

While there may be some overlap with the products that the other cases and the other patents may have addressed, what's really driving the scope of this case, as Mr. Guaragna has alluded to a couple of times, is the claims of the patent. The claims of the patent are -- and what's been accused in this case are what is -- what makes this case unique unto itself. And there was no evidence there's no argument that any of the cases that are in the Northern District of California are -- involve assertions of this patent.

If I heard correctly, I believe the closest connection was that a different asserted patent in the 357 case that is in northern California cites to this patent

09:56:43 as prior art, I would suggest that that's a tenuous
09:56:46 connection, at best. And the only other case that we're
09:56:50 aware of that involved the 088 patent is a case against
09:56:55 Microsoft, but that case is pending in the Central
09:56:58 District of California, not the Northern District of
09:56:59 California.
09:57:01 And so, giving -- and I understand why Apple and
09:57:06 Mr. Guaragna are making the arguments they made, and I
09:57:08 understand they feel offended that they -- you know, that
09:57:14 this case was not transferred with the remaining cases.
09:57:18 But the fact is that this case and the factors we look at
09:57:24 in the record before the Court on this motion, at best,
09:57:29 the fact that other cases were transferred would go to
09:57:32 judicial economy.
09:57:33 And in this case, there is no judicial economy
09:57:38 that is going to benefit from transferring this case to
09:57:41 the Northern District of California. We'll get into it --
09:57:44 into that later.
09:57:46 I do want to say, your Honor, there was some
09:57:49 question and some allusions to, you know, why this case
09:57:53 was dismissed and why it was filed. Again, and my
09:57:57 understanding is that this case was originally dismissed
09:58:01 from the Western District of Texas, in front of Judge
09:58:05 Yeakel, because of an IPR that Apple had filed. And, you
09:58:09 know, IPR was filed, the case was dismissed, and it was

09:58:13 dismissed six months before Judge Yeakel made his ruling
09:58:17 on the other cases.
09:58:19 So to say that this case and the facts that have
09:58:25 been presented before your Honor today were considered by
09:58:28 Judge Yeakel and there's already been a decision on it, I
09:58:32 don't think is accurate. And so, with that introduction,
09:58:40 I will move into the relevant factors that Volkswagen
09:58:44 progeny tell us to look at in deciding whether or not it
09:58:50 would be clearly more convenient to have this case
09:58:53 litigated in California, Northern District of California.
09:58:58 And I'm looking at slide 3 of my presentation,
09:59:00 your Honor, where we've laid the factors out. There's
09:59:02 really the first four private factors and the first public
09:59:08 factor are in dispute. The other three are, I think,
09:59:11 agreed to either be neutral, or at least for public factor
09:59:14 two, we believe, weigh against transfer.
09:59:18 Turning to factor one, the relative ease of
09:59:22 access to sources of proof. Apple has not met its burden
09:59:25 to show that this factor clearly weighs in favor of
09:59:28 transfer. And we know the case law on this that if we're
09:59:32 looking at and the Court looks to where the evidence is,
09:59:35 where it's stored and it's the relative ease of access of
09:59:40 -- to the proof, not the absolute ease of access. And we
09:59:43 know that this court has given some guidance on this
09:59:46 factor that as a general practice, this court gives little

09:59:50 weight to the location of documents, given the ease at
09:59:53 which documents can be produced. And Apple has not made
09:59:56 any showing under this factor that it would be clearly
09:59:59 more convenient to access its documents here versus
10:00:06 California.
10:00:07 Additionally, there are sources of proof in this
10:00:11 district and in Texas from third parties such as
10:00:14 Flextronics, who makes the accused Mac Pro computers in
10:00:17 Austin. We believe that they have documents relevant at
10:00:21 least to infringing activities and its relationship with
10:00:23 Apple. And to elaborate on that a bit, one of our claims
10:00:27 in this case is inducement.
10:00:28 And Flextronics is a third party who makes the
10:00:30 computers and installs the software. The claims asserted
10:00:34 in the 088 patent are method claims. We believe
10:00:38 Flextronics will be a source of proof for direct
10:00:41 infringement as a direct infringement for our inducement
10:00:44 claims against Apple, making Flextronics a third party and
10:00:47 their sources of proof located in this district highly
10:00:52 relevant.
10:00:52 Uniloc's sources of proof are located in this
10:00:56 district -- I'm sorry, in Texas, in Tyler, which is not in
10:01:00 this district, but is much closer to this forum than
10:01:03 California. And finally, Apple sources of proof, we
10:01:06 believe, contrary to Apple's contentions, that employees,

10:01:12 personnel, evidence located in Austin, will be relevant to
10:01:16 this case because we believe the content delivery network,
10:01:20 the AppleCare program, financials and royalties arising
10:01:26 from Apple's relationships with its app developers, have
10:01:29 connection to this forum. And we'll get into that in a
10:01:33 bit.
10:01:34 Additionally, Mr. Jaynes' declaration provides no
10:01:40 evidence that documents located in California would be
10:01:44 inaccessible or more difficult to access. So we feel that
10:01:48 Apple -- we know that Apple can remotely access the
10:01:52 documents looking on slide 7. We took Mr. Jaynes'
10:01:57 deposition, and he confirmed that the sales data,
10:01:59 financial records pertaining to the accused app store and
10:02:03 other accused products, the marketing documents about the
10:02:06 accused products, network-stored records of Dana BuBois,
10:02:11 engineering manager, and his team members are within the
10:02:16 Apple Store Frameworks group, and, finally, source code
10:02:19 resides in repositories that are -- that could be remotely
10:02:21 accessed confirm that this factor does not weigh in favor
10:02:25 of transfer. We believe that all the --
10:02:26 THE COURT: Mr. Davis, could you hold on just one
10:02:29 second? I want to ask my clerk something. I'm gonna put
10:02:32 you on mute for just a second. I'll be right back.
10:02:35 MR. DAVIS: Of course, your Honor.
10:03:28 Mr. Davis, I just wanted to -- I thought I was

10:03:30 right. I wanted to double-check. On slide 7, which you
10:03:36 just discussed, about remote access of relevant documents,
10:03:42 doesn't that require us to sort of stretch Fifth Circuit
10:03:49 precedent with respect to a -- what I'm trying to figure
10:03:54 out is, has the Fifth Circuit caught up to what I think,
10:03:59 and we probably all agree, is the reality of the way
10:04:03 information could be accessed in 2020?
10:04:06 Do you think that the Fifth Circuit is in
10:04:11 alignment with what you're saying? Or do you think that
10:04:14 the reality is that the Fifth Circuit may not have caught
10:04:18 up to where we are at technologically? And while you may
10:04:21 be right that this isn't something in favor of Apple, it's
10:04:24 not something that the Court should rely on yet.
10:04:27 I'm just interested in your thoughts on that.
10:04:30 MR. DAVIS: Your Honor, I do not believe that the
10:04:34 Fifth Circuit has directly addressed this point or caught
10:04:37 up with, I believe, some of the recent thinking on this
10:04:43 issue. I do believe that the Fifth Circuit in the case --
10:04:48 prior cases where it has dealt with this issue, it has
10:04:53 said this i a factor, said you need to look at the
10:04:56 evidence that's presented about the relative ease of
10:05:00 access to this -- to these sources of proof. And, you
10:05:04 know, so I believe it's very fact-specific.
10:05:06 So I don't believe that the Fifth Circuit has,
10:05:09 you know, endorsed, one way or another, a specific finding

10:05:14 that, hey, if you can remotely access a document, that
10:05:17 that necessarily means that this factor should not weigh
10:05:21 in favor of transfer. But what I think it has said is,
10:05:27 you need to consider where they are and how that weighs in
10:05:30 the convenience -- in the balance as it relates to
10:05:33 convenience.
10:05:33 And so, where you have a situation where parties
10:05:37 have remotely accessible documents, that's part of the
10:05:41 analysis. That is something that I believe the Court, in
10:05:43 its discretion, can consider in deciding whether this
10:05:47 factor weighs in favor of transferring or not.
10:05:50 And, you know, so you can look at it from the
10:05:53 remote standpoint, you could look at it from the location
10:05:56 of Uniloc's documents where they have 60-plus boxes of
10:05:59 their documents located in Tyler, Texas, and you can then
10:06:06 do comparison -- mileage comparison as the crow would fly.
10:06:11 And we all know that Tyler's closer than -- to Waco than
10:06:15 the Northern District of California.
10:06:17 But I do think that we can take into account that
10:06:20 this factor may not weigh the scales very heavily at all
10:06:24 because -- because documents are remotely accessed. And
10:06:30 we all know in these cases, we all scan our documents and
10:06:35 TIFF them and convert them to -- and produce them
10:06:38 electronically with load files. So that reality, I think,
10:06:41 makes this factor less important than the others for sure.

I spent time on it only to highlight that it's Apple's burden to show that this factor clearly weighs in favor of transfer. And we don't think they've even really addressed it.

THE COURT: So would it be fair to -- would it be fair to take your position on behalf of Uniloc that it's Apple's burden to show that the Northern District is clearly more convenient and that this may not, depending on how you want think of things, weigh in favor, against, however you want to say, but that this certainly doesn't assist them in being able to accomplish their required goal of showing that it is clearly more convenient?

MR. DAVIS: That's correct, your Honor.

So turning to --

THE COURT: I'm now on slide 8. But if you have anything else to add to slide 7, please do.

MR. DAVIS: No, your Honor. That is our position. I mean, I believe we believe that in factor one, they've not met their burden and, therefore, weighs against transfer.

So factor two, the availability of process to security the attendance of witnesses. Most of the discussions that I heard from Mr. Guaragna and Apple in their briefs relates to party witnesses. And we know that the attendance of party witnesses are of less importance

than those of nonparty witnesses.

So looking at -- turning to slide 9, looking at the relevant nonparty witnesses, we see that they are geographically diverse. We see the inventors of the 088 patent are located in New York, the prosecuting attorney's in New York. Both -- two of them are in New York. The patents were purchased from Philips, a Netherlands company with U.S headquarters in Hanover, Massachusetts. We believe that Flextronics -- I'm sorry, Flex Limited, formerly Flextronics, is relevant to this case. We intend to seek discovery from them, and they're located in Austin within the subpoena power of the Court.

One of the prior artists, Garritt Foote, is in Austin. Another prior artist, Thomas Van Weaver, is in Dripping Springs, Texas. I understand that Apple may not have asserted in this case the prior art that these two gentlemen are relevant to, but that doesn't mean that we won't -- it won't be relevant to us. I mean, we're entitled to prove other prior art just as Apple -- if we want to prove other prior artists to get their view on what they were doing and how that might relate to the patents in this case, then we may want to do that. We don't know yet, but we may want to. And so, as far as who is a potential, I think it's at least safe to say these are potential witnesses, they're located in Texas.

10:09:58 We have other companies. If you look on the
10:10:01 right-hand side of slide 9, companies located in Plano,
10:10:05 companies located in China, companies located in
10:10:09 Washington. The prior owner of the 088 patent is
10:10:16 Luxembourg, S.A. and Uniloc USA. The former exclusive
10:10:21 licensee is in Plano, Texas. So we see just a geographic
10:10:25 diversity for the universe of people that we've identified
10:10:30 so far who have some connection to this case and are
10:10:32 potential witnesses, and most of them are central either
10:10:39 -- in the central part of the country or east of the
10:10:42 Mississippi. And we don't -- we see very few of them that
10:10:46 are actually on the west coast. The closest we've seen so
10:10:48 far in Kirkland, Washington.
10:10:52 Now, on slide 2, we get to some other companies
10:10:56 that some are in Washington and there are a couple in San
10:10:59 Francisco. So we do recognize that there are some there.
10:11:03 But if you take all of these as a whole, you don't see
10:11:07 some clear weight of the -- or a concentration of
10:11:15 witnesses and people and companies in the proposed
10:11:19 transferee forum. So, if anything, California is going to
10:11:23 be much less convenient for the minority of these folks
10:11:28 and companies than the Central District of -- I'm sorry,
10:11:32 the Western District of Texas.
10:11:33 Uniloc's witnesses we don't contend are relevant
10:11:38 to factor two. The two primary -- or the primary

witnesses for Uniloc, Mr. Etchegoyen, the inventor, Mr. Turner, Mr. Ford, these are Uniloc employees, they're all willing to come testify in Texas. Even the Uniloc board members, to the extent that Apple believes they're relevant to the case, if they want to take their depositions and they even want to call them at trial, those folks have submitted declarations stating that Western District of Texas is not inconvenient for them. They're willing to come here, and they're willing to appear and testify live, should either party want them to.

Now, we think that that is evidence in this case that the Court could consider. And while it is true that those folks geographically live closer to particularly the Northern District of California, you know, the fact that they are willing to come should address any of the convenience concerns that the Court would have with respect to these witnesses.

And I will mention that, for example, Mr. Etchegoyen, who is the inventor of the patent in suit, we believe he will be potentially our corporate representative at trial. You know, he lives in Hawaii and he spends most of his time in Hawaii, and he splits his time between Hawaii and California, and he spends as much as 10 to 15 percent of his time in Texas. And that was something that he testified to in a recent deposition

10:13:14 taken by Google.

10:13:15 I know that was not part of the record in this
10:13:17 case. We're happy to provide the transcripts, but I don't
10:13:20 think it's a surprise. I think everyone, all the parties
10:13:24 on this phone know that Mr. Etchegoyen is not -- that he
10:13:27 lives in Hawaii. And so, for him to travel from Hawaii to
10:13:31 Texas for trial, you know, sure, there's an extra three,
10:13:36 three-and-a-half hours on his flight, but we don't believe
10:13:40 that there's a showing that for him, it's -- California is
10:13:44 clearly more convenient.

10:13:48 So factor three, the cost of attendance for
10:13:53 willing witnesses weighs against transfer. They're
10:13:55 nonparty witnesses, are geographically dispersed, they're
10:13:57 not concentrated in the two forums; and therefore,
10:14:00 transfer would not result in this clear incremental
10:14:04 increase in convenience as compared to litigating the case
10:14:08 here.

10:14:08 We know that the convenience of the party
10:14:12 witnesses is given little weight. We've addressed them
10:14:15 already. But addressing -- I've addressed Uniloc's
10:14:19 witnesses already, but addressing Apple's witnesses, Apple
10:14:21 identified four ND California-based party witnesses. And
10:14:26 Mr. Guaragna's correct, we don't contend that those folks
10:14:30 are irrelevant. Apple says they're relevant. We take
10:14:34 them at their word.

10:14:35 Relevance to the case is a low bar. I mean, we know in discovery, we're trying to figure out, well, who's relevant if they've got some connection to the case that could -- and even if it -- even if they're not directly relevant, but could have potentially information that leads to relevant evidence, we know that they're relevant. They get disclosed in our initial disclosures, we have the opportunity to take their deposition.

No one knows for certain yet who all will be called at trial. We have vague ideas. We have concrete ideas about who might be our corporate rep. We all know that there will be expert witnesses. But as far as who the fact witness are, that could play pivotal roles in the trial of this case. We don't know who that is yet, and we won't know until we get through discovery.

So right now, when we look at the universe of these witnesses, Apple identified four. But we identified other Apple engineers that are actually located in Austin, Texas that we believe are relevant to this case. And we're not required to depose only the witnesses that Apple puts forward for us to depose. We're entitled to -- entitled to depose any Apple witnesses that we think are relevant and that we can show under Rule 26 that the needs of the case would permit us to depose.

And we oftentimes, as I'm sure Mr. Guaragna has

10:15:57 experienced in his practice, it's -- sometimes it's the
10:16:01 lower-level engineers that provide the insight you need
10:16:06 into the way the products work that the higher-level folks
10:16:09 may not have. So in every case I litigate, sure I want to
10:16:13 depose the folks that Apple intends to call as its
10:16:15 witnesses at trial, because I want to know their story,
10:16:17 but I also want to depose some other people that have
10:16:21 knowledge about the case, that know how the products work.
10:16:24 And oftentimes, you get a different perspective from those
10:16:26 witnesses.
10:16:26 And so, we in our discovery identified seven
10:16:29 engineers in Austin that have job duties that relate to
10:16:33 the content delivery network. And as your Honor may or
10:16:41 may not know, the content delivery network is what stores
10:16:43 and distributes the apps and the updates from the accused
10:16:45 app store. And we got that from Mr. Jaynes at his
10:16:49 deposition. And that's what we've accused in this case,
10:16:51 that the patents are about making sure that updates are
10:16:55 compatible with the hardware and the software of -- that's
10:16:59 being undated. So content delivery network is going to be
10:17:03 a key future in this case.
10:17:05 There are also relevant witnesses located at the
10:17:08 Apple CDN service in Dallas. And if we gave the Court and
10:17:13 Mr. Guaragna the impression that we were pointing to the
10:17:16 servers themselves, the boxes themselves as the witnesses,

10:17:19 that was not the case. We merely were pointing to the
10:17:23 fact that, hey, these servers are there. There are folks
10:17:26 that understand how these servers work, what they do, and
10:17:29 those folks are in Dallas, and those are the people that
10:17:32 we believe could have relevant information and that we'd
10:17:36 like to discover in this case.
10:17:38 And if they have information that we believe is
10:17:43 worthy of testimony at trial, then for them, Austin would
10:17:48 be -- I'm sorry, Waco would be more convenient than having
10:17:51 to travel to California.
10:17:54 I'm on slide 15, your Honor, and in this slide,
10:17:58 these are the seven engineers in Austin that we identified
10:18:02 that have job duties relating to the content delivery
10:18:06 network. And these are folks that we want to have a
10:18:10 discussion with Apple about and take their deposition,
10:18:13 find out what they know, and we think that they could very
10:18:15 well have important information.
10:18:16 And it's relevant. We know one of the witnesses,
10:18:21 Alyssa Quek, she's a software engineer on slide 16, and
10:18:27 she's been there for eight months and she works on
10:18:30 automating the management, monitoring and analysis of our
10:18:33 CDN infrastructure and services. So she knows how it
10:18:36 works. Slide 17, Mr. Sanchagrin, same thing. He designs
10:18:45 and builds tools to analyze performance data for Apple's
10:18:50 CDN and infrastructure. They improve customer experience

10:18:52 and these all go to the human side of the story in the
10:18:55 case we intend to present at trial.
10:18:57 These patents -- the inventions don't exist in a
10:19:01 vacuum. They exist to make Apple's products better for
10:19:04 their customers, improving the customer experience. So, I
10:19:10 mean, these are all important issues that we are entitled
10:19:12 to probe and would like to probe to understand not only
10:19:17 how Apple views the technology at issue, but what they
10:19:21 might say at trial.
10:19:24 Apple failed to identify, on slide 18, other
10:19:28 relevant party witnesses in this district. The employees
10:19:33 in Austin, they help run the iTunes and music and app
10:19:37 stores. They handle billions of dollars going in and out
10:19:40 of the company's American operations. They have 8,000
10:19:44 customer tech support calls a day that are fielded in
10:19:47 Austin. And they manage the network of suppliers and
10:19:50 figure out how to move around millions of iPhones a week.
10:19:53 I mean, customer support notes, customer support
10:19:59 information, what customers are saying about these
10:20:02 products, the problems they're having, those are all very
10:20:06 relevant to how a patent and the technology in that patent
10:20:10 has solved the solution that Apple is benefiting from. So
10:20:14 these are all very important relevant issues for us.
10:20:19 On slide 19, they've only identified the
10:20:23 California witnesses. Again, we're not disputing that

10:20:25 they're relevant. We just don't think that tells the
10:20:28 whole story. So for those reasons, we think that factor
10:20:32 three weighs against transfer.
10:20:36 So in factor four, all of the other problems that
10:20:39 make the case -- the trial in the case easy, expeditious
10:20:44 and inexpensive. I believe here that Apple's primary
10:20:51 argument, or at least the most generous view of that
10:20:55 argument, is that judicial economy would favor
10:20:59 transferring this case to California because there are a
10:21:03 number of other cases there. But if you actually look at
10:21:07 -- we have the benefit in this case of seeing how that
10:21:13 actually has played out with the cases that were
10:21:15 transferred previously.
10:21:18 And if we look at that, I don't think the picture
10:21:21 that presents itself is one of judicial economy. What we
10:21:25 see is that of the 21 cases that Apple had transferred to
10:21:30 California, 11 were from the Western District and 10 are
10:21:36 from east Texas. Only three are active and of those three
10:21:42 active cases -- I'm on slide 20, your Honor. I apologize.
10:21:47 Only three are active and of those three, they are
10:21:51 different patents, different technologies, and two of them
10:21:56 that have Markman hearings will not have Markman hearings
10:22:00 till August. And no trial date is set in any of the
10:22:03 three.
10:22:03 So we know that this case is well ahead of those.

10:22:08 Two of the cases that were transferred were dismissed, and
10:22:10 the remaining 16 are stayed pending ongoing IPRs. A
10:22:14 decision against an IPR or resolution of a Federal Circuit
10:22:19 appeal.
10:22:19 And, you know, judicial economy could potentially
10:22:23 be served if there was some guarantee that this case would
10:22:26 end up in front of the same judge. But that doesn't
10:22:30 happen. We know that the way that the Northern District
10:22:32 of California works, a case gets transferred out there,
10:22:35 there's no guarantee that it will get transferred to the
10:22:38 same -- one of the other judges that are handling Uniloc
10:22:42 and Apple cases out there. So we don't think that this
10:22:46 shows that there is really much of an argument to be made
10:22:50 that judicial efficiency or judicial economy would be
10:22:52 served by transferring this case to California.
10:22:56 In public factor one, court congestion, we
10:23:01 believe this weighs against transfer. We think despite
10:23:05 the statistics that Mr. Guaragna presented, you know, he
10:23:11 presented statistics based just on patent cases, but he
10:23:14 didn't consider the entirety of the docket. And we know
10:23:16 that what really slows civil cases down are criminal
10:23:19 cases. It's a criminal docket that -- a heavy criminal
10:23:23 docket that demands the most attention from judges.
10:23:26 And so, you know, there was no discussion of the
10:23:29 relevant weights of the criminal dockets between the

10:23:31 various -- or the various districts or even taking all of
10:23:38 the civil cases combined. But what we do know is that
10:23:40 during the 12-month period, ending June 30th, that the
10:23:47 median time to trial was 25 months here in the Western
10:23:51 District. And it's the same period, 25. -- or similar
10:23:58 factor for the Northern District of California. So at
10:24:03 most, that's a wash.
10:24:04 But in this case, we have a Markman hearing
10:24:07 that's set that we're having in a few days, and the Court
10:24:11 has already invested significant amount of judicial
10:24:14 resources preparing for that Markman hearing and providing
10:24:17 us with its preliminary constructions and its preliminary
10:24:20 views on how the patent should be construed. And so, you
10:24:25 know, this Court has already invested a significant amount
10:24:28 of its resources in the case, and to transfer it on down
10:24:30 the road would be -- to California, I believe, would not
10:24:37 be efficient.
10:24:40 Additionally, we have a trial that's set in
10:24:42 February, and, you know, there's an interval of about 18
10:24:48 months that exists between this case's filing and when it
10:24:51 will be disposed of during trial. So while the overall
10:24:55 statistics for the Western District are perhaps on par
10:24:58 with California in the Waco Division and in front of your
10:25:04 Honor, we know that it's much quicker to trial here.
10:25:10 Public interest factor two, local interest. We

10:25:14 think this one is neutral or even weighs against transfer.
10:25:18 I know that there are prior decisions in this district
10:25:21 that have found that it's -- you know, it's very difficult
10:25:24 to say that Apple, having the large presence that it does
10:25:29 here in the Western District of Texas, that there is no
10:25:31 local interest or that this factor would actually weigh in
10:25:35 favor of transfer.
10:25:36 So I'm not going to spend a lot of time on this
10:25:39 one unless your Honor has some discussion about it. But
10:25:42 we believe that this factor is neutral, at best, or, in
10:25:48 fact, weighs against transfer, given Apple's significant
10:25:52 presence in this district. And, you know, even on
10:25:54 Uniloc's side, while it may not have a direct presence in
10:25:57 Waco or Austin, it does have a presence in the Northern
10:26:01 District of Texas and in the Eastern District of Texas.
10:26:04 So there is connection to the state as a whole.
10:26:07 And I'm not suggesting to your Honor that that is
10:26:10 something that should tip the scales, you know, solidly in
10:26:16 Uniloc's favor. I'm just saying it's something that can
10:26:18 be considered and Uniloc has invested in the state of
10:26:25 Texas and the Western District of Texas, has significant
10:26:28 interest in having this issue decided here. And Apple's
10:26:32 failed to meet its burden.
10:26:34 With that, your Honor, I'd like to turn just to
10:26:37 slide 24 and summarize the factors as I've outlined them

10:26:41 for you. We believe that Apple has failed to meet its
10:26:45 burden to show that this case is clearly more conveniently
10:26:50 tried in east Texas. And almost all of the factors, we
10:27:00 believe, weigh against -- five out of the eight factors
10:27:03 weigh against transfer.
10:27:06 For those reasons, your Honor, we ask that you
10:27:08 deny Apple's motion. And I'll cede the podium, so to
10:27:15 speak, your Honor.
10:27:22 MR. GUARAGNA: Yeah. Thank you, your Honor.
10:27:23 So just a couple of points in response. So I'm
10:27:26 actually double-checking my notes, your Honor, but my
10:27:29 notes indicate that the prior case was dismissed in July
10:27:34 of 2019. The IPR wasn't filed until October -- I'm sorry,
10:27:39 let me back up. My notes suggest that our -- the
10:27:43 dismissal of the prior case asserting the same patent was
10:27:46 done in July of 2018, and the IPR was not filed until
10:27:50 October of '18. So hat Uniloc seemed to suggest that that
10:27:53 was had motivated their dismissal, but it doesn't line up
10:27:57 with my chronology of the facts.
10:27:59 The next point I want to make, your Honor,
10:28:02 relates to Flextronics. And I think what we're missing
10:28:06 here is the idea that Flextronics is likely to be a trial
10:28:11 witness. The analysis focuses on who is going to be
10:28:16 inconvenienced by traveling to trial. Uniloc has made no
10:28:21 showing, certainly not with any evidence of testimony, or

10:28:25 otherwise, from Flextronics that they're likely to be
10:28:27 witnesses at trial in this case. And that's the thing
10:28:30 that's missing in their argument is the connection between
10:28:33 several of these entities that they claim might be
10:28:36 relevant or are potentially relevant.
10:28:38 The time to figure out if they actually were
10:28:41 relevant and might actually be trial witnesses was now.
10:28:44 Not to kick that can down the road and to Apple's
10:28:50 detriment in respect to defending against their
10:28:52 allegations and trying to prove up what the convenient --
10:28:55 the more convenient venue is for transfer. It just
10:28:59 doesn't add up that their allegations of some future
10:29:02 relevance and potential relevance can trump the actual
10:29:06 evidence that we've provided.
10:29:07 They also mentioned, Mr. Davis, that they intend
10:29:14 to seek discovery of certain individuals down the road.
10:29:18 Well, they also seem to be conflating the test for whether
10:29:23 something might be relevant for purposes of discovery at
10:29:27 some instance in the litigation versus those pieces of
10:29:30 evidence and those witnesses who actually might testify.
10:29:33 So we see that back-and-forth in Mr. Davis' argument:
10:29:38 They might be relevant, they're potentially relevant, they
10:29:40 may be discoverable. Well, that doesn't rise to the level
10:29:44 of evidence that counters our showing that the likely
10:29:49 witnesses are in California and would be inconvenienced by

10:29:51 a trial in the Western District.

10:29:53 Mr. Davis went so far as to say that the CDN is
10:30:02 going to be a key factor in this case. Well, he says
10:30:04 that, but the facts show something different. CDN is not
10:30:08 even mentioned, not even mentioned in Uniloc's
10:30:11 infringement contentions, yet, Mr. Davis now claims it's
10:30:14 going to be a key issue and a key feature in the case.

10:30:18 I think it's important, your Honor, not to look
10:30:19 at what Uniloc says about this but, actually, what they
10:30:23 did, and what they did was point to other technology, not
10:30:26 to CDN or anyone affiliated with CDN, for purposes of
10:30:32 proving up their case.

10:30:33 On slide 16 in Uniloc's presentation, there's a
10:30:38 reference to Ms. -- I believe it's Ms. Quek. It's a
10:30:43 LinkedIn profile. I'm going to pull that up, your Honor.
10:30:49 I notice that --

10:30:51 MR. DAVIS: Which slide was that?

10:30:53 MR. GUARAGNA: It's slide 16, your Honor, Alyssa
10:30:55 Quek. And, again, this is not evidence. It's a LinkedIn
10:31:00 profile. But taking Uniloc -- assuming it's accurate, the
10:31:02 date that Ms. Quek joined Apple in Austin is October 2019.
10:31:08 The case was actually filed in September of 2019. So as I
10:31:12 noted earlier, the transfer is considered at the time of
10:31:15 the filing. This witness didn't even reside in Austin,
10:31:20 if, in fact, she does, and setting aside the fact that we

10:31:23 disagree that these folks are even relevant. This person
10:31:26 didn't even get to Austin until after the case was filed.
10:31:32 So, your Honor, they're relying very heavily on
10:31:35 the CDN and the seven individuals they claim might be
10:31:38 relevant. Again, I want to emphasize Uniloc had the
10:31:43 opportunity to take the depositions of one or all of those
10:31:47 folks to try to show that, in fact, they might be relevant
10:31:50 witnesses at trial in this case. They didn't do it. They
10:31:54 didn't do it; therefore, all of this evidence should be
10:31:57 discounted.
10:32:01 Mr. Davis had pointed to three active cases, but
10:32:06 it's interesting that Uniloc left out a fourth case, the
10:32:08 one that has actually perhaps the most amount of
10:32:12 technology overlap. It's the case where I noted earlier,
10:32:15 the patent asserted in the case that is now pending in the
10:32:20 Northern District, actually cites to the asserted patent
10:32:23 in this case as prior art. That was left out. So clearly
10:32:26 that case has technology overlap, and it is a relevant
10:32:30 action that's pending in the Northern District.
10:32:34 I think that's all, your Honor, unless you have
10:32:36 any other questions.
10:32:40 THE COURT: Mr. Davis.
10:32:43 MR. DAVIS: Yes, your Honor. Briefly.
10:32:44 I just would like to make one point. And I don't
10:32:47 believe our infringement contentions were presented in the

record, but I do know that if -- just for Mr. Guaragna's reference on pages 25 and 26, that what we point to in our infringement contentions are showing an example of the update that's occurring, and that update occurs and delivered by the CDN. So we believe that while we may not have said the word "CDN" specifically in our infringement contentions and, you know, we believe that what we have disclosed is actually done by the CDN.

So I think it's important to note that CDN is relevant to this case, and it's not something that's beyond the scope of this case. I understand we may have some other discovery dispute about that down the road; if we do, then we can address it then. But for purposes of at least what we disclosed in our contentions, the functionality that is providing the updates is done by the CDN. So it is very relevant to this case.

As far as taking depositions of these seven employees that we identified in Austin, you know, I think there comes a point of where you go beyond just where we -- where we go beyond just, I guess, responding to what Apple, who has the burden of proof on this motion, did and to actually taking the actual deposition that we would take of this witness, without the benefit of any documents, are one shot of these witnesses to take their depositions without the benefit of the documentary

discovery that we don't have yet.

I don't believe that we're conflating the level of relevance that we have to show to rebut Apple or to challenge Apple's burden, but I think what the law does -- that the law is more aligned with our view that what we do is we identify the potentially relevant witnesses. We don't have to conclusively prove to defeat a motion to transfer that there is a witness in Austin that is -- that we are going to call and here is the testimony that they are going to give.

I mean, that's just not practical in the framework that we've done in this case. And I don't think it's required to show that of the 8,000 employees located in the Western District of Texas and Apple's facility or campus there where it's undisputed that they manage CDN, they manage customer service, that they manage the App Store, there is significant involvement with those features of Apple's business in that location, that there are going to be witnesses with relevant knowledge that we would take discovery from. And, I mean, of course, and if we get bad testimony from those witnesses, we may not call them at trial; but if we get good testimony, we may want to call them at trial.

So it's not about predetermining or pre-disclosing who we're going to call at trial or not,

10:36:04 but who could we potentially call at trial. I think
10:36:06 that's a fairer reading of the law. And I believe that
10:36:09 the approach that Apple has taken is that we have some
10:36:14 burden to show that we're going to call this witness, and
10:36:18 I just don't think that's where we are at this stage.
10:36:21 It's Apple's burden of proof, they failed to
10:36:25 carry their burden. They identified four witnesses in
10:36:27 Waco. You know, we haven't had a chance to test their
10:36:30 assertions, either. They didn't submit declarations from
10:36:32 all of those witnesses. They submitted a single
10:36:35 declaration from Mr. Jaynes, who said, oh, yeah, these are
10:36:37 the four that we think are most relevant. Well, you know,
10:36:40 Apple didn't do either what it's asking us to have done
10:36:42 with their own witnesses. And so, I think that's a bit of
10:36:46 a red herring.
10:36:47 And with that, your Honor, we would just rest the
10:36:49 remainder of our positions on our papers. And we
10:36:53 appreciate your time today.
10:36:54 THE COURT: Of course.
10:36:55 Mr. Guaragna.
10:36:57 MR. GUARAGNA: Your Honor, just briefly back to
10:36:58 the CDN issue, Mr. Davis is simply providing attorney
10:37:03 argument without any evidence. And in this case, his
10:37:07 argument is actually belied by the fact that there is no
10:37:10 mention of CDN in the contentions, as he admits, and there

10:37:13 is no mention of CDN in the Markman briefing. Not one.
10:37:16 So if he claims this to be a key feature, I think the
10:37:21 facts suggest otherwise.
10:37:23 And with regard to the identification of
10:37:26 witnesses, it was Uniloc's burden to actually identify
10:37:31 evidence. The whole purpose of having transferred
10:37:34 discovery was so that the playing field was level. We,
10:37:39 our client, Apple, at tremendous cost and at tremendous
10:37:43 time, prepared and provided ample evidence to back up its
10:37:48 positions that the likely witnesses in this case all
10:37:50 reside in the Northern District of California.
10:37:54 Uniloc had every opportunity to take depositions
10:37:58 if they disagreed or if they wanted to contest that
10:38:01 evidence. They also could have actually taken a
10:38:05 deposition of these other folks that they speculate might
10:38:08 have some relevance. They don't even say they're likely
10:38:11 witnesses at trial. They speculate even to the fact that
10:38:14 they might be relevant.
10:38:15 So, again, your Honor, I know I've made this
10:38:17 point before, but Mr. Davis came back to this issue about
10:38:21 the fact of venue discovery and what was required to be
10:38:23 done. What was required to be done was them presenting
10:38:26 evidence to refute the evidence that Apple provided. They
10:38:31 didn't do it; therefore, we should prevail on the motion
10:38:33 to transfer.

10:38:34 THE COURT: Mr. Davis.

10:38:37 MR. DAVIS: Nothing further, your Honor.

10:38:38 THE COURT: Okay. Just give me a second here. I'm going to go on mute again. Don't anyone hang up.

10:40:11 The Court would like to thank both sides for, really, one of the best arguments I've had in front of me. I'm blessed to have this job because the quality of the lawyers is so exceptional in every case I have. But I continue to find with patent cases, I guess, given the issues that are involved, the quality of lawyering just seems to get better and better as I go along.

10:40:43 The briefing was exceptional. The PowerPoints are very helpful. The Court is going to deny the motion to transfer, and we will get a written order out as soon as we can. The Markman is set for Friday afternoon at 1:30.

10:41:02 Mr. Guaragna; is that right?

10:41:05 MR. GUARAGNA: Yes, your Honor. I believe so.

10:41:07 THE COURT: Okay. So we will resume at 1:30 on Friday with the Markman hearing. And I thank everyone very much for the exceptional lawyering that took place today.

10:41:19 Be safe up there and have a good day. Bye.

10:41:24 MR. DAVIS: Thank you, your Honor.

MR. GUARAGNA: Thank you.

(End of proceedings.)

* * * * * *

UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter, Registered Merit Reporter, in my capacity as Official Court Reporter of the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 14th day of May, 2020.

/s/Lily I. Reznik
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ADRMOP,APPEAL,REFSET-JCS,RELATE,STAYED

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:18-cv-00360-WHA

Uniloc USA, Inc. et al v. Apple Inc.
Assigned to: Judge William Alsup
Referred to: Magistrate Judge Joseph C. Spero (Settlement)
Relate Case Cases: 3:17-cv-06733-WHA
3:18-cv-00358-WHA
3:18-cv-00359-WHA
3:18-cv-00365-WHA
3:18-cv-00572-WHA
3:18-cv-00363-WHA
Case in other court: Federal Circuit, 19-01922
USDC, Eastern Dist. of Texas (Marshall), 2:17-cv-00457
Cause: 35:271 Patent Infringement

Date Filed: 01/17/2018
Jury Demand: Both
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
05/26/2017	1	COMPLAINT *for Patent Infringement* against Apple Inc., (Filing Fee: $400.00, receipt number 0540-6311484), filed by Uniloc USA, Inc., Uniloc Luxembourg, S.A.. (Attachments: #(1) Civil Cover Sheet, # 2 Exhibit A)(Nelson, Edward) (Entered: 05/26/2017)
05/26/2017	2	Notice of Filing of Patent/Trademark Form (AO 120). AO 120 mailed to the Director of the U.S. Patent and Trademark Office. (Nelson, Edward) (Entered: 05/26/2017)
05/26/2017	3	CORPORATE DISCLOSURE STATEMENT filed by Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Nelson, Edward) (Entered: 05/26/2017)
05/26/2017	4	NOTICE by Uniloc Luxembourg, S.A., Uniloc USA, Inc. *of Related Cases* (Nelson, Edward) (Entered: 05/26/2017)
05/26/2017	5	NOTICE of Attorney Appearance by Paul J Hayes on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Hayes, Paul) (Entered: 05/26/2017)
05/26/2017	6	NOTICE of Attorney Appearance by Dean G Bostock on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Bostock, Dean) (Entered: 05/26/2017)
05/26/2017	7	NOTICE of Attorney Appearance by Michael James Ercolini on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Ercolini, Michael) (Entered: 05/26/2017)
05/26/2017	8	NOTICE of Attorney Appearance by James John Foster on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Foster, James) (Entered: 05/26/2017)
05/26/2017	9	NOTICE of Attorney Appearance by Kevin Gannon on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Gannon, Kevin) (Entered: 05/26/2017)
05/26/2017	10	NOTICE of Attorney Appearance by Robert R Gilman on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Gilman, Robert) (Entered: 05/26/2017)
05/26/2017	11	NOTICE of Attorney Appearance by Aaron Seth Jacobs on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Jacobs, Aaron) (Entered: 05/26/2017)
05/26/2017	12	NOTICE of Attorney Appearance by Daniel James McGonagle on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (McGonagle, Daniel) (Entered: 05/26/2017)
05/26/2017	13	NOTICE of Attorney Appearance by Anthony Michael Vecchione on behalf of Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Vecchione, Anthony) (Entered: 05/26/2017)
05/26/2017	14	SUMMONS Issued as to Apple Inc.. (ch,) (Entered: 05/26/2017)
05/26/2017		Case assigned to Judge Rodney Gilstrap. (ch,) (Entered: 05/26/2017)
05/26/2017		In accordance with the provisions of 28 USC Section 636(c), you are hereby notified that a U.S. Magistrate Judge of this district court is available to conduct any or all

		proceedings in this case including a jury or non-jury trial and to order the entry of a final judgment. The form Consent to Proceed Before Magistrate Judge is available on our website. All signed consent forms, excluding pro se parties, should be filed electronically using the event *Notice Regarding Consent to Proceed Before Magistrate Judge*. (ch,) (Entered: 05/26/2017)
06/07/2017	15	Defendant's Unopposed First Application for Extension of Time to Answer Complaint re Apple Inc..(Smith, Melissa) (Entered: 06/07/2017)
06/07/2017		Defendant's Unopposed First Application for Extension of Time to Answer Complaint is granted pursuant to Local Rule CV-12 for Apple Inc. to 7/21/2017. 30 Days Granted for Deadline Extension.(nkl,) (Entered: 06/07/2017)
07/12/2017	16	Defendant's Unopposed Second Application for Extension of Time to Answer Complaint re Apple Inc..(Smith, Melissa) (Entered: 07/12/2017)
07/12/2017		Defendant's Unopposed Second Application for Extension of Time to Answer Complaint is granted pursuant to Local Rule CV-12 for Apple Inc. to 8/5/2017. 15 Days Granted for Deadline Extension.(nkl,) (Entered: 07/12/2017)
07/13/2017	17	Unopposed MOTION for Extension of Time to File Answer re 1 Complaint by Apple Inc.. (Attachments: # 1 Text of Proposed Order)(Smith, Melissa) (Entered: 07/13/2017)
07/14/2017	18	ORDER granting 17 Unopposed Motion for Extension to Respond to Complaint. Apple Inc. answer due 8/11/2017.. Signed by Judge Rodney Gilstrap on 7/14/2017. (ch,) (Entered: 07/14/2017)
07/18/2017	19	NOTICE of Attorney Appearance - Pro Hac Vice by Michael T Pieja on behalf of Apple Inc.. Filing fee $ 100, receipt number 0540-6384706. (Pieja, Michael) (Entered: 07/18/2017)
07/18/2017	20	NOTICE of Attorney Appearance - Pro Hac Vice by Alan E Littmann on behalf of Apple Inc.. Filing fee $ 100, receipt number 0540-6384780. (Littmann, Alan) (Entered: 07/18/2017)
07/18/2017	21	NOTICE of Attorney Appearance - Pro Hac Vice by Doug Winnard on behalf of Apple Inc.. Filing fee $ 100, receipt number 0540-6384827. (Winnard, Doug) (Entered: 07/18/2017)
07/18/2017	22	NOTICE of Attorney Appearance - Pro Hac Vice by Emma C. Neff on behalf of Apple Inc.. Filing fee $ 100, receipt number 0540-6385313. (Neff, Emma) (Entered: 07/18/2017)
07/31/2017	23	NOTICE of Attorney Appearance by Jennifer Greenblatt on behalf of Apple Inc. (Greenblatt, Jennifer) (Entered: 07/31/2017)
08/08/2017	24	AMENDED COMPLAINT against Apple Inc., filed by Uniloc USA, Inc., Uniloc Luxembourg, S.A.. (Attachments: # 1 Exhibit A)(Gannon, Kevin) (Entered: 08/08/2017)
08/11/2017	25	ANSWER to 24 Amended Complaint by Apple Inc..(Pieja, Michael) (Entered: 08/11/2017)
08/11/2017	26	CORPORATE DISCLOSURE STATEMENT filed by Apple Inc. (Pieja, Michael) (Entered: 08/11/2017)
08/11/2017		In accordance with the provisions of 28 USC Section 636(c), you are hereby notified that a U.S. Magistrate Judge of this district court is available to conduct any or all proceedings in this case including a jury or non-jury trial and to order the entry of a final judgment. The form Consent to Proceed Before Magistrate Judge is available on our website. All signed consent forms, excluding pro se parties, should be filed electronically

		using the event *Notice Regarding Consent to Proceed Before Magistrate Judge*. (ch,) (Entered: 08/11/2017)
08/22/2017	27	NOTICE of Readiness for Scheduling Conference by Uniloc Luxembourg, S.A., Uniloc USA, Inc. (Gannon, Kevin) (Entered: 08/22/2017)
08/22/2017	28	CONSOLIDATION ORDER. The above-captioned cases are hereby ORDERED to be CONSOLIDATED for all pretrial issues (except venue) with the LEAD CASE, Cause No. 2:17-cv-00470. All parties are instructed to file any future filings (except relating to venue) in the LEAD CASE. Signed by Judge Rodney Gilstrap on 8/22/2017. (slo,) (Entered: 08/23/2017)
08/22/2017		ALL FUTURE FILINGS (EXCEPT THOSE RELATING TO VENUE) SHOULD BE FILED IN LEAD CASE NO. 2:17-cv-00470. (slo,) (Entered: 08/23/2017)
09/22/2017	29	MOTION to Change Venue by Apple Inc.. (Attachments: # 1 Declaration of Michael Jaynes, # 2 Declaration of Emma Neff, # 3 Exhibit A - Burdick 258 Deposition, # 4 Exhibit B - Patent Assignments, # 5 Exhibit C - Inventor Declarations, # 6 Exhibit D - Cal Inventor LinkedIn Profiles, # 7 Exhibit E - ND Cal Witness Travel Times to Marshall and ND Cal, # 8 Exhibit F - Utah and Idaho Inventor LinkedIn Profiles, # 9 Exhibit G - Utah Witness Travel Times to Marshall and NDCAL, # 10 Exhibit H - Idaho Witness Travel Times to Marshall and NDCAL, # 11 Exhibit I - Marshall Islands Witness Travel Times to Marshall and NDCAL, # 12 Exhibit J - SD Cal Witness Travel Times to Marshall and NDCAL, # 13 Exhibit K - HI Witness Travel Times to Marshall and NDCAL, # 14 Exhibit L - 1.5.16 Amended Etchegoyen Declaratain, # 15 Exhibit M - Patent Cover Pages, # 16 Exhibit N - Witness Chart, # 17 Text of Proposed Order)(Pieja, Michael) (Entered: 09/22/2017)
10/06/2017	30	RESPONSE in Opposition re 29 MOTION to Change Venue *filed by Uniloc Luxembourg, S.A., Uniloc USA, Inc.*. (Attachments: # 1 Declaration of Daniel McGonagle, # 2 EXHIBIT A, # 3 EXHIBIT B, # 4 EXHIBIT C, # 5 EXHIBIT D, # 6 EXHIBIT E, # 7 EXHIBIT F, # 8 EXHIBIT G, # 9 EXHIBIT H, # 10 EXHIBIT I, # 11 EXHIBIT J, # 12 EXHIBIT K, # 13 EXHIBIT L, # 14 EXHIBIT M, # 15 EXHIBIT N, # 16 EXHIBIT O, # 17 EXHIBIT P, # 18 EXHIBIT Q, # 19 EXHIBIT R, # 20 EXHIBIT S, # 21 Text of Proposed Order)(Gannon, Kevin) (Entered: 10/06/2017)
10/12/2017	31	Unopposed MOTION to Substitute Corrected Exhibit C re 29 MOTION to Change Venue by Apple Inc.. (Attachments: # 1 CORRECTED Exhibit C - Inventor Declarations, # 2 Text of Proposed Order)(Pieja, Michael) (Entered: 10/12/2017)
10/13/2017	32	REPLY to Response to Motion re 29 MOTION to Change Venue *filed by Apple Inc.*. (Attachments: # 1 Declaration of Michael T. Pieja, # 2 Exhibit O - Micron Screenshot, # 3 Exhibit P - SKYhnix Screenshot)(Pieja, Michael) (Entered: 10/13/2017)
10/17/2017	33	ORDER granting 31 Motion to Substitute a Corrected Exhibit C for its Motion to Change Venue. Signed by Judge Rodney Gilstrap on 10/16/2017. (nkl,) (Entered: 10/17/2017)
10/20/2017	34	SUR-REPLY to Reply to Response to Motion re 29 MOTION to Change Venue *filed by Uniloc Luxembourg, S.A., Uniloc USA, Inc.*. (Gannon, Kevin) (Entered: 10/20/2017)
10/20/2017	35	ORDER Setting Hearing on Motion 29 MOTION to Change Venue : Motion Hearing set for 10/27/2017 10:30 AM before District Judge Rodney Gilstrap.. Signed by District Judge Rodney Gilstrap on 10/20/2017. (ch,) (Entered: 10/20/2017)
10/27/2017	36	Minute Entry for proceedings held before District Judge Rodney Gilstrap: Motion Hearing held on 10/27/2017 re 29 MOTION to Change Venue filed by Apple Inc.. (Court Reporter Shelly Holmes, CSR-TCRR.) (Attachments: # 1 Attorney Attendance Sheet) (jml) (Entered: 10/27/2017)

12/22/2017	37	ORDER granting 29 Motion to Change Venue. Signed by District Judge Rodney Gilstrap on 12/22/2017. (ch,) (Entered: 12/28/2017)
01/12/2018		Interdistrict transfer to the Northern District of California. (ch,) (Entered: 01/12/2018)
01/17/2018	38	CASE TRANSFERRED in from United States District Court for the Eastern District of Texas (Marshall); Case Number 2:17-cv-00457-JRG. Original file certified copy of transfer order and docket sheet received. Modified on 1/18/2018 (tnS). (Entered: 01/18/2018)
01/17/2018	39	**Initial Case Management Scheduling Order with ADR Deadlines: Joint Case Management Statement due by 4/23/2018. Initial Case Management Conference set for 4/30/2018 at 1:30 PM in Courtroom A, 15th Floor, San Francisco. (tnS) (Filed on 1/17/2018) (Entered: 01/18/2018)**
01/25/2018	40	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Apple, Inc... (Pieja, Michael) (Filed on 1/25/2018) (Entered: 01/25/2018)
01/25/2018	41	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. *This is a text only docket entry; there is no document associated with this notice.* (mklS, COURT STAFF) (Filed on 1/25/2018) (Entered: 01/25/2018)
01/26/2018	42	**ORDER, Case reassigned to Judge William Alsup. Magistrate Judge Sallie Kim no longer assigned to the case. This case is assigned to a judge who participates in the Cameras in the Courtroom Pilot Project. See General Order 65 and http://cand.uscourts.gov/cameras. Signed by Executive Committee on 1/26/18. (Attachments: # 1 Notice of Eligibility for Video Recording)(haS, COURT STAFF) (Filed on 1/26/2018) (Entered: 01/26/2018)**
01/31/2018	43	NOTICE of Change In Counsel by Michael Thomas Pieja *re Melissa R. Smith* (Pieja, Michael) (Filed on 1/31/2018) (Entered: 01/31/2018)
02/05/2018	44	NOTICE of Change In Counsel by James J. Foster (Foster, James) (Filed on 2/5/2018) (Entered: 02/05/2018)
02/06/2018	45	NOTICE of Change In Counsel by Michael Thomas Pieja *re Harry Lee Gillam, Jr.* (Pieja, Michael) (Filed on 2/6/2018) (Entered: 02/06/2018)
02/07/2018	46	NOTICE by UNILOC Luxembourg S.A., Uniloc USA, Inc. (Attachments: # 1 Attachment)(Jacobs, Aaron) (Filed on 2/7/2018) (Entered: 02/07/2018)
02/16/2018	47	CLERK'S NOTICE SCHEDULING INITIAL CASE MANAGEMENT CONFERENCE ON REASSIGNMENT: Initial Case Management Conference set for **3/22/2018 at 11:00 AM** in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Case Management Statement due by 3/15/2018. Standing orders can be downloaded from the Court's web page at www.cand.uscourts.gov/whaorders. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Filed on 2/16/2018) (Entered: 02/16/2018)

03/01/2018	48	**ORDER RELATING CASE. Signed by Judge Alsup on 3/1/2018. (whalc2, COURT STAFF) (Filed on 3/1/2018) (Entered: 03/01/2018)**
03/02/2018		**Related cases: Create association to 3:17-cv-06733-WHA.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(sxbS, COURT STAFF) (Filed on 3/2/2018) (Entered: 03/02/2018)**
03/02/2018	49	CLERK'S NOTICE SCHEDULING INITIAL CASE MANAGEMENT CONFERENCE ON REASSIGNMENT: Initial Case Management Conference set for **4/26/2018 at 11:00 AM** in San Francisco, Courtroom 12, 19th Floor. Case Management Statement due by 4/19/2018. Standing orders may be downloaded from the Court's web page at: www.cand.uscourts.gov/whaorders. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Filed on 3/2/2018) (Entered: 03/02/2018)
03/02/2018		**Related cases: Create association to 3:18-cv-00358-WHA.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(sxbS, COURT STAFF) (Filed on 3/2/2018) (Entered: 03/02/2018)**
03/02/2018		**Related cases: Create association to 3:18-cv-00359-WHA.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(sxbS, COURT STAFF) (Filed on 3/2/2018) (Entered: 03/02/2018)**
03/08/2018	50	CLERK'S NOTICE RESCHEDULING TIME OF INITIAL CASE MANAGEMENT CONFERENCES: Initial Case Management Conference set for **4/26/2018 at 08:00 AM** in San Francisco, Courtroom 12, 19th Floor. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Filed on 3/8/2018) (Entered: 03/08/2018)
04/05/2018	51	**ORDER denying Motion for Centralization of related cases (sxbS, COURT STAFF) (Filed on 4/5/2018) (Entered: 04/05/2018)**
04/05/2018	52	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Jacobs, Aaron) (Filed on 4/5/2018) (Entered: 04/05/2018)
04/05/2018	53	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Pieja, Michael) (Filed on 4/5/2018) (Entered: 04/05/2018)
04/05/2018	54	STIPULATION WITH PROPOSED ORDER *TO ENLARGE TIME TO FILE ADR L.R. 3-5(c) STIPULATION OR NOTICE* filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Declaration, # 2 Proposed Order)(Jacobs, Aaron) (Filed on 4/5/2018) (Entered: 04/05/2018)
04/11/2018	55	Declaration of Aaron S. Jacobs in Support of 54 STIPULATION WITH PROPOSED ORDER *TO ENLARGE TIME TO FILE ADR L.R. 3-5(c) STIPULATION OR NOTICE* filed byUNILOC Luxembourg S.A., Uniloc USA, Inc.. (Related document(s) 54) (Jacobs, Aaron) (Filed on 4/11/2018) (Entered: 04/11/2018)
04/11/2018	56	**ORDER APPROVING STIPULATION TO ENLARGE TIME TO FILE ADR STIPULATION OR NOTICE (granting (34) Stipulation in case 3:17-cv-06733-WHA; granting (59) Stipulation in case 3:18-cv-00358-WHA; granting (66) Stipulation in case 3:18-cv-00359-WHA; granting (49) Stipulation in case 3:18-cv-00363-WHA; granting (54) Stipulation in case 3:18-cv-00360-WHA; granting (50) Stipulation in case 3:18-cv-00365-WHA; granting (51) Stipulation in case 3:18-cv-00572-WHA) by Judge Alsup. (whalc2, COURT STAFF) (Filed on 4/11/2018) (Entered: 04/11/2018)**
04/18/2018	57	ADR Clerk's Notice re: Non-Compliance with Court Order (ewhS, COURT STAFF) (Filed on 4/18/2018) (Entered: 04/18/2018)

04/18/2018	58	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Jacobs, Aaron) (Filed on 4/18/2018) (Entered: 04/18/2018)
04/18/2018	59	ADR Clerk's Notice Setting ADR Phone Conference on April 24, 2018 at 12:30 PM Pacific time. Please note that you must be logged into an ECF account of counsel of record in order to view this document. (cmf, COURT STAFF) (Filed on 4/18/2018) (Entered: 04/18/2018)
04/19/2018	60	CLERK'S NOTICE RESCHEDULING TIME OF MOTION AND CASE MANAGEMENT CONFERENCE HEARINGS: Initial Case Management Conference and 53 MOTION for Judgment on the Pleadings RESCHEDULED from 4/26/2018 at 8:00 a.m. to **4/26/2018 at 01:30 PM** in San Francisco, Courtroom 12, 19th Floor. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Filed on 4/19/2018) (Entered: 04/19/2018)
04/19/2018		Set/Reset Deadlines as to (53 in 3:18-cv-00358-WHA) MOTION for Judgment on the Pleadings , (53 in 3:18-cv-00359-WHA) MOTION to Dismiss. Motion Hearing set for 4/24/2018 01:30 PM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. (afmS, COURT STAFF) (Filed on 4/19/2018) (Entered: 04/19/2018)
04/19/2018		Set/Reset Deadlines as to (53 in 3:18-cv-00359-WHA) MOTION to Dismiss, (53 in 3:18-cv-00358-WHA) MOTION for Judgment on the Pleadings . Motion Hearing set for 4/26/2018 01:30 PM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. (afmS, COURT STAFF) (Filed on 4/19/2018) (Entered: 04/19/2018)
04/19/2018	61	Certificate of Interested Entities by Apple, Inc. (Pieja, Michael) (Filed on 4/19/2018) (Entered: 04/19/2018)
04/19/2018	62	JOINT CASE MANAGEMENT STATEMENT filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Jacobs, Aaron) (Filed on 4/19/2018) (Entered: 04/19/2018)
04/20/2018	63	Certificate of Interested Entities by UNILOC Luxembourg S.A., Uniloc USA, Inc. identifying Other Affiliate Fortress Credit Co. Ltd. for UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Foster, James) (Filed on 4/20/2018) (Entered: 04/20/2018)
04/25/2018	64	ADR Remark: ADR Phone Conference held on 4/24/2018 by Tamara Lange. (af, COURT STAFF) (Filed on 4/25/2018) *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (Entered: 04/25/2018)
04/25/2018	65	NOTICE of Appearance by Matthew David Vella (Vella, Matthew) (Filed on 4/25/2018) (Entered: 04/25/2018)
04/26/2018	66	**Minute Entry for proceedings held before Judge William Alsup:** **Initial Case Management Conference held on 4/26/2018; Motion Hearing held on 4/26/2018 re (53 in 3:18-cv-00358-WHA, 3:18-cv-00359-WHA) MOTION for Judgment on the Pleadings filed by Apple, Inc. and MOTION to Dismiss filed by Apple, Inc. CASE REFERRED to Magistrate Judge Chief Magistrate Judge Joseph C. Spero for Settlement Conference. Final Pretrial Conference set for 11/13/2019 at 02:00 PM in San Francisco, Courtroom 12, 19th Floor. Jury Selection/Jury Trial set for 11/18/2019 at 07:30 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Further Jury Trial set for 11/19/2019, 11/20/2019, 11/21/2019, 11/22/2019 07:30 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Scheduling Order to issue.** **Total Time in Court: 1 Hour; 8 Minutes.** **Court Reporter: Belle Ball.**

		Plaintiff Attorneys: Brian Tollefson, James Foster. **Defendant Attorneys: Logitech: Maria Radwick, Ivo Labar; Apple: Michael Pieja, Doug Winnard, Alan Littmann, Mark Breverman.** **Attachment: Minute Order.** **(afmS, COURT STAFF) (Date Filed: 4/26/2018) (Entered: 04/26/2018)**
04/30/2018	67	Transcript of Proceedings held on April 26, 2018, before Judge William Alsup. Court Reporter Belle Ball, CSR, CRR, RDR, telephone number (415)373-2529, belle_ball@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (44 in 3:17-cv-06733-WHA) Transcript Order) Release of Transcript Restriction set for 7/30/2018. (ballbb15S, COURT STAFF) (Filed on 4/30/2018) (Entered: 04/30/2018)
05/01/2018	68	NOTICE of Appearance by Kenneth Frederick Baum (Baum, Kenneth) (Filed on 5/1/2018) (Entered: 05/01/2018)
05/01/2018	69	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12317221.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing) (Littmann, Alan) (Filed on 5/1/2018) (Entered: 05/01/2018)
05/01/2018	70	**CASE MANAGEMENT ORDER AND REFERENCE TO MAGISTRATE JUDGE FOR MEDIATION/SETTLEMENT. Signed by Judge Alsup on 5/1/2018. Amended Pleadings due by 6/28/2018. Motions due by 6/28/2018. Discovery due by 6/28/2019. Dispositive Motion due by 8/8/2019. (whalc2, COURT STAFF) (Filed on 5/1/2018) (Entered: 05/01/2018)**
05/01/2018	71	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12317425.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing) (Greenblatt, Jennifer) (Filed on 5/1/2018) (Entered: 05/01/2018)
05/01/2018	72	**ORDER GRANTING 69 APPLICATION FOR ADMISSION OF ATTORNEY ALAN LITTMANN PRO HAC VICE by Judge William Alsup. (whalc2, COURT STAFF) (Filed on 5/1/2018) (Entered: 05/01/2018)**
05/01/2018	73	**ORDER GRANTING 71 APPLICATION FOR ADMISSION OF ATTORNEY JENNIFER GREENBLATT PRO HAC VICE by Judge William Alsup. (whalc2, COURT STAFF) (Filed on 5/1/2018) (Entered: 05/01/2018)**
05/01/2018	74	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12317542.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing)(Rima, Andrew) (Filed on 5/1/2018) (Entered: 05/01/2018)
05/01/2018	75	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12317672.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing)(Neff, Emma) (Filed on 5/1/2018) (Entered: 05/01/2018)
05/01/2018	76	**ORDER GRANTING 74 APPLICATION FOR ADMISSION OF ATTORNEY ANDREW RIMA PRO HAC VICE by Judge William Alsup. (whalc2, COURT STAFF) (Filed on 5/1/2018) (Entered: 05/01/2018)**
05/01/2018	77	**ORDER GRANTING 75 APPLICATION FOR ADMISSION OF ATTORNEY EMMA NEFF PRO HAC VICE by Judge William Alsup. (whalc2, COURT STAFF)**

		(Filed on 5/1/2018) (Entered: 05/01/2018)
05/02/2018	78	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12318877.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing) (Abendshien, Lauren) (Filed on 5/2/2018) (Entered: 05/02/2018)
05/02/2018	79	**ORDER GRANTING 78 APPLICATION FOR ADMISSION OF ATTORNEY LAUREN ABENDSHIEN PRO HAC VICE by Judge William Alsup. (whalc2, COURT STAFF) (Filed on 5/2/2018) (Entered: 05/02/2018)**
05/14/2018	80	CLERK'S NOTICE. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* Telephone Conference to set Settlement Conference set for 5/24/2018 09:00 AM in San Francisco, Chambers before Chief Magistrate Judge Joseph C. Spero. Clerk will email conference call information to counsel. (klhS, COURT STAFF) (Filed on 5/14/2018) (Entered: 05/14/2018)
05/23/2018	81	MOTION to Strike *Plaintiffs' Infringement Contentions* filed by Apple, Inc.. Motion Hearing set for 6/28/2018 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 6/6/2018. Replies due by 6/13/2018. (Attachments: # 1 Appendix A, # 2 Declaration of Doug Winnard, # 3 Exhibit A - '422 Disclosure of Asserted Claims and Infringement Contentions, # 4 Exhibit B - '422 Infringement Chart, # 5 Exhibit C - '671 Disclosure of Asserted Claims and Infringement Contentions, # 6 Exhibit D - '671 Infringement Chart, # 7 Exhibit E - '018 Disclosure of Asserted Claims and Infringement Contentions, # 8 Exhibit F - '018 Infringement Chart, # 9 Exhibit G - '127, '134 Disclosure of Asserted Claims and Infringement Contentions, # 10 Exhibit H - '127 Infringement Chart, # 11 Exhibit I - '134 Infringement Chart, # 12 Exhibit J - '158 Disclosure of Asserted Claims and Infringement Contentions, # 13 Exhibit K - '158 Infringement Chart, # 14 Exhibit L - '127 Patent, # 15 Exhibit M - '134 Patent, # 16 Exhibit N - '158 Patent, # 17 Exhibit O - '018 Patent, # 18 Exhibit P - Protective Order, # 19 Exhibit Q - '422 Patent, # 20 Exhibit R - '671 Patent, # 21 Exhibit S - 4.16.18 Email, Pieja to Counsel, # 22 Proposed Order)(Pieja, Michael) (Filed on 5/23/2018) (Entered: 05/23/2018)
05/24/2018	82	**Minute Entry for proceedings held before Chief Magistrate Judge Joseph C. Spero: Telephone Conference to Set Settlement Conference held on 5/24/2018. Settlement Conference set for 12/10/2018 at09:30 AM in San Francisco, Courtroom G, 15th Floor. Court to issue Order** **FTR Time: Not Reported.** **Plaintiff Attorney: James Foster.** **Defendant Attorney: Michael Pieja, Mark Breverman.** **Attachment: Minute Order. (klhS, COURT STAFF) (Date Filed: 5/24/2018) (Entered: 05/24/2018)**
05/24/2018	83	Administrative Motion to File Under Seal *Motion for Entry of Protective Order* filed by Apple, Inc.. (Attachments: # 1 Declaration of Lauren Abendshien, # 2 Proposed Order, # 3 Redacted Version of Motion for Entry of Protective Order, # 4 Unredacted Version of Motion for Entry of Protective Order, # 5 Redacted Declaration of Lauren Abendshien in Support of Motion for Entry of Protective Order, # 6 Unredacted Declaration of Lauren Abendshien in Support of Motion for Entry of Protective Order, # 7 Unredacted Exhibit 17, # 8 Unredacted Exhibit 35)(Pieja, Michael) (Filed on 5/24/2018) (Entered: 05/24/2018)
05/24/2018	84	MOTION for Protective Order *[REDACTED]* filed by Apple, Inc.. Motion Hearing set

		for 6/28/2018 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 6/7/2018. Replies due by 6/14/2018. (Attachments: # 1 Declaration of Lauren Abendshien [REDACTED], # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17 - FILED UNDER SEAL, # 19 Exhibit 18, # 20 Exhibit 19, # 21 Exhibit 20, # 22 Exhibit 21, # 23 Exhibit 22, # 24 Exhibit 23, # 25 Exhibit 24, # 26 Exhibit 25, # 27 Exhibit 26, # 28 Exhibit 27, # 29 Exhibit 28, # 30 Exhibit 29, # 31 Exhibit 30, # 32 Exhibit 31, # 33 Exhibit 32, # 34 Exhibit 33, # 35 Exhibit 34, # 36 35 - FILED UNDER SEAL, # 37 Proposed Protective Order)(Pieja, Michael) (Filed on 5/24/2018) (Entered: 05/24/2018)
05/25/2018	85	CERTIFICATE OF SERVICE by Apple, Inc. re 83 Administrative Motion to File Under Seal *Motion for Entry of Protective Order* (Abendshien, Lauren) (Filed on 5/25/2018) (Entered: 05/25/2018)
05/25/2018	86	**Notice of Settlement Conference and Order Setting Settlement Conference before Chief Magistrate Judge Joseph C. Spero. Settlement Conference set for 12/10/2018 09:30 AM in San Francisco, Courtroom G, 15th Floor. Signed by Chief Magistrate Judge Joseph C. Spero on 05/25/18. (klhS, COURT STAFF) (Filed on 5/25/2018) (Entered: 05/25/2018)**
05/30/2018	87	**ORDER RE MOTIONS TO STRIKE AND FOR PARTIAL STAY OF DISCOVERY. Signed by Judge Alsup on 5/30/2018. (whalc2, COURT STAFF) (Filed on 5/30/2018) (Entered: 05/30/2018)**
06/07/2018	88	Discovery Letter Brief filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Exhibit A)(Foster, James) (Filed on 6/7/2018) (Entered: 06/07/2018)
06/07/2018	89	OPPOSITION/RESPONSE (re 84 MOTION for Protective Order *[REDACTED]*) filed byUNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Declaration of James J. Foster, # 2 Exhibit A, # 3 Proposed Order)(Jacobs, Aaron) (Filed on 6/7/2018) (Entered: 06/07/2018)
06/07/2018		Set/Reset Hearing re: 3:18-cv-00359-WHA 107 Discovery Letter Brief 3:18-cv-00360-WHA 88 Discovery Letter Brief, 3:18-cv-00572-WHA 85 Discovery Letter Brief, 3:18-cv-00365-WHA 83 Discovery Letter Brief, 3:18-cv-00363-WHA 84 Discovery Letter Brief Telephonic Discovery Hearing set for 6/7/2018 12:00 PM in San Francisco, Chambers before Judge William Alsup. (afmS, COURT STAFF) (Filed on 6/7/2018) (Entered: 06/07/2018)
06/07/2018	90	**Minute Entry for proceedings held before Judge William Alsup:** **Telephone Discovery Hearing held on 6/7/2018. The Court ruled that the deposition of the Apple representative will go forward on 6/14/2018. Regarding Topics of Examination listed in the Schedule A attachment to 107 ; 3:18-cv-00360-WHA 88 Discovery Letter Brief,3:18-cv-00572-WHA 85 Discovery Letter Brief, 3:18-cv-00365-WHA 83 Discovery Letter Brief, 3:18-cv-00363-WHA 84 Discovery Letter Brief , Topic 2 is stricken by the Court.** **Total Time in Court: 15 minutes.** **Court Reporter: Debra Pas.** **Plaintiff Attorney: James Foster.**

		Defendant Attorneys: Michael Pieja, Doug Winnard. ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(afmS, COURT STAFF) (Date Filed: 6/7/2018) Modified on 6/7/2018 (afmS, COURT STAFF). (Entered: 06/07/2018)**
06/08/2018	91	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12419197.) filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Certificate of Good Standing)(Hayes, Paul) (Filed on 6/8/2018) (Entered: 06/08/2018)
06/08/2018	92	**Order denying 91 Motion for Pro Hac Vice. Signed by Judge William Alsup on 6/8/2018. (afmS, COURT STAFF) (Filed on 6/8/2018) (Entered: 06/08/2018)**
06/08/2018	93	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12419197.) Filing fee previously paid on 6/8/2018 filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Certificate of Good Standing)(Hayes, Paul) (Filed on 6/8/2018) (Entered: 06/08/2018)
06/08/2018	94	**ORDER GRANTING 93 APPLICATION FOR ADMISSION OF ATTORNEY PAUL HAYES PRO HAC VICE. Signed by Judge William Alsup on 6/8/2018.(afmS, COURT STAFF) (Filed on 6/8/2018) (Entered: 06/08/2018)**
06/08/2018	95	STIPULATION WITH PROPOSED ORDER *for Order Changing Time to Select a Claim* filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Declaration, # 2 Proposed Order)(Jacobs, Aaron) (Filed on 6/8/2018) (Entered: 06/08/2018)
06/11/2018	96	**ORDER GRANTING 95 STIPULATION RE CHANGING TIME TO SELECT A CLAIM (AS MODIFIED). Signed by Judge William Alsup. Associated Cases: 3:17-cv-06733-WHA, 3:18-cv-00359-WHA, 3:18-cv-00360-WHA, 3:18-cv-00363-WHA, 3:18-cv-00365-WHA, 3:18-cv-00572-WHA(whalc2, COURT STAFF) (Filed on 6/11/2018). (Entered: 06/11/2018)**
06/14/2018	97	REPLY (re 84 MOTION for Protective Order *[REDACTED]*) filed byApple, Inc.. (Attachments: # 1 Declaration of Lauren Abendshien, # 2 Exhibit 36 - Comparison of Parties' Prosecution-Bar Proposals, # 3 Exhibit 37 - Order Granting -361 Motion to Stay, # 4 Exhibit 38 - IPR Responses (excerpts), # 5 Exhibit 39 - LinkedIn Profiles, # 6 Exhibit 40 - Uniloc Contingent Motion to Amend (excerpts), # 7 Revised Proposed Protective Order)(Pieja, Michael) (Filed on 6/14/2018) (Entered: 06/14/2018)
06/18/2018	98	**ORDER RE MOTION TO STRIKE INFRINGEMENT CONTENTIONS (granting (98) Motion to Strike in case 3:18-cv-00359-WHA; granting (76) Motion to Strike in case 3:18-cv-00363-WHA; granting (81) Motion to Strike in case 3:18-cv-00360-WHA; granting (76) Motion to Strike in case 3:18-cv-00365-WHA; granting (78) Motion to Strike in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 6/18/2018) (Entered: 06/18/2018)**
06/18/2018	99	CLERK'S NOTICE CALENDARING MOTIONS TO STRIKE FOR HEARING: Motion Hearing set for **6/28/2018 at 08:00 AM** in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. 98 in 3:18-cv-00359-WHA, 81 in 3:18-cv-00360-WHA, 76 in 3:18-cv-00363-WHA, 76 in 3:18-cv-00365-WHA, and 78 in 3:18-cv-00572-WHA. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Filed on 6/18/2018) (Entered: 06/18/2018)
06/18/2018	100	NOTICE by UNILOC Luxembourg S.A., Uniloc USA, Inc. *of Asserted Claim for the Purpose of the Court's Expedited Procedure* (Jacobs, Aaron) (Filed on 6/18/2018) (Entered: 06/18/2018)
06/18/2018	101	NOTICE by Apple, Inc. *of Selection of Patent and Claim for Early Summary Judgment*

		Procedure (Pieja, Michael) (Filed on 6/18/2018) (Entered: 06/18/2018)
06/22/2018	102	MOTION for Leave to File *OPPOSITION TO APPLE'S MOTION TO STRIKE PLAINTIFFS' INFRINGEMENT CONTENTIONS* filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6, # 9 Exhibit C, # 10 Proposed Order)(Foster, James) (Filed on 6/22/2018) (Entered: 06/22/2018)
06/22/2018	103	**ORDER GRANTING MOTION FOR LEAVE AND VACATING ORDER GRANTING MOTION TO STRIKE by Judge Alsup (granting (119) Motion for Leave to File in case 3:18-cv-00359-WHA; granting (98) Motion for Leave to File in case 3:18-cv-00363-WHA; granting (102) Motion for Leave to File in case 3:18-cv-00360-WHA; granting (97) Motion for Leave to File in case 3:18-cv-00365-WHA; granting (99) Motion for Leave to File in case 3:18-cv-00572-WHA). (whalc2S, COURT STAFF) (Filed on 6/22/2018) (Entered: 06/22/2018)**
06/25/2018	104	OPPOSITION/RESPONSE (re 81 MOTION to Strike *Plaintiffs' Infringement Contentions*) filed byUNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Declaration of Brian Tollefson, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6)(Foster, James) (Filed on 6/25/2018) (Entered: 06/25/2018)
06/25/2018	105	STIPULATION WITH PROPOSED ORDER *EXTENDING DEADLINES TO FILE EARLY MOTIONS FOR SUMMARY JUDGMENT TO SERVE SERVE INVALIDITY CONTENTIONS* filed by Apple, Inc.. (Attachments: # 1 Declaration of Michael T. Pieja, # 2 Proposed Order)(Pieja, Michael) (Filed on 6/25/2018) (Entered: 06/25/2018)
06/25/2018	106	**ORDER GRANTING STIPULATED REQUEST TO EXTEND DEADLINES TO FILE EARLY MOTIONS FOR SUMMARY JUDGMENT AND TO SERVE INVALIDITY CONTENTIONS (granting (123) Stipulation in case 3:18-cv-00359-WHA; granting (101) Stipulation in case 3:18-cv-00363-WHA; granting (105) Stipulation in case 3:18-cv-00360-WHA; granting (100) Stipulation in case 3:18-cv-00365-WHA; granting (102) Stipulation in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 6/25/2018) (Entered: 06/25/2018)**
06/26/2018	107	REPLY (re 81 MOTION to Strike *Plaintiffs' Infringement Contentions*) filed byApple, Inc.. (Pieja, Michael) (Filed on 6/26/2018) (Entered: 06/26/2018)
06/28/2018	108	**Minute Entry for proceedings held before Judge William Alsup:** **Motion Hearing held on 6/28/2018 re** **84 in 3:18-cv-00360-WHA MOTION for Protective Order *[REDACTED]* filed by Apple, Inc.,** **79 in 3:18-cv-00365-WHA MOTION for Protective Order *[REDACTED]* filed by Apple, Inc.,** **79 in 3:18-cv-00363-WHA MOTION for Protective Order *[REDACTED]* filed by Apple, Inc.,** **81 in 3:18-cv-00360-WHA MOTION to Strike *Plaintiffs' Infringement Contentions* filed by Apple, Inc.,** **98 in 3:18-cv-00359-WHA MOTION to Strike *Plaintiffs' Infringement Contentions* filed by Apple, Inc.,** **76 in 3:18-cv-00363-WHA MOTION to Strike *Plaintiffs' Infringement Contentions* filed by Apple, Inc.,** **78 in 3:18-cv-00572-WHA MOTION to Strike *Plaintiffs' Infringement Contentions* filed by Apple, Inc.,** **76 in 3:18-cv-00365-WHA MOTION to Strike *Plaintiffs' Infringement Contentions* filed by Apple, Inc.,** **81 in 3:18-cv-00572-WHA MOTION for Protective Order *[REDACTED]* filed by**

		Apple, Inc., **100 in 3:18-cv-00359-WHA MOTION for Protective Order *[REDACTED]* filed by Apple, Inc.** **Plaintiff has until 7/27/2018 noon to file brief. Motions taken under submission.** **Total Time in Court: 36 Minutes.** **Court Reporter: Belle Ball.** **Plaintiff Attorney: James Foster.** **Defendant Attorneys: Michael Pieja, Lauren Abendshien.** **Also Present: Corporate Counsel, Apple: Marc Breverman.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)* (afmS, COURT STAFF) (Date Filed: 6/28/2018) Modified on 6/28/2018 (afmS, COURT STAFF). (Entered: 06/28/2018)**
06/28/2018	109	TRANSCRIPT ORDER for proceedings held on 06/28/2018 before Judge William Alsup by Apple, Inc., for Court Reporter Belle Ball. (Pieja, Michael) (Filed on 6/28/2018) (Entered: 06/28/2018)
07/02/2018	110	**ORDER GRANTING MOTION TO STRIKE PLAINTIFF'S INFRINGEMENT CONTENTIONS (granting (76) Motion to Strike in case 3:18-cv-00363-WHA; granting (81) Motion to Strike in case 3:18-cv-00360-WHA; granting (76) Motion to Strike in case 3:18-cv-00365-WHA; granting (78) Motion to Strike in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 7/2/2018) (Entered: 07/02/2018)**
07/02/2018	111	**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR ENTRY OF PROTECTIVE (granting in part and denying in part (79) Motion for Protective Order in case 3:18-cv-00363-WHA; granting in part and denying in part (84) Motion for Protective Order in case 3:18-cv-00360-WHA; granting in part and denying in part (79) Motion for Protective Order in case 3:18-cv-00365-WHA; granting in part and denying in part (81) Motion for Protective Order in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 7/2/2018) (Entered: 07/02/2018)**
07/02/2018	112	**ORDER DENYING ADMINISTRATIVE MOTION TO SEAL (denying (78) Administrative Motion to File Under Seal in case 3:18-cv-00363-WHA; denying (83) Administrative Motion to File Under Seal in case 3:18-cv-00360-WHA; denying (78) Administrative Motion to File Under Seal in case 3:18-cv-00365-WHA; denying (80) Administrative Motion to File Under Seal in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2S, COURT STAFF) (Filed on 7/2/2018) (Entered: 07/02/2018)**
07/11/2018	113	NOTICE by Apple, Inc. re 112 Order on Administrative Motion to File Under Seal,,,,,,,, *of Compliance with Order* (Attachments: # 1 UNREDACTED VERSION of Defendant's Motion for Entry of Protective Order, # 2 UNREDACTED VERSION of L. Abendshien's Declaration in Support, # 3 UNREDACTED VERSION of Exhibit 17 in Support, # 4 UNREDACTED VERSION of Exhibit 35 in Support)(Pieja, Michael) (Filed on 7/11/2018) (Entered: 07/11/2018)
07/13/2018	114	STIPULATION WITH PROPOSED ORDER filed by Apple, Inc.. (Attachments: # 1 Proposed Protective Order)(Pieja, Michael) (Filed on 7/13/2018) (Entered: 07/13/2018)
07/14/2018	115	**ORDER GRANTING STIPULATED PROTECTIVE ORDER (granting (109) Stipulation in case 3:18-cv-00363-WHA; granting (114) Stipulation in case 3:18-cv-00360-WHA; granting (112) Stipulation in case 3:18-cv-00365-WHA; granting (112)**

		Stipulation in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 7/14/2018) (Entered: 07/14/2018)
08/01/2018	116	Transcript of Proceedings held on June 28, 2018, before Judge William Alsup. Court Reporter Belle Ball, CSR, CRR, RDR, telephone number (415)373-2529, belle_ball@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (109 in 3:18-cv-00360-WHA) Transcript Order) Release of Transcript Restriction set for 10/30/2018. (ballbb15S, COURT STAFF) (Filed on 8/1/2018) (Entered: 08/01/2018)
08/21/2018	117	Discovery Letter Brief filed by Apple, Inc.. (Attachments: # 1 Exhibit A - Apple's First Set of Interrogatories (excerpts), # 2 Exhibit B - Apple's First Set of Requests for Production (excerpts), # 3 Exhibit C - Assigment (excerpts), # 4 Exhibit D - Letter from D. Winnard, # 5 Exhibit E - Email from M. Pieja)(Pieja, Michael) (Filed on 8/21/2018) (Entered: 08/21/2018)
08/22/2018	118	**ORDER SETTING DISCOVERY HEARING (re (112) Discovery Letter Brief in case 3:18-cv-00363-WHA; re (117) Discovery Letter Brief in case 3:18-cv-00360-WHA; re (133) Discovery Letter Brief in case 3:18-cv-00365-WHA; re (128) Discovery Letter Brief in case 3:18-cv-00572-WHA). Signed by Judge Alsup on 8/22/2018. (whalc2, COURT STAFF) (Filed on 8/22/2018) (Entered: 08/22/2018)**
08/23/2018		Set/Reset Hearing re (129 in 3:18-cv-00572-WHA) Order, Discovery Hearing set for 9/4/2018 10:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. (afmS, COURT STAFF) (Filed on 8/23/2018) (Entered: 08/23/2018)
08/23/2018	119	MOTION UNDER FED. R. CIV. P. 25 TO JOIN NEW PATENT OWNER UNILOC 2017 LLC AS A PLAINTIFF filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. Motion Hearing set for 9/27/2018 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 9/6/2018. Replies due by 9/13/2018. (Attachments: # 1 Declaration of James J. Foster, # 2 Proposed Order)(Foster, James) (Filed on 8/23/2018) (Entered: 08/23/2018)
08/29/2018	120	OPPOSITION/RESPONSE (re 117 Discovery Letter Brief) *PLAINTIFFS DETAILED ACCOUNT OF PATENT OWNERSHIP HISTORY* filed byUNILOC Luxembourg S.A., Uniloc USA, Inc.. (Foster, James) (Filed on 8/29/2018) (Entered: 08/29/2018)
08/30/2018	121	TRANSCRIPT ORDER for proceedings held on 6/28/18 before Judge William Alsup by UNILOC Luxembourg S.A., Uniloc USA, Inc., for Court Reporter Belle Ball. (Foster, James) (Filed on 8/30/2018) (Entered: 08/30/2018)
09/04/2018	122	**Minute Entry for proceedings held before Judge William Alsup: Discovery Hearing held on 9/4/2018. Matter taken under submission. Court to issue written order.** **Total Time in Court: 39 minutes.** **Court Reporter: Belle Ball.** **Plaintiff Attorney: James Foster.** **Defendant Attorney: Michael Pieja, Jimmy Ruck (summer associate).** **Apple Corporate Counsel: Marc Breverman.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)* (tlhS, COURT STAFF) (Date Filed: 9/4/2018) (Entered: 09/04/2018)**
09/04/2018	123	**ORDER RE 117 DISCOVERY LETTER BRIEF. Signed by Judge William Alsup.**

		(whalc2, COURT STAFF) (Filed on 9/4/2018) (Entered: 09/04/2018)
09/05/2018	124	TRANSCRIPT ORDER for proceedings held on 09/04/2018 before Judge William Alsup by Apple, Inc., for Court Reporter Belle Ball. (Pieja, Michael) (Filed on 9/5/2018) (Entered: 09/05/2018)
09/05/2018	125	Transcript of Proceedings held on September 4, 2018, before Judge William Alsup. Court Reporter Belle Ball, CSR, CRR, RDR, telephone number (415)373-2529, belle_ball@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re (124 in 3:18-cv-00360-WHA) Transcript Order) Release of Transcript Restriction set for 12/4/2018. (ballbb15S, COURT STAFF) (Filed on 9/5/2018) (Entered: 09/05/2018)
09/06/2018	126	TRANSCRIPT ORDER for proceedings held on 9/4/2018 before Judge William Alsup by UNILOC Luxembourg S.A., Uniloc USA, Inc., for Court Reporter Belle Ball. (Foster, James) (Filed on 9/6/2018) (Entered: 09/06/2018)
09/11/2018	127	**REQUEST FOR RESPONSE. Signed by Judge Alsup on 9/11/2018. (whalc2, COURT STAFF) (Filed on 9/11/2018) (Entered: 09/11/2018)**
09/13/2018	128	RESPONSE to re 127 Order by Apple, Inc.. (Pieja, Michael) (Filed on 9/13/2018) (Entered: 09/13/2018)
09/13/2018	129	RESPONSE to re 127 Order by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Foster, James) (Filed on 9/13/2018) (Entered: 09/13/2018)
09/14/2018	130	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-12678739.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing)(Zhang, Shu) (Filed on 9/14/2018) (Entered: 09/14/2018)
09/14/2018	131	**ORDER SUA SPONTE STAYING CASES PENDING RESOLUTION OF IPR PROCEEDINGS. Signed by Judge Alsup on 9/14/2018. (whalc2, COURT STAFF) (Filed on 9/14/2018) (Entered: 09/14/2018)**
09/17/2018	132	**ORDER GRANTING APPLICATION FOR ADMISSION OF ATTORNEY PRO HAC VICE by Judge William Alsup granting 130 Motion for Pro Hac Vice for attorney Shu Zhang.(tlS, COURT STAFF) (Filed on 9/17/2018) (Entered: 09/17/2018)**
10/25/2018	133	CLERK'S NOTICE. In light of the STAY entered by Judge Alsup, the Court sets a Telephonic Scheduling Conference for 12/11/2018 09:00 AM in San Francisco, Chambers before Chief Magistrate Judge Joseph C. Spero. The settlement conference set for 12/10/18 at 9:30 AM is taken off calendar. The clerk has emailed conference call information to counsel. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (klhS, COURT STAFF) (Filed on 10/25/2018) (Entered: 10/25/2018)
10/25/2018	134	Administrative Motion to File Under Seal *Defendant's Motion to Dismiss for Lack of Subject-Matter Jurisdiction* filed by Apple, Inc.. (Attachments: # 1 Declaration, # 2 Proposed Order, # 3 Redacted Version of Motion to Dismiss, # 4 Unredacted Version of Motion to Dismiss, # 5 Redacted Version of Declaration, # 6 Unredacted Version of Declaration, # 7 Unredacted Version of Exhibit A, # 8 Unredacted Version of Exhibit B, # 9 Unredacted Version of Exhibit C, # 10 Unredacted Version of Exhibit D, # 11 Unredacted Version of Exhibit E, # 12 Unredacted Version of Exhibit F, # 13 Unredacted

		Version of Exhibit G, # 14 Unredacted Version of Exhibit J, # 15 Unredacted Version of Exhibit K, # 16 Unredacted Version of Exhibit L, # 17 Unredacted Version of Exhibit M, # 18 Unredacted Version of Exhibit O, # 19 Unredacted Version of Exhibit P, # 20 Unredacted Version of Exhibit Q, # 21 Unredacted Version of Exhibit R, # 22 Unredacted Version of Exhibit S, # 23 Unredacted Version of Exhibit W, # 24 Unredacted Version of Appendix A)(Pieja, Michael) (Filed on 10/25/2018) (Entered: 10/25/2018)
10/25/2018	135	MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]* filed by Apple, Inc.. Motion Hearing set for 11/29/2018 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 11/8/2018. Replies due by 11/15/2018. (Attachments: # 1 Declaration of Doug Winnard [REDACTED], # 2 Exhibit A [SEALED], # 3 Exhibit B [SEALED], # 4 Exhibit C [SEALED], # 5 Exhibit D [SEALED], # 6 Exhibit E [SEALED], # 7 Exhibit F [SEALED], # 8 Exhibit G [SEALED], # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J [SEALED], # 12 Exhibit K [SEALED], # 13 Exhibit L [SEALED], # 14 Exhibit M [SEALED], # 15 Exhibit N, # 16 Exhibit O [SEALED], # 17 Exhibit P [SEALED], # 18 Exhibit Q [SEALED], # 19 Exhibit R [SEALED], # 20 Exhibit S [SEALED], # 21 Exhibit T, # 22 Exhibit U, # 23 Exhibit V, # 24 Exhibit W [SEALED], # 25 Exhibit X, # 26 Exhibit Y, # 27 Exhibit Z, # 28 Exhibit AA, # 29 Appendix A [SEALED], # 30 Appendix B, # 31 Proposed Order) (Pieja, Michael) (Filed on 10/25/2018) (Entered: 10/25/2018)
10/26/2018	136	CLERK'S NOTICE RESCHEDULING MOTION(S) HEARING FROM NOVEMBER 29, 2018 TO DECEMBER 13, 2018: As to (135 in 3:18-cv-00360-WHA) MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]*, (129 in 3:18-cv-00363-WHA) MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]*, (159 in 3:18-cv-00365-WHA) MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]*, (149 in 3:18-cv-00572-WHA) MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]*. Motion(s) previously noticed for hearing on 11/29/2018 have been rescheduled to 12/13/2018 at 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup.. *(This is a text-only entry generated by the court. There is no document associated with this entry.)*, (tlS, COURT STAFF) (Filed on 10/26/2018) (Entered: 10/26/2018)
10/29/2018	137	Declaration of Aaron Jacobs in Support of 134 Administrative Motion to File Under Seal *Defendant's Motion to Dismiss for Lack of Subject-Matter Jurisdiction* filed byUNILOC Luxembourg S.A., Uniloc USA, Inc.. (Related document(s) 134) (Jacobs, Aaron) (Filed on 10/29/2018) (Entered: 10/29/2018)
11/05/2018	138	STIPULATION WITH PROPOSED ORDER *to Extend Time* filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Declaration of James J. Foster) (Foster, James) (Filed on 11/5/2018) (Entered: 11/05/2018)
11/05/2018	139	**ORDER GRANTING IN PART STIPULATED REQUEST TO EXTEND DEADLINES RE MOTION TO DISMISS (AS MODIFIED) (re (132) Stipulation in case 3:18-cv-00363-WHA; re (138) Stipulation in case 3:18-cv-00360-WHA; re (162) Stipulation in case 3:18-cv-00365-WHA; re (152) Stipulation in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 11/5/2018) (Entered: 11/05/2018)**
11/07/2018	140	Renotice motion hearing re 135 MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]* filed byApple, Inc.. (Related document(s) 135) (Pieja, Michael) (Filed on 11/7/2018) (Entered: 11/07/2018)
11/12/2018	141	Administrative Motion to File Under Seal filed by UNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Declaration of Aaron S. Jacobs, # 2 Proposed Order, # 3 Exhibit 1 - Response (Redacted), # 4 Exhibit 2 - Palmer Declaration (Redacted), # 5 Exhibit 3 - Ex. A to Palmer Declaration (Redacted), # 6 Exhibit 4 - Response (Unredacted), # 7 Exhibit 5 - Palmer Declaration (Unredacted), # 8 Exhibit 6 - Ex. A t

		Palmer Declaration (Unredacted))(Jacobs, Aaron) (Filed on 11/12/2018) (Entered: 11/12/2018)
11/12/2018	142	OPPOSITION/RESPONSE (re 119 MOTION UNDER FED. R. CIV. P. 25 TO JOIN NEW PATENT OWNER UNILOC 2017 LLC AS A PLAINTIFF , 135 MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]*) *[REDACTED]* filed byUNILOC Luxembourg S.A., Uniloc USA, Inc.. (Attachments: # 1 Declaration of James Palmer, # 2 Exhibit A)(Jacobs, Aaron) (Filed on 11/12/2018) (Entered: 11/12/2018)
11/15/2018	143	STIPULATION re 135 MOTION to Dismiss for Lack of Jurisdiction *[REDACTED] to Extend Time* filed by Apple, Inc.. (Attachments: # 1 Declaration of Michael T. Pieja) (Pieja, Michael) (Filed on 11/15/2018) (Entered: 11/15/2018)
11/15/2018	144	**ORDER GRANTING STIPULATED REQUEST TO EXTEND TIME FOR REPLY BRIEF (re (137) Stipulation in case 3:18-cv-00363-WHA; re (143) Stipulation in case 3:18-cv-00360-WHA; re (167) Stipulation in case 3:18-cv-00365-WHA; re (157) Stipulation in case 3:18-cv-00572-WHA). Signed by Judge Alsup on 11/15/2018. (whalc2, COURT STAFF) (Filed on 11/15/2018) (Entered: 11/15/2018)**
11/20/2018	145	CLERK'S NOTICE Rescheduling Motion Hearing: Motion Hearing re (135 in 3:18-cv-00360-WHA) MOTION to Dismiss for Lack of Jurisdiction, (129 in 3:18-cv-00363-WHA) MOTION to Dismiss for Lack of Jurisdiction, (159 in 3:18-cv-00365-WHA) MOTION to Dismiss for Lack of Jurisdiction, (149 in 3:18-cv-00572-WHA) MOTION to Dismiss for Lack of Jurisdiction previously set for 12/13/2018 at 8:00 AM is rescheduled to **1/10/2019 08:00 AM** in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (tlhS, COURT STAFF) (Filed on 11/20/2018) (Entered: 11/20/2018)
11/20/2018		Set/Reset Hearing (tlhS, COURT STAFF) (Filed on 11/20/2018) (Entered: 11/20/2018)
11/27/2018	146	Administrative Motion to File Under Seal *Portions of Defendant's Reply and Exhibits* filed by Apple, Inc.. (Attachments: # 1 Declaration of Doug Winnard, # 2 Proposed Order, # 3 Redacted Version of Reply, # 4 Unredacted Version of Reply, # 5 Redacted Version of Declaration, # 6 Unredacted Version of Declaration, # 7 Unredacted Version of Exhibit CC, # 8 Unredacted Version of Exhibit DD, # 9 Unredacted Version of Exhibit GG)(Winnard, Douglas) (Filed on 11/27/2018) (Entered: 11/27/2018)
11/27/2018	147	REPLY (re 135 MOTION to Dismiss for Lack of Jurisdiction *[REDACTED]*) *[REDACTED]* filed byApple, Inc.. (Attachments: # 1 Declaration, # 2 Exhibit BB, # 3 Exhibit CC [SEALED], # 4 Exhibit DD [SEALED], # 5 Exhibit EE, # 6 Exhibit FF, # 7 Exhibit GG [SEALED], # 8 Exhibit HH)(Winnard, Douglas) (Filed on 11/27/2018) (Entered: 11/27/2018)
11/30/2018	148	Declaration of Aaron Jacobs in Support of 146 Administrative Motion to File Under Seal *Portions of Defendant's Reply and Exhibits* filed byUNILOC Luxembourg S.A., Uniloc USA, Inc.. (Related document(s) 146) (Jacobs, Aaron) (Filed on 11/30/2018) (Entered: 11/30/2018)
12/11/2018	149	**Minute Entry for proceedings held before Chief Magistrate Judge Joseph C. Spero: Telephonic Scheduling Conference held on 12/11/2018.Further Telephone Conference set for 4/11/2019 09:00 AM in San Francisco, Chambers before Chief Magistrate Judge Joseph C. Spero.** **FTR Time: Not Reported.** **Plaintiff Attorney: No Appearance.**

		Defendant Attorney: Michael Pieja (by phone). **Attachment: Minute Order. (klhS, COURT STAFF) (Date Filed: 12/11/2018) (Entered: 12/11/2018)**
12/14/2018	150	STATUS REPORT *(JOINT)* by Apple, Inc., UNILOC Luxembourg S.A. and Uniloc USA, Inc. (Pieja, Michael) (Filed on 12/14/2018) Modified on 12/17/2018 (amgS, COURT STAFF). (Entered: 12/14/2018)
12/14/2018	151	**STATUS REPORT ORDER. Signed by Judge Alsup on 12/14/2018. Status Report due by 7/1/2019. (whalc2, COURT STAFF) (Filed on 12/14/2018) (Entered: 12/14/2018)**
01/09/2019	152	MOTION to Intervene *for Limited Purpose of Opposing Motions to Seal* filed by Electronic Frontier Foundation. Motion Hearing set for 2/14/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 1/23/2019. Replies due by 1/30/2019. (Attachments: # 1 Proposed Order)(Nazer, Daniel) (Filed on 1/9/2019) (Entered: 01/09/2019)
01/09/2019	153	Corporate Disclosure Statement by Electronic Frontier Foundation (Nazer, Daniel) (Filed on 1/9/2019) (Entered: 01/09/2019)
01/10/2019	154	**Minute Entry for proceedings held before Judge William Alsup: Motion Hearing re (107 in 3:18-cv-00358-WHA) Amended MOTION for an Indicative Ruling Pursuant to Rule 62.1, (135 in 3:18-cv-00360-WHA) MOTION to Dismiss for Lack of Jurisdiction, (129 in 3:18-cv-00363-WHA) MOTION to Dismiss for Lack of Jurisdiction, (159 in 3:18-cv-00365-WHA) MOTION to Dismiss for Lack of Jurisdiction, (149 in 3:18-cv-00572-WHA) MOTION to Dismiss for Lack of Jurisdiction held on 1/10/2019. Matter taken under submission. Court to issue written order. (Total Time in Court: 10 minutes.)** **Court Reporter: Marla Knox.** **Plaintiff Attorney: James Foster.** **Defendant Attorney: Michael Pieja, Mark Breverman, Lauren Abendshien, Doug Winnard for Apple Inc.** ***(This is a text-only entry generated by the court. There is no document associated with this entry.)* (tlhS, COURT STAFF) (Date Filed: 1/10/2019) (Entered: 01/10/2019)**
01/14/2019	155	TRANSCRIPT ORDER for proceedings held on 01/10/2019 before Judge William Alsup by Apple, Inc., for Court Reporter Marla Knox. (Pieja, Michael) (Filed on 1/14/2019) (Entered: 01/14/2019)
01/16/2019	156	TRANSCRIPT ORDER for proceedings held on 1/10/2019 before Judge William Alsup by UNILOC Luxembourg S.A., Uniloc USA, Inc., for Court Reporter Marla Knox. (Jacobs, Aaron) (Filed on 1/16/2019) (Entered: 01/16/2019)
01/17/2019	158	**ORDER RE SEALING OF ORDER ON MOTION TO DISMISS AND MOTION TO JOIN PARTY. Signed by Judge William Alsup on 1/17/2019. (tlhS, COURT STAFF) (Filed on 1/17/2019) (Entered: 01/17/2019)**
01/17/2019	159	**ORDER RE ADMINISTRATIVE MOTIONS TO FILE UNDER SEAL AND MOTION TO INTERVENE (denying (128) Administrative Motion to File Under Seal; denying (135) Administrative Motion to File Under Seal; denying (140) Administrative Motion to File Under Seal; granting in part and denying in part (146) Motion to Intervene in case 3:18-cv-00363-WHA; denying (134) Administrative Motion to File Under Seal; denying (141) Administrative Motion to File Under Seal; denying (146) Administrative Motion to File Under Seal; granting**

		in part and denying in part (152) Motion to Intervene in case 3:18-cv-00360-WHA; denying (158) Administrative Motion to File Under Seal; denying (165) Administrative Motion to File Under Seal; denying (170) Administrative Motion to File Under Seal; granting in part and denying in part (176) Motion to Intervene in case 3:18-cv-00365-WHA; denying (148) Administrative Motion to File Under Seal; denying (155) Administrative Motion to File Under Seal; denying (160) Administrative Motion to File Under Seal; granting in part and denying in part (166) Motion to Intervene in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2S, COURT STAFF) (Filed on 1/17/2019) (Entered: 01/17/2019)
01/18/2019	160	Transcript of Proceedings held on January 10, 2019, before Judge William H. Alsup. Court Reporter, Marla F. Knox, RPR, CRR, telephone number (602) 391-6990. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 4/18/2019. (mfk, COURT STAFF) (Filed on 1/18/2019) (Entered: 01/18/2019)
01/23/2019	161	OPPOSITION TO 152 MOTION to Intervene for Limited Purpose of Opposing Motions to Seal filed by UNILOC Luxembourg S.A., Uniloc USA, Inc., Uniloc 2017 LLC. (Foster, James) (Filed on 1/23/2019) Modified on 1/23/2019 (amgS, COURT STAFF). (Entered: 01/23/2019)
01/29/2019	162	ADMINISTRATIVE MOTION for a Brief Stay re 158 Order, 159 Order on Administrative Motion to File Under Seal, Order on Motion to Intervene filed by UNILOC Luxembourg S.A., Uniloc 2017 LLC. Responses due by 2/4/2019. (Attachments: # 1 Proposed Order)(Jacobs, Aaron) (Filed on 1/29/2019) Modified on 1/29/2019 (amgS, COURT STAFF). (Entered: 01/29/2019)
01/30/2019	163	**ORDER GRANTING ADMINISTRATIVE MOTION FOR A BRIEF STAY RE 1/17/19 SEALING ORDERS (granting (154) Administrative Motion in case 3:18-cv-00363-WHA; granting (162) Administrative Motion in case 3:18-cv-00360-WHA; granting (184) Administrative Motion in case 3:18-cv-00365-WHA; granting (174) Administrative Motion in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 1/30/2019) (Entered: 01/30/2019)**
02/01/2019	164	ADMINISTRATIVE MOTION to File Redacted Document on the Public Record re 158 Order filed by UNILOC Luxembourg S.A., Uniloc 2017 LLC. Responses due by 2/5/2019. (Attachments: # 1 Proposed Order, # 2 Exhibit (Redacted Order on Motion to Dismiss and Motion to Join Party))(Jacobs, Aaron) (Filed on 2/1/2019) (Entered: 02/01/2019)
02/14/2019	165	MOTION for Leave to File *a Motion for Reconsideration* filed by Apple, Inc.. (Attachments: # 1 Declaration of Doug Winnard, # 2***** EXHIBIT FILED IN ERROR WITH CONFIDENTIAL INFORMATION . DOCUMENT LOCKED. SEE DOC # 166 ***** Exhibit A - Revenue Sharing Agreement, # 3 Exhibit B - Email, # 4 Proposed Order) (Pieja, Michael) (Filed on 2/14/2019) Modified on 2/14/2019 (fff, COURT STAFF). Modified on 2/14/2019 (amgS, COURT STAFF). (Entered: 02/14/2019)
02/14/2019	166	EXHIBITS re 165 MOTION for Leave to File *a Motion for Reconsideration* filed by Apple, Inc.. (Attachments: # 1 Exhibit A - Revenue Sharing Agreement (Excerpt)) (Related document(s) 165) (Pieja, Michael) (Filed on 2/14/2019) Modified on 2/14/2019 (amgS, COURT STAFF). (Entered: 02/14/2019)
02/15/2019	167	Administrative Motion to File Under Seal *re Motion for Leave for Reconsideration* filed

		by UNILOC Luxembourg S.A., Uniloc 2017 LLC. (Attachments: # 1 Declaration of Aaron S. Jacobs, # 2 Proposed Order, # 3 Exhibit Jacobs Declaration (redacted), # 4 Exhibit A (redacted), # 5 Exhibit B (redacted), # 6 Exhibit G (sealed), # 7 Exhibit H (sealed), # 8 Exhibit I (redacted), # 9 Exhibit J (sealed), # 10 Exhibit K (sealed), # 11 Exhibit L (sealed), # 12 Exhibit M (sealed), # 13 Exhibit N (sealed), # 14 Exhibit O (redacted), # 15 Exhibit P (redacted), # 16 Exhibit Q (redacted), # 17 Exhibit R (redacted), # 18 Exhibit S (redacted), # 19 Exhibit T (redacted), # 20 Exhibit U (redacted), # 21 Exhibit V (redacted), # 22 Exhibit W (sealed), # 23 Exhibit Y (sealed), # 24 Exhibit Z (redacted), # 25 Exhibit Jacobs Declaration, # 26 Exhibit A, # 27 Exhibit B, # 28 Exhibit G, # 29 Exhibit H, # 30 Exhibit I, # 31 Exhibit J, # 32 Exhibit K, # 33 Exhibit L, # 34 Exhibit M, # 35 Exhibit N, # 36 Exhibit O, # 37 Exhibit P, # 38 Exhibit Q, # 39 Exhibit R, # 40 Exhibit S, # 41 Exhibit T, # 42 Exhibit U, # 43 Exhibit V, # 44 Exhibit W, # 45 Exhibit X (public), # 46 Exhibit Y, # 47 Exhibit Z)(Jacobs, Aaron) (Filed on 2/15/2019) (Entered: 02/15/2019)
02/15/2019	168	MOTION for Reconsideration re 158 Order, 159 Order on Administrative Motion to File Under Seal, Order on Motion to Intervene, *Pursuant to Civ. L.R. 7-9(a)* filed by UNILOC Luxembourg S.A., Uniloc 2017 LLC. (Attachments: # 1 Exhibit (Motion for Reconsideration), # 2 Exhibit (Jacobs Declaration re Motion for Reconsideration), # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G, # 10 Exhibit H, # 11 Exhibit I, # 12 Exhibit J, # 13 Exhibit K, # 14 Exhibit L, # 15 Exhibit M, # 16 Exhibit N, # 17 Exhibit O, # 18 Exhibit P, # 19 Exhibit Q, # 20 Exhibit R, # 21 Exhibit S, # 22 Exhibit T, # 23 Exhibit U, # 24 Exhibit V, # 25 Exhibit W, # 26 Exhibit X, # 27 Exhibit Y)(Jacobs, Aaron) (Filed on 2/15/2019) Modified on 2/19/2019 (amgS, COURT STAFF). (Entered: 02/15/2019)
02/25/2019	169	**ORDER GRANTING MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION (granting (157) Motion for Leave to File in case 3:18-cv-00363-WHA; granting (165) Motion for Leave to File in case 3:18-cv-00360-WHA; granting (187) Motion for Leave to File in case 3:18-cv-00365-WHA; granting (177) Motion for Leave to File in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2S, COURT STAFF) (Filed on 2/25/2019) (Entered: 02/25/2019)**
02/26/2019	170	STIPULATION *TO AMEND BRIEFING SCHEDULE* filed by UNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc. and Apple, Inc. (Foster, James) (Filed on 2/26/2019) Modified on 2/26/2019 (amgS, COURT STAFF). (Entered: 02/26/2019)
02/27/2019	171	**ORDER GRANTING STIPULATED REQUEST TO AMEND BRIEFING SCHEDULE. Signed by Judge Alsup on 2/27/2019. (whalc2, COURT STAFF) (Filed on 2/27/2019) (Entered: 02/27/2019)**
03/04/2019	172	Administrative Motion to File Under Seal *Motion for Reconsideration* filed by Apple, Inc.. (Attachments: # 1 Declaration of Doug Winnard, # 2 Proposed Order, # 3 Redacted Version of Motion for Reconsideration, # 4 Unredacted Version of Motion to Dismiss) (Winnard, Douglas) (Filed on 3/4/2019) (Entered: 03/04/2019)
03/04/2019	173	MOTION for Reconsideration *(REDACTED) of Order Denying Motion to Dismiss* filed by Apple, Inc.. (Attachments: # 1 Declaration of Doug Winnard, # 2 Exhibit A - Agreement (Excerpts), # 3 Exhibit B - Deposition (Excerpts), # 4 Proposed Order)(Pieja, Michael) (Filed on 3/4/2019) (Entered: 03/04/2019)
03/05/2019	174	Declaration of Aaron S. Jacobs in Support of 172 Administrative Motion to File Under Seal *Motion for Reconsideration* filed byUNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Related document(s) 172) (Jacobs, Aaron) (Filed on 3/5/2019) (Entered: 03/05/2019)
03/05/2019	175	NOTICE of Appearance by Alexandra Helen Moss (Moss, Alexandra) (Filed on

		3/5/2019) (Entered: 03/05/2019)
03/07/2019	176	NOTICE of Change In Counsel by Daniel K. Nazer (Nazer, Daniel) (Filed on 3/7/2019) (Entered: 03/07/2019)
03/11/2019	177	Second MOTION to Intervene *for Limited Purpose of Opposing Uniloc's Motion for Reconsideration* filed by Electronic Frontier Foundation. Motion Hearing set for 4/18/2019 08:00 AM in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. Responses due by 3/25/2019. Replies due by 4/1/2019. (Attachments: # 1 Declaration of Alexandra H. Moss, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Proposed Order)(Moss, Alexandra) (Filed on 3/11/2019) (Entered: 03/11/2019)
03/13/2019	178	OPPOSITION/RESPONSE (re 173 MOTION for Reconsideration *(REDACTED) of Order Denying Motion to Dismiss*) filed by UNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Attachments: # 1 Declaration of James Palmer)(Foster, James) (Filed on 3/13/2019) Modified on 3/13/2019 (amgS, COURT STAFF). (Entered: 03/13/2019)
03/19/2019	179	REPLY (re 173 MOTION for Reconsideration *(REDACTED) of Order Denying Motion to Dismiss*) filed by Apple, Inc.. (Pieja, Michael) (Filed on 3/19/2019) Modified on 3/19/2019 (amgS, COURT STAFF). (Entered: 03/19/2019)
03/25/2019	180	OPPOSITION/RESPONSE (re 177 Second MOTION to Intervene *for Limited Purpose of Opposing Uniloc's Motion for Reconsideration*) filed byUNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Jacobs, Aaron) (Filed on 3/25/2019) (Entered: 03/25/2019)
04/01/2019	181	REPLY (re 177 Second MOTION to Intervene *for Limited Purpose of Opposing Uniloc's Motion for Reconsideration*) filed byElectronic Frontier Foundation. (Moss, Alexandra) (Filed on 4/1/2019) (Entered: 04/01/2019)
04/08/2019	182	CLERK'S NOTICE CONTINUING MOTION HEARING: Motion Hearing re (177 in 3:18-cv-00360-WHA) Second MOTION to Intervene, (168 in 3:18-cv-00363-WHA) Second MOTION to Intervene, (198 in 3:18-cv-00365-WHA) Second MOTION to Intervene, (188 in 3:18-cv-00572-WHA) Second MOTION to Intervene previously set for 4/18/2019 8:00 AM is rescheduled to **5/9/2019 08:00 AM** in San Francisco, Courtroom 12, 19th Floor before Judge William Alsup. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (tlhS, COURT STAFF) (Filed on 4/8/2019) (Entered: 04/08/2019)
04/11/2019	183	CLERK'S REMINDER NOTICE RE TELEPHONE CONFERENCE. Please note that you must be logged into an ECF account of counsel of record in order to view this document. Telephone conference set for 4/11/19 at 9:00 AM before Chief Magistrate Judge Joseph C. Spero. Parties shall use the following conference call number: 888 684 8852. Code: 8256171. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (klhS, COURT STAFF) (Filed on 4/11/2019) Modified on 4/11/2019 (klhS, COURT STAFF). (Entered: 04/11/2019)
04/11/2019	184	**Minute Entry for proceedings held before Chief Magistrate Judge Joseph C. Spero: Pre-Settlement Telephone Conference held on 4/11/2019. Further Telephone Conference set for 7/11/2019 09:00 AM in San Francisco, Chambers before Magistrate Judge Joseph C. Spero. Counsel shall use the same conference call information.** **FTR Time: Not Reported.** **Plaintiff Attorney: Aaron Jacobs (by phone).**

		Defendant Attorney: Lauren Abendshien (by phone). ***(This is a text-only entry generated by the court. There is no document associated with this entry.)*** **(klhS, COURT STAFF) (Date Filed: 4/11/2019) (Entered: 04/11/2019)**
04/30/2019	185	MOTION to Relate Case filed by Apple, Inc.. (Attachments: # 1 Declaration of Michael Pieja, # 2 Exhibit A - US6856616, # 3 Exhibit B - US6446127, # 4 Exhibit C - US8539552, # 5 Proposed Order)(Pieja, Michael) (Filed on 4/30/2019) (Entered: 04/30/2019)
05/06/2019	186	OPPOSITION/RESPONSE (re 185 MOTION to Relate Case) filed by UNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Attachments: # 1 Declaration of Kevin Gannon, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H)(Foster, James) (Filed on 5/6/2019) Modified on 5/6/2019 (amgS, COURT STAFF). (Entered: 05/06/2019)
05/07/2019	187	**ORDER ON MOTIONS FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION, TO FILE UNDER SEAL, AND TO INTERVENE AND ORDER VACATING HEARING (denying (158) Administrative Motion to File Under Seal; denying (159) Motion for Reconsideration ; granting (168) Motion to Intervene in case 3:18-cv-00363-WHA; denying (167) Administrative Motion to File Under Seal; denying (168) Motion for Reconsideration ; granting (177) Motion to Intervene in case 3:18-cv-00360-WHA; denying (188) Administrative Motion to File Under Seal; denying (189) Motion for Reconsideration ; granting (198) Motion to Intervene in case 3:18-cv-00365-WHA; denying (178) Administrative Motion to File Under Seal; denying (179) Motion for Reconsideration ; granting (188) Motion to Intervene in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2S, COURT STAFF) (Filed on 5/7/2019) (Entered: 05/07/2019)**
05/10/2019	188	**ORDER GRANTING MOTION TO FILE REDACTED DOCUMENT ON THE PUBLIC DOCKET (granting (156) Administrative Motion in case 3:18-cv-00363-WHA; granting (164) Administrative Motion in case 3:18-cv-00360-WHA; granting (186) Administrative Motion in case 3:18-cv-00365-WHA; granting (176) Administrative Motion in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 5/10/2019) (Entered: 05/10/2019)**
05/21/2019	189	NOTICE OF APPEAL to the Federal Circuit by UNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. Filing fee $ 505, receipt number 0971-13366138. Appeal Record due by 6/20/2019. (Foster, James) (Filed on 5/21/2019) (Entered: 05/21/2019)
05/24/2019	190	**ORDER DENYING 185 MOTION TO RELATE. Signed by Judge William Alsup. (whalc2, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/24/2019)**
05/24/2019	193	USCA Case Number 19-1922 Federal Circuit for 189 Notice of Appeal to the Federal Circuit filed by Uniloc 2017 LLC, UNILOC Luxembourg S.A., Uniloc USA, Inc.. (amgS, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/31/2019)
05/28/2019	191	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d filed byUNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Attachments: # 1 Supplement Federal Circuit Opinion in 18-1132)(Related document(s) 173) (Jacobs, Aaron) (Filed on 5/28/2019) (Entered: 05/28/2019)
05/30/2019	192	STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d filed by UNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Attachments: # 1 Attachment)(Foster, James) (Filed on 5/30/2019) Modified on 5/30/2019 (amgS, COURT STAFF). (Entered: 05/30/2019)
06/11/2019	194	ADMINISTRATIVE MOTION FOR LEAVE TO FILE RESPONSE TO PLAINTIFFS'

		STATEMENTS OF RECENT DECISION re 192 Statement of Recent Decision, 191 Statement of Recent Decision, filed by Apple, Inc.. Responses due by 6/17/2019. (Attachments: # 1 Declaration of Doug Winnard, # 2 Exhibit A - Statement Regarding Decisions Cited by Plaintiffs, # 3 Proposed Order)(Pieja, Michael) (Filed on 6/11/2019) (Entered: 06/11/2019)
06/17/2019	195	OPPOSITION/RESPONSE (re 194 ADMINISTRATIVE MOTION FOR LEAVE TO FILE RESPONSE TO PLAINTIFFS' STATEMENTS OF RECENT DECISION re 192 Statement of Recent Decision, 191 Statement of Recent Decision,) filed byUNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit A-1)(Foster, James) (Filed on 6/17/2019) (Entered: 06/17/2019)
07/01/2019	196	STATUS REPORT *(JOINT)* by Apple, Inc.. (Pieja, Michael) (Filed on 7/1/2019) (Entered: 07/01/2019)
07/03/2019	197	**ORDER ON ADMINISTRATIVE MOTION FOR LEAVE TO FILE RESPONSE TO STATEMENTS OF RECENT DECISION (granting (182) Administrative Motion in case 3:18-cv-00363-WHA; granting (194) Administrative Motion in case 3:18-cv-00360-WHA; granting (213) Administrative Motion in case 3:18-cv-00365-WHA; granting (203) Administrative Motion in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 7/3/2019) (Entered: 07/03/2019)**
07/03/2019	198	**STATUS REPORT ORDER. Signed by Judge Alsup on 7/3/2019. Status Report due by 11/5/2019. (whalc2, COURT STAFF) (Filed on 7/3/2019) (Entered: 07/03/2019)**
07/05/2019	199	Supplemental Brief re 192 Statement of Recent Decision, 197 Order on Administrative Motion per Civil Local Rule 7-11,,,,,,, 191 Statement of Recent Decision, filed byUNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Attachments: # 1 Exhibit A-1 - Joint Appendix from Lone Star case)(Related document(s) 192 , 197 , 191) (Jacobs, Aaron) (Filed on 7/5/2019) (Entered: 07/05/2019)
07/05/2019	200	RESPONSE re 192 Statement of Recent Decision, 191 Statement of Recent Decision, by Apple, Inc.. (Pieja, Michael) (Filed on 7/5/2019) (Entered: 07/05/2019)
07/10/2019	201	Please note that you must be logged into an ECF account of counsel of record in order to view this document. CLERK'S REMINDER NOTICE RE: TELEPHONE CONFERENCE set for 7/11/19 at 9:00 AM before Chief Magistrate Judge Joseph C. Spero. Parties shall use the following conference call number: 888-684-8852. Code: 8256171. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (klhS, COURT STAFF) (Filed on 7/10/2019) (Entered: 07/10/2019)
07/11/2019	202	**Minute Entry for proceedings held before Chief Magistrate Judge Joseph C. Spero: Telephone Conference to set Settlement Conference held on 7/11/2019.** **FTR Time: Not Reported.** **Attorney for Plaintiff: Aaron Jacobs** **Attorney for Defendant: Michael Pieja** **(klhS, COURT STAFF) (Date Filed: 7/11/2019) (Entered: 07/11/2019)**
07/11/2019	203	AMENDED Minute Entry for proceedings held before Chief Magistrate Judge Joseph C. Spero: Telephone Conference to set Settlement Conference held on 7/11/2019.

		FTR Time: Not Reported. Attorney for Plaintiff: Aaron Jacobs. Attorney for Defendant: Michael Pieja (klhS, COURT STAFF) (Filed on 7/11/2019) (Entered: 07/11/2019)
08/07/2019	204	**ORDER DENYING MOTION FOR RECONSIDERATION (denying (164) Motion for Reconsideration in case 3:18-cv-00363-WHA; denying (173) Motion for Reconsideration in case 3:18-cv-00360-WHA; denying (194) Motion for Reconsideration in case 3:18-cv-00365-WHA; denying (184) Motion for Reconsideration in case 3:18-cv-00572-WHA). Signed by Judge Alsup. (whalc2, COURT STAFF) (Filed on 8/7/2019) (Entered: 08/07/2019)**
08/13/2019	205	REDACTION to 158 Order, 188 Order on Administrative Motion per Civil Local Rule 7-11,,,,,,, by Uniloc 2017 LLC, Uniloc USA, Inc., UNILOC Luxembourg S.A.. (Jacobs, Aaron) (Filed on 8/13/2019) (Entered: 08/13/2019)
11/08/2019	206	NOTICE of Change of Address by Michael Thomas Pieja (Pieja, Michael) (Filed on 11/8/2019) (Entered: 11/08/2019)
11/11/2019	207	STATUS REPORT *(JOINT)* by Apple, Inc.. (Pieja, Michael) (Filed on 11/11/2019) (Entered: 11/11/2019)
11/12/2019	208	**STATUS REPORT ORDER. Signed by Judge Alsup on 11/12/2019. Status Report due by 4/3/2020. (whalc2, COURT STAFF) (Filed on 11/12/2019) (Entered: 11/12/2019)**
04/02/2020	209	STATUS REPORT *REGARDING INTER PARTES REVIEW PROCEEDINGS* by UNILOC Luxembourg S.A., Uniloc 2017 LLC, Uniloc USA, Inc.. (Foster, James) (Filed on 4/2/2020) (Entered: 04/02/2020)
04/02/2020	210	**STATUS REPORT ORDER. Signed by Judge Alsup on 4/2/2020. (whalc2, COURT STAFF) (Filed on 4/2/2020) (Entered: 04/02/2020)**

ADRMOP,PROTO,REFSET-JCS,STAYED

U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:19-cv-01905-JD

Uniloc 2017 LLC v. Apple Inc.
Assigned to: Judge James Donato
Referred to: Magistrate Judge Joseph C. Spero (Settlement)
Case in other court: Texas Western, 1:18-cv-00989
Cause: 35:271 Patent Infringement

Date Filed: 04/09/2019
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

Uniloc 2017 LLC

represented by **Edward Nelson , III**
Nelson Bumgardner PC
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Fax: 817-377-3485
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TERMINATED: 03/06/2020
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V.

Defendant

Apple, Inc.

represented by **Alan E. Littmann**
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Date Filed	#	Docket Text
11/17/2018	1	COMPLAINT (Filing fee $ 400 receipt number 0542-11468199). No Summons requested at this time, filed by Uniloc 2017 LLC. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A (U.S. Patent No. 6,856,616))(Jacobs, Aaron) (Attachment 1 replaced on 11/19/2018 to flatten image) (afd). (Entered: 11/17/2018)
11/17/2018		Case assigned to Judge Lee Yeakel. CM WILL NOW REFLECT THE JUDGE INITIALS AS PART OF THE CASE NUMBER. PLEASE APPEND THESE JUDGE INITIALS TO THE CASE NUMBER ON EACH DOCUMENT THAT YOU FILE IN THIS CASE. (afd) (Entered: 11/19/2018)
11/17/2018		DEMAND for Trial by Jury by Uniloc 2017 LLC. (afd) (Entered: 11/19/2018)
11/19/2018	2	Report on Patent/Trademark sent to U.S. Patent and Trademark Office with copy of Complaint. (afd) (Entered: 11/19/2018)
11/19/2018	3	RULE 7 DISCLOSURE STATEMENT filed by Uniloc 2017 LLC. (Jacobs, Aaron) (Entered: 11/19/2018)
11/19/2018	4	NOTICE of Attorney Appearance by Aaron S. Jacobs on behalf of Uniloc 2017 LLC (Jacobs, Aaron) (Entered: 11/19/2018)

11/19/2018	5	NOTICE of Attorney Appearance by Kevin Gannon on behalf of Uniloc 2017 LLC (Gannon, Kevin) (Entered: 11/19/2018)
11/19/2018	6	NOTICE of Attorney Appearance by Shawn A. Latchford on behalf of Uniloc 2017 LLC (Latchford, Shawn) (Entered: 11/19/2018)
11/19/2018	7	REQUEST FOR ISSUANCE OF SUMMONS by Uniloc 2017 LLC. (Latchford, Shawn) (Main Document 7 replaced on 11/19/2018 to flatten form) (lt). (Entered: 11/19/2018)
11/19/2018	8	Summons Issued as to Apple Inc. (lt) (Entered: 11/19/2018)
12/14/2018	9	NOTICE of Attorney Appearance by John Michael Guaragna on behalf of Apple Inc.. Attorney John Michael Guaragna added to party Apple Inc.(pty:dft) (Guaragna, John) (Entered: 12/14/2018)
12/14/2018	10	MOTION to Appear Pro Hac Vice by John Michael Guaragna *for Lauren Abendshien* (Filing fee $ 100 receipt number 0542-11558589) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 12/14/2018)
12/14/2018	11	MOTION to Appear Pro Hac Vice by John Michael Guaragna *for Alan Lilttmann* (Filing fee $ 100 receipt number 0542-11558689) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 12/14/2018)
12/14/2018	12	MOTION to Appear Pro Hac Vice by John Michael Guaragna *for Michael Pieja* (Filing fee $ 100 receipt number 0542-11558727) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 12/14/2018)
12/14/2018	13	MOTION to Appear Pro Hac Vice by John Michael Guaragna *for Emma C. Ross* (Filing fee $ 100 receipt number 0542-11558753) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 12/14/2018)
12/14/2018	14	MOTION to Appear Pro Hac Vice by John Michael Guaragna *for Doug Winnard* (Filing fee $ 100 receipt number 0542-11558771) by on behalf of Apple Inc.. (Guaragna, John) (Entered: 12/14/2018)
12/18/2018	15	ORDER GRANTING 10 Motion for Lauren Abendshien to Appear Pro Hac Vice on behalf of Apple Inc. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. Signed by Judge Lee Yeakel. (lt) (Entered: 12/18/2018)
12/18/2018	16	ORDER GRANTING 11 Motion for Alan Littmann to Appear Pro Hac Vice on behalf of Apple Inc. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. Signed by Judge Lee Yeakel. (lt) (Entered: 12/18/2018)
12/18/2018	17	ORDER GRANTING 12 Motion for Michael Pieja to Appear Pro Hac Vice on behalf of Apple Inc. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. Signed by Judge Lee Yeakel. (lt) (Entered: 12/18/2018)
12/18/2018	18	ORDER GRANTING 13 Motion for Emma C. Ross to Appear Pro Hac Vice on behalf of Apple Inc. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. Signed by Judge Lee Yeakel. (lt) (Entered: 12/18/2018)

12/18/2018	19	ORDER GRANTING 14 Motion for Doug Winnard to Appear Pro Hac Vice on behalf of Apple Inc. Pursuant to our Administrative Policies and Procedures for Electronic Filing, the attorney hereby granted to practice pro hac vice in this case must register for electronic filing with our court within 10 days of this order. Signed by Judge Lee Yeakel. (lt) (Entered: 12/18/2018)
12/18/2018	20	Unopposed MOTION for Leave to Exceed Page Limitation *(Motion to Transfer Venue)* by Apple Inc.. (Guaragna, John) (Entered: 12/18/2018)
12/18/2018	21	Motion to Dismiss for Failure to State a Claim by Apple Inc.. (Attachments: # 1 Abendshien Decl., # 2 Exhibit 1)(Guaragna, John) (Entered: 12/18/2018)
12/19/2018	22	RULE 7 DISCLOSURE STATEMENT filed by Apple Inc.. (Guaragna, John) (Entered: 12/19/2018)
12/21/2018	23	ORDER GRANTING Apple Inc.'s 20 Motion for Leave to File Excess Pages. Signed by Judge Lee Yeakel. (lt) (Entered: 12/21/2018)
12/21/2018	24	MOTION to Change Venue *Pursuant to 28 USC Sec. 1404(a)* by Apple Inc.. (Attachments: # 1 Jaynes Decl., # 2 Guaragna Decl., # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Exhibit 6, # 9 Exhibit 7, # 10 Exhibit 8, # 11 Exhibit 9, # 12 Exhibit 10, # 13 Exhibit 11, # 14 Exhibit 12, # 15 Exhibit 13, # 16 Exhibit 14, # 17 Exhibit 15, # 18 Exhibit 16, # 19 Exhibit 17, # 20 Proposed Order)(Guaragna, John) (Entered: 12/21/2018)
12/27/2018	25	Unopposed MOTION for Extension of Time to File Response/Reply as to 24 MOTION to Change Venue *Pursuant to 28 USC Sec. 1404(a)* by Uniloc 2017 LLC. (Gannon, Kevin) (Entered: 12/27/2018)
12/27/2018	26	ORDER SETTING Initial Pretrial Conference for 2/1/2019 at 02:00 PM before Judge Lee Yeakel. IN ALL OTHER RESPECTS this action is STAYED, pending further order of the Court. Signed by Judge Lee Yeakel. (lt) (Entered: 12/27/2018)
01/02/2019	27	NOTICE *Regarding Apple Inc.'s Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(B)(6)* by Uniloc 2017 LLC (Gannon, Kevin) (Entered: 01/02/2019)
01/08/2019	28	AMENDED COMPLAINT against Apple Inc. amending, filed by Uniloc 2017 LLC. (Attachments: # 1 Exhibit 1)(Gannon, Kevin) (Entered: 01/08/2019)
01/30/2019	29	ORDER Granting Joint Stipulation Setting Deadlines. ORDER continuing Initial Pretrial Conference until further notice. Signed by Judge Lee Yeakel. (lt) (Entered: 01/30/2019)
02/15/2019	30	Response in Opposition to Motion, filed by Uniloc 2017 LLC, re 24 MOTION to Change Venue *Pursuant to 28 USC Sec. 1404(a)* filed by Defendant Apple Inc. (Attachments: # 1 Declaration of Kevin Gannon, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R, # 20 Exhibit S, # 21 Exhibit T, # 22 Exhibit U, # 23 Exhibit V, # 24 Exhibit W, # 25 Exhibit X, # 26 Exhibit Y, # 27 Exhibit Z, # 28 Exhibit AA, # 29 Exhibit BB, # 30 Exhibit CC, # 31 Exhibit DD, # 32 Exhibit EE, # 33 Exhibit FF, # 34 Exhibit GG, # 35 Exhibit HH, # 36 Exhibit II, # 37 Exhibit JJ, # 38 Exhibit KK, # 39 Declaration of James J. Foster, # 40 Proposed Order)(Gannon, Kevin) (Entered: 02/15/2019)
03/01/2019	31	REPLY to Response to Motion, filed by Apple Inc., re 24 MOTION to Change Venue *Pursuant to 28 USC Sec. 1404(a)* filed by Defendant Apple Inc. (Attachments: # 1 Guaragna Decl., # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8)(Guaragna, John) (Entered: 03/01/2019)

04/08/2019	32	ORDER GRANTING Defendant's 24 Motion to Transfer Venue and TRANSFERRING this cause to the United States District Court for the Northern District of California. ORDER DISMISSING without prejudice Defendant's 21 Motion to Dismiss for Failure to State a Claim. Signed by Judge Lee Yeakel. (lt) (Entered: 04/08/2019)
04/09/2019	33	Case transferred in from District of Texas Western; Case Number 1:18-cv-00989. Original file certified copy of transfer order and docket sheet received. Modified on 4/10/2019 (aaaS, COURT STAFF). (Entered: 04/10/2019)
04/09/2019	34	**Initial Case Management Scheduling Order with ADR Deadlines:** Case Management Statement due by 7/2/2019. Initial Case Management Conference set for 7/9/2019 10:00 AM. Signed by Magistrate Judge Elizabeth D. Laporte on 4/9/19. (aaaS, COURT STAFF) (Filed on 4/9/2019) (Entered: 04/10/2019)
04/10/2019	35	CLERK'S NOTICE Re: Consent or Declination: Plaintiffs/Defendants shall file a consent or declination to proceed before a magistrate judge. Note that any party is free to withhold consent to proceed before a magistrate judge without adverse substantive consequences. The forms are available at: http://cand.uscourts.gov/civilforms. Consent/Declination due by 4/24/2019. (mllS, COURT STAFF) (Filed on 4/10/2019) (Entered: 04/10/2019)
04/17/2019	36	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Apple, Inc... (Pieja, Michael) (Filed on 4/17/2019) (Entered: 04/17/2019)
04/17/2019	37	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now reassign this case to a District Judge because a party has not consented to the jurisdiction of a Magistrate Judge. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. *This is a text only docket entry; there is no document associated with this notice.* (shyS, COURT STAFF) (Filed on 4/17/2019) (Entered: 04/17/2019)
04/18/2019	38	**ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Susan Illston for all further proceedings. Magistrate Judge Elizabeth D. Laporte no longer assigned to case,. Signed by Clerk on 4/18/19. (Attachments: # 1 Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 4/18/2019) (Entered: 04/18/2019)**
04/22/2019	39	**ORDER OF RECUSAL. Signed by Judge Susan Illston on 4/19/19. (tfS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)**
04/22/2019	40	STIPULATION *Joint Stipulation Regarding Responsive Pleading* filed by Apple, Inc. and Uniloc 2017 LLC. (Pieja, Michael) (Filed on 4/22/2019) Modified on 4/22/2019 (amgS, COURT STAFF). (Entered: 04/22/2019)
04/23/2019	41	Certificate of Interested Entities by Apple, Inc. (Pieja, Michael) (Filed on 4/23/2019) (Entered: 04/23/2019)
04/24/2019	42	**ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge James Donato for all further proceedings. Judge Susan Illston no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras.. Signed by Clerk on**

		4/24/19. (Attachments: # 1 Notice of Eligibility for Video Recording)(as, COURT STAFF) (Filed on 4/24/2019) (Entered: 04/24/2019)
04/25/2019	43	**CASE MANAGEMENT SCHEDULING ORDER: Initial Case Management Conference set for 7/18/2019 10:00 AM in San Francisco, Courtroom 11, 19th Floor. Case Management Statement due by 7/11/2019. Signed by Judge James Donato on 4/25/19. (lrcS, COURT STAFF) (Filed on 4/25/2019) (Entered: 04/25/2019)**
05/16/2019	44	NOTICE of Appearance by Kenneth Frederick Baum (Baum, Kenneth) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	45	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13353308.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing) (Littmann, Alan) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	46	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13353330.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing)(Ross, Emma) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	47	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13353348.) filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing) (Abendshien, Lauren) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	48	NOTICE of Change In Counsel by Michael Thomas Pieja *of Brian K. Erickson* (Pieja, Michael) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	49	NOTICE of Change In Counsel by Michael Thomas Pieja *of John Michael Guaragna* (Pieja, Michael) (Filed on 5/16/2019) (Entered: 05/16/2019)
05/16/2019	50	**Order by Judge James Donato granting 45 Motion for Pro Hac Vice as to A. Littmann. (tmiS, COURT STAFF) (Filed on 5/16/2019) (Entered: 05/16/2019)**
05/16/2019	51	**Order by Judge James Donato granting 46 Motion for Pro Hac Vice as to Emma Ross. (tmiS, COURT STAFF) (Filed on 5/16/2019) (Entered: 05/16/2019)**
05/16/2019	52	**Order by Judge James Donato granting 47 Motion for Pro Hac Vice as to Lauren Abendshien. (tmiS, COURT STAFF) (Filed on 5/16/2019) (Entered: 05/16/2019)**
05/22/2019	53	Application for Refund, Receipt Number 0971-13353260 by Apple, Inc.. (Littmann, Alan) (Filed on 5/22/2019) (Entered: 05/22/2019)
05/23/2019	54	Refund Status re 53 Application for Refund APPROVED. (rghS, COURT STAFF) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/24/2019	55	**ORDER DENYING MOTION TO RELATE. Signed by Judge Alsup on 5/24/2019. (whalc2, COURT STAFF) (Filed on 5/24/2019) (Entered: 05/24/2019)**
05/24/2019	56	Answer to Amended Complaint 28 Amended Complaint byApple, Inc.. (Pieja, Michael) (Filed on 5/24/2019) (Entered: 05/24/2019)
06/18/2019	57	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Jacobs, Aaron) (Filed on 6/18/2019) (Entered: 06/18/2019)
06/24/2019	58	NOTICE of Appearance by James J. Foster (Foster, James) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/28/2019	59	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Pieja, Michael) (Filed on 6/28/2019) (Entered: 06/28/2019)
07/11/2019	60	JOINT CASE MANAGEMENT STATEMENT *AND DISCOVERY PLAN* filed by Apple, Inc.. (Pieja, Michael) (Filed on 7/11/2019) (Entered: 07/11/2019)

07/18/2019	61	**Minute Entry for proceedings held before Judge James Donato: Initial Case Management Conference held on 7/18/2019., CASE REFERRED to Magistrate Judge Mag. Spero for Settlement ConferenceTotal Time in Court: 5 minutes. Court Reporter: JoAnn Bryce. (lrcS, COURT STAFF) (Date Filed: 7/18/2019) (Entered: 07/22/2019)**
07/22/2019	62	STIPULATION WITH PROPOSED ORDER filed by Apple, Inc.. (Attachments: # 1 Proposed Protective Order)(Pieja, Michael) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/22/2019		CASE REFERRED to Magistrate Judge Joseph C. Spero for Settlement (ahm, COURT STAFF) (Filed on 7/22/2019) (Entered: 07/22/2019)
07/28/2019	63	**ORDER re 62 Stipulated Protective Order. The parties' stipulated protective order is approved, except that in those provisions where the stipulated protective order conflicts with the Court's standing orders (e.g., with respect to the filing of discovery motions rather than discovery dispute letters), the Court's standing orders will control. Signed by Judge James Donato on 7/28/2019. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (jdlc1S, COURT STAFF) (Filed on 7/28/2019) (Entered: 07/28/2019)**
08/20/2019	64	CLERK'S NOTICE SETTING TELEPHONE CONFERENCE. Please note that you must be logged into an ECF account of counsel of record in order to view this document. Pre-Settlement Telephone Conference set for 8/22/2019 02:00 PM in San Francisco, Chambers before Chief Magistrate Judge Joseph C. Spero. Parties may use the following conference call number: 888-684-8852. Code: 8256171. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (klhS, COURT STAFF) (Filed on 8/20/2019) (Entered: 08/20/2019)
08/22/2019	65	**Minute Entry for proceedings held before Chief Magistrate Judge Joseph C. Spero: Telephone Scheduling Conference to set Settlement Conference held on 8/22/2019. Settlement Conference set for 1/29/2020 09:30 AM in San Francisco, Courtroom G, 15th Floor. FTR Time: Not Reported. Attorney for Plaintiff: Aaron Jacobs Attorney for Defendant: Michael Pieja, Lauren Abendshien. Client Rep: Mark Breverman(klhS, COURT STAFF) (Date Filed: 8/22/2019) (Entered: 08/23/2019)**
08/23/2019	66	**Notice of Settlement Conference and Order Setting Settlement Conference before Chief Magistrate Judge Joseph C. Spero. Settlement Conference set for 1/29/2020 09:30 AM in San Francisco, Courtroom G, 15th Floor. Signed by Chief Magistrate Judge Joseph C. Spero on 8/23/19. (klhS, COURT STAFF) (Filed on 8/23/2019) (Entered: 08/23/2019)**
09/18/2019	67	**SCHEDULING ORDER. Signed by Judge James Donato on 9/18/2019. (jdlc1S, COURT STAFF) (Filed on 9/18/2019) (Entered: 09/18/2019)**
09/18/2019		Set Deadlines/Hearings: Amended Pleadings due by 12/1/2019. Close of Expert Discovery due by 9/21/2020. Close of Fact Discovery due by 6/15/2020. Designation of Experts due by 7/6/2020. Dispositive Motion due by 10/22/2020. Rebuttal Reports due by 7/27/2020. Claims Construction Hearing set for 5/28/2020 11:00 AM. Tutorial Hearing set for 5/21/2020 11:00 AM in San Francisco, Courtroom 11, 19th Floor. (lrcS, COURT STAFF) (Filed on 9/18/2019) (Entered: 09/24/2019)

10/01/2019	68	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13752170.) Filing fee previously paid on 10/01/2019 filed by Apple, Inc.. (Attachments: # 1 Certificate of Good Standing)(Zhang, Shu) (Filed on 10/1/2019) (Entered: 10/01/2019)
10/04/2019	69	**ORDER by Judge James Donato granting 68 Motion for Pro Hac Vice as to Shu Zhang. (lrcS, COURT STAFF) (Filed on 10/4/2019) (Entered: 10/04/2019)**
10/30/2019	70	NOTICE of Change of Address by Michael Thomas Pieja (Pieja, Michael) (Filed on 10/30/2019) (Entered: 10/30/2019)
10/30/2019	71	MOTION to Strike *Plaintiff Uniloc 2017 LLC's Infringement Contentions* filed by Apple, Inc.. Motion Hearing set for 12/5/2019 10:00 AM in San Francisco, Courtroom 11, 19th Floor before Judge James Donato. Responses due by 11/13/2019. Replies due by 11/20/2019. (Attachments: # 1 Proposed Order Text of Proposed Order)(Pieja, Michael) (Filed on 10/30/2019) (Entered: 10/30/2019)
10/30/2019	72	Declaration of Doug Winnard in Support of 71 MOTION to Strike *Plaintiff Uniloc 2017 LLC's Infringement Contentions* filed byApple, Inc.. (Attachments: # 1 Exhibit Ex. 1 - Uniloc Infringement Contentions, # 2 Exhibit Ex. 2 - Exhibit A to Uniloc Infringement Contentions, # 3 Exhibit Ex. 3 - Pieja Letter to Foster re Uniloc Infringement Contentions, # 4 Exhibit Ex. 4 - Pieja Email Follow Up, # 5 Exhibit Ex. 5 - Foster Email to Pieja, # 6 Exhibit Ex. 6 - Pieja Email to Foster, # 7 Exhibit Ex. 7 - Foster Email to Pieja, # 8 Exhibit Ex. 8 - Pieja Email to Foster, # 9 Exhibit Ex. 9 - Foster Email to Pieja, # 10 Exhibit Ex. 10 - Pieja Email to Foster, # 11 Exhibit Ex. 11 - Uniloc First Set of Requests for Production to Apple (Nos. 1-3))(Related document(s) 71) (Pieja, Michael) (Filed on 10/30/2019) (Entered: 10/30/2019)
11/05/2019	73	**ORDER. Apple's motion to strike infringement contentions, Dkt. No. 71 , exceeds the Court's page limits and is stricken. It may file a conforming brief by November 7, 2019. The parties are advised that any subsequent non-conforming filings may be stricken without leave to refile. Signed by Judge James Donato on 11/5/2019. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (jdlc1S, COURT STAFF) (Filed on 11/5/2019) (Entered: 11/05/2019)**
11/06/2019	74	MOTION to Strike *Plaintiff Uniloc 2017 LLC's Infringement Contentions* filed by Apple, Inc.. Motion Hearing set for 12/19/2019 10:00 AM in San Francisco, Courtroom 11, 19th Floor before Judge James Donato. Responses due by 11/20/2019. Replies due by 11/27/2019. (Attachments: # 1 Proposed Order Text of Proposed Order)(Pieja, Michael) (Filed on 11/6/2019) (Entered: 11/06/2019)
11/06/2019	75	Declaration of Doug Winnard in Support of 74 MOTION to Strike *Plaintiff Uniloc 2017 LLC's Infringement Contentions* filed byApple, Inc.. (Attachments: # 1 Exhibit 1 - Uniloc Infringement Contentions, # 2 Exhibit 2 - Exhibit A to Uniloc Infringement Contentions, # 3 Exhibit 3 - Pieja Letter to Foster re Uniloc Infringement Contentions, # 4 Exhibit 4 - Pieja Email Follow Up, # 5 Exhibit 5 - Foster Email to Pieja, # 6 Exhibit 6 - Pieja Email to Foster, # 7 Exhibit 7 - Foster Email to Pieja, # 8 Exhibit 8 - Pieja Email to Foster, # 9 Exhibit 9 - Foster Email to Pieja, # 10 Exhibit 10 - Pieja Email to Foster, # 11 Exhibit 11 - Uniloc First Set of Requests for Production to Apple (Nos. 1-3))(Related document(s) 74) (Pieja, Michael) (Filed on 11/6/2019) (Entered: 11/06/2019)
11/11/2019	76	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13876126.) filed by Uniloc 2017 LLC. (Attachments: # 1 Certificate of Good Standing) (Ruderman, Alyssa) (Filed on 11/11/2019) (Entered: 11/11/2019)
11/13/2019	77	**ORDER by Judge James Donato denying 76 Motion for Pro Hac Vice as to Alyssa Holland Ruderman. (lrcS, COURT STAFF) (Filed on 11/13/2019) (Entered:**

		11/13/2019)
11/14/2019	78	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13876126.) Filing fee previously paid on 11/11/2019 filed by Uniloc 2017 LLC. (Attachments: # 1 Certificate of Good Standing)(Ruderman, Alyssa) (Filed on 11/14/2019) (Entered: 11/14/2019)
11/15/2019	79	CLAIM CONSTRUCTION STATEMENT *P.R. 4-3 Joint Claim Construction and Prehearing Statement* filed by Apple, Inc.. (Attachments: # 1 Exhibit A - Uniloc Identification of Construction and Evidence, # 2 Exhibit B - Apple's Identification of Constructions and Evidence, # 3 Exhibit C - Houh Declaration and CV)(Winnard, Douglas) (Filed on 11/15/2019) (Entered: 11/15/2019)
11/19/2019	80	**ORDER by Judge James Donato denying 78 Motion for Pro Hac Vice as to Alyssa Holland Ruderman. (lrcS, COURT STAFF) (Filed on 11/19/2019) (Entered: 11/19/2019)**
11/19/2019	81	MOTION for leave to appear in Pro Hac Vice (Filing fee $ 310, receipt number 0971-13876126.) Filing fee previously paid on 11/11/2019 filed by Uniloc 2017 LLC. (Attachments: # 1 Certificate of Good Standing)(Ruderman, Alyssa) (Filed on 11/19/2019) (Entered: 11/19/2019)
11/19/2019		Case Stayed (lrcS, COURT STAFF) (Filed on 11/19/2019) (Entered: 01/13/2020)
11/20/2019	82	NOTICE of Appearance by Matthew David Vella (Vella, Matthew) (Filed on 11/20/2019) (Entered: 11/20/2019)
11/20/2019	83	OPPOSITION/RESPONSE (re 74 MOTION to Strike *Plaintiff Uniloc 2017 LLC's Infringement Contentions*) filed byUniloc 2017 LLC. (Attachments: # 1 Declaration of Kevin Gannon, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Proposed Order)(Jacobs, Aaron) (Filed on 11/20/2019) (Entered: 11/20/2019)
11/25/2019	84	STIPULATION re 67 Order filed by Apple, Inc.. (Attachments: # 1 Declaration of Michael T. Pieja)(Pieja, Michael) (Filed on 11/25/2019) (Entered: 11/25/2019)
11/26/2019	85	**ORDER. At the parties' joint request, Dkt. No. 84 , the deadline to move to amend the pleadings or to add parties is extended until December 5, 2019. Signed by Judge James Donato on 11/26/2019. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (jdlc1S, COURT STAFF) (Filed on 11/26/2019) (Entered: 11/26/2019)**
11/26/2019	86	REPLY (re 74 MOTION to Strike *Plaintiff Uniloc 2017 LLC's Infringement Contentions*) filed byApple, Inc.. (Pieja, Michael) (Filed on 11/26/2019) (Entered: 11/26/2019)
12/03/2019	87	STIPULATION re 67 Order filed by Apple, Inc.. (Winnard, Douglas) (Filed on 12/3/2019) (Entered: 12/03/2019)
12/13/2019	88	Discovery Letter Brief filed by Apple, Inc.. (Winnard, Douglas) (Filed on 12/13/2019) (Entered: 12/13/2019)
12/17/2019	89	**ORDER. Plaintiff Uniloc is directed to file a response to defendant Apple's discovery dispute letter, Dkt. No. 88 , by December 27, 2019. The response should not exceed three pages and should otherwise comply with the Court's Standing Order for Civil Discovery. Signed by Judge James Donato on 12/17/2019. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (jdlc1S, COURT STAFF) (Filed on 12/17/2019) (Entered: 12/17/2019)**
12/19/2019	94	**Minute Entry for proceedings held before Judge James Donato: Motion Hearing re**

		74 Motion to Strike held on 12/19/2019. (jdlc1S, COURT STAFF) (Date Filed: 12/19/2019) (Entered: 01/13/2020)
12/27/2019	90	RESPONSE re 88 Discovery Letter Brief by Uniloc 2017 LLC. (Foster, James) (Filed on 12/27/2019) (Entered: 12/27/2019)
01/02/2020	91	Certificate of Interested Entities by Uniloc 2017 LLC (Jacobs, Aaron) (Filed on 1/2/2020) (Entered: 01/02/2020)
01/10/2020	92	TRANSCRIPT ORDER for proceedings held on 12/19/2019 before Judge James Donato by Apple, Inc., for Court Reporter Marla Knox. (Pieja, Michael) (Filed on 1/10/2020) (Entered: 01/10/2020)
01/13/2020	93	TRANSCRIPT ORDER for proceedings held on 12/19/2019 before Judge James Donato by Uniloc 2017 LLC, for Court Reporter Marla Knox. (Foster, James) (Filed on 1/13/2020) (Entered: 01/13/2020)
01/13/2020	95	**ORDER by Judge James Donato granting 81 Motion for Pro Hac Vice as to Alyssa Ruderman. (lrcS, COURT STAFF) (Filed on 1/13/2020) (Entered: 01/13/2020)**
01/23/2020	96	STIPULATION WITH PROPOSED ORDER *to Extend Deadline to Amend Infringement Contentions* filed by Uniloc 2017 LLC and Apple, Inc. (Attachments: # 1 Declaration of James Foster)(Jacobs, Aaron) (Filed on 1/23/2020) Modified on 1/24/2020 (amgS, COURT STAFF). (Entered: 01/23/2020)
01/29/2020	97	**Minute Entry for proceedings held before Chief Magistrate Judge Joseph C. Spero: Settlement Conference held on 1/29/2020. Case did not settle.** **FTR Time: Not Reported.** **Attorney for Plaintiff: Aaron Jacobs, Kevin Gannon** **Attorney for Defendant: Michael T. Pieja, Christine Corbett** **(klhS, COURT STAFF) (Date Filed: 1/29/2020) (Entered: 01/30/2020)**
01/30/2020	98	**ORDER re 96 Stipulation to Extend Deadline to Amend Infringement Contentions. Signed by Judge James Donato on 1/30/2020. (jdlc1S, COURT STAFF) (Filed on 1/30/2020) (Entered: 01/30/2020)**
02/06/2020	99	CLERK'S NOTICE SETTING TELEPHONE CONFERENCE. Please note that you must be logged into an ECF account of counsel of record in order to view this document. Telephone Conference set further settlement conference for 10/8/2020 09:30 AM in San Francisco, Chambers before Chief Magistrate Judge Joseph C. Spero. Conference call dial-in information has been emailed to counsel. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (klhS, COURT STAFF) (Filed on 2/6/2020) (Entered: 02/06/2020)
02/07/2020	100	Joint MOTION to Lift Stay *and Set Claim Construction Deadlines* filed by Apple, Inc. and Uniloc 2017 LLC. Motion Hearing set for 3/19/2020 10:00 AM in San Francisco, Courtroom 11, 19th Floor before Judge James Donato. Responses due by 2/21/2020. Replies due by 2/28/2020. (Attachments: # 1 Proposed Order)(Pieja, Michael) (Filed on 2/7/2020) Modified on 2/10/2020 (amgS, COURT STAFF). (Entered: 02/07/2020)
02/13/2020	101	MOTION to Strike *Plaintiff Uniloc 2017 LLC's Amended Infringement Contentions* filed by Apple, Inc.. Motion Hearing set for 3/19/2020 10:00 AM in San Francisco, Courtroom 11, 19th Floor before Judge James Donato. Responses due by 2/27/2020. Replies due by 3/5/2020. (Attachments: # 1 Proposed Order Text of Proposed Order)(Pieja, Michael) (Filed on 2/13/2020) (Entered: 02/13/2020)
02/13/2020	102	Declaration of Doug Winnard in Support of 101 MOTION to Strike *Plaintiff Uniloc 2017*

		LLC's Amended Infringement Contentions filed byApple, Inc.. (Attachments: # 1 Exhibit 1 - 12.19.19 Hearing Transcript, # 2 Exhibit 2 - 8.1.19 Uniloc Original Disclosure, # 3 Exhibit 3 - 8.1.19 Uniloc Original Claim Chart, # 4 Exhibit 4 - 2.5.20 Uniloc Amended Disclosure, # 5 Exhibit 5 - Compilation of 2.5.20 Claim Charts, # 6 Exhibit 6 - 2.5.20 Claim Chart - iPhone 8)(Related document(s) 101) (Pieja, Michael) (Filed on 2/13/2020) (Entered: 02/13/2020)
02/27/2020	103	OPPOSITION/RESPONSE (re 101 MOTION to Strike Plaintiff Uniloc 2017 LLC's Amended Infringement Contentions) filed by Uniloc 2017 LLC. (Attachments: # 1 Declaration of James Foster, # 2 Exhibit 1)(Foster, James) (Filed on 2/27/2020) Modified on 3/5/2020 (gbaS, COURT STAFF). (Entered: 02/27/2020)
03/04/2020	104	NOTICE by Uniloc 2017 LLC *NOTICE OF WITHDRAWAL OF ATTORNEYS* (Foster, James) (Filed on 3/4/2020) (Entered: 03/04/2020)
03/05/2020	105	REPLY (re 101 MOTION to Strike *Plaintiff Uniloc 2017 LLC's Amended Infringement Contentions*) filed byApple, Inc.. (Attachments: # 1 Declaration of D. Winnard in Support of Apple Inc.'s Reply re Motion to Strike Uniloc's Amended Infringement Contentions, # 2 Exhibit 7 - 20200303 Email from Winnard to Foster)(Pieja, Michael) (Filed on 3/5/2020) (Entered: 03/05/2020)
03/16/2020	106	**ORDER. The Court will decide the motion to lift stay and motion to strike, Dkt. Nos. 100, 101, without oral argument. Civil L.R. 7-1(b). The hearing set for March 19, 2020, is vacated. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (Donato, James) (Filed on 3/16/2020) (Entered: 03/16/2020)**
04/21/2020	107	STIPULATION *to Extend Certain Deadlines and Lift Stay JOINT* filed by Apple, Inc.. (Pieja, Michael) (Filed on 4/21/2020) (Entered: 04/21/2020)
04/22/2020	108	**ORDER. At the parties' joint request, Dkt. No. 107 , the stay is lifted. The Court will issue an amended scheduling order with the dates proposed by the parties. By joint agreement, Dkt. No. 100 is terminated. The Court sets a telephonic hearing on the discovery letters, Dkt. Nos. 88 and 90 , for April 29, 2020, at 11:30 a.m. California time. The parties are directed to contact CourtCall at 866-582-6878 by April 27, 2020, to schedule their appearances. Signed by Judge James Donato on 4/22/2020. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (jdlc1S, COURT STAFF) (Filed on 4/22/2020) (Entered: 04/22/2020)**
04/23/2020	109	**CASE MANAGEMENT SCHEDULING ORDER: Claims Construction Hearing set for 8/25/2020 11:00 AM. Close of Expert Discovery due by 12/11/2020. Close of Fact Discovery due by 9/21/2020. Designation of Experts due by 10/9/2020. Dispositive Motion due by 1/14/2021. Rebuttal Reports due by 10/30/2020. Tutorial Hearing set for 8/18/2020 11:00 AM in San Francisco, Courtroom 11, 19th Floor. Signed by Judge James Donato on 4/23/2020. (lrcS, COURT STAFF) (Filed on 4/23/2020) Modified on 4/23/2020 (arkS, COURT STAFF). Modified on 4/23/2020 (arkS, COURT STAFF). (Entered: 04/23/2020)**
04/26/2020	110	**ORDER. The April 29, 2020 telephonic discovery hearing will be held at 1:30 p.m. California time. Signed by Judge James Donato on 4/26/2020. *(This is a text-only entry generated by the court. There is no document associated with this entry.)* (jdlc1S, COURT STAFF) (Filed on 4/26/2020) (Entered: 04/26/2020)**
04/29/2020	111	**Minute Entry for proceedings held before Judge James Donato: Telephonic Discovery Hearing held on 4/29/2020. (jdlc1S, COURT STAFF) (Date Filed: 4/29/2020) (Entered: 04/30/2020)**
05/27/2020	112	Brief *Opening Claim Construction* filed byUniloc 2017 LLC. (Attachments: # 1

		Declaration of Kevin Gannon, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C)(Foster, James) (Filed on 5/27/2020) (Entered: 05/27/2020)
05/29/2020	113	STIPULATION WITH PROPOSED ORDER *EXTENDING DEADLINES FOR FILING RESPONSIVE CLAIM CONSTRUCTION BRIEF AND REPLY CLAIM CONSTRUCTION BRIEF* filed by Uniloc 2017 LLC. (Foster, James) (Filed on 5/29/2020) (Entered: 05/29/2020)
06/02/2020	114	Discovery Letter Brief filed by Uniloc 2017 LLC. (Attachments: # 1 Attachment)(Foster, James) (Filed on 6/2/2020) (Entered: 06/02/2020)
06/05/2020	115	Declaration of CRAIG S. ETCHEGOYEN in Support of 90 Response (Non Motion) *to Apple's Discovery Letter* filed byUniloc 2017 LLC. (Related document(s) 90) (Foster, James) (Filed on 6/5/2020) (Entered: 06/05/2020)
06/10/2020	116	MOTION for leave to appear in Pro Hac Vice *of Thomas Fulford* (Filing fee $ 310, receipt number 0971-14559924.) filed by Uniloc 2017 LLC. (Attachments: # 1 Certificate of Good Standing)(Fulford, Thomas) (Filed on 6/10/2020) (Entered: 06/10/2020)
06/11/2020	117	**ORDER by Judge James Donato granting 116 Motion for Pro Hac Vice as to Thomas R. Fulford. (lrcS, COURT STAFF) (Filed on 6/11/2020) (Entered: 06/11/2020)**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNILOC 2017 LLC,

Plaintiff.

v.

APPLE, INC.,

Defendant.

Case No. 19-cv-01905-JD (JCS)

NOTICE OF SETTLEMENT CONFERENCE AND SETTLEMENT CONFERENCE ORDER (PATENT CASE)

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter was referred to Chief Magistrate Judge Joseph C. Spero for settlement purposes.

You are hereby notified that a Settlement Conference is scheduled for **January 29, 2020, at 9:30 a.m.**, in Courtroom G, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

IT IS HEREBY ORDERED that by **January 10, 2020**, all parties are ordered to have exchanged settlement demands and offers and have their principals meet in person to discuss settlement. The principals of all parties, with unlimited authority to settle the case, shall attend the meet and confer. The parties shall negotiate the specific schedule for these demands and offers and for the meeting of principals. The settlement conference shall include all patent cases between the parties. The parties shall email a list of all such cases to the following email address: JCSSettlement@cand.uscourts.gov.

A copy of settlement proposals and counter-proposals shall be emailed, in writing, to the undersigned and emailed to JCSSettlement@cand.uscourts.gov.

It is the responsibility of counsel to ensure that whatever discovery is needed for all sides

to evaluate the case for settlement purposes is completed by the date of the Settlement Conference. Counsel shall cooperate in providing discovery informally and expeditiously.

Lead trial counsel shall appear at the Settlement Conference with the parties. Any party who is not a natural person shall be represented by the person(s) with **unlimited** authority to negotiate a settlement. A person who needs to call another person not present before agreeing to any settlement does not have unlimited authority. If a party is a governmental entity, its governing body shall designate one of its members or a senior executive to appear at the Settlement Conference with authority to participate in the Settlement Conference and, if a tentative settlement agreement is reached, to recommend the agreement to the governmental entity for its approval. An insured party shall appear with a representative of the carrier with full authority to negotiate up to the limits of coverage. Personal attendance of a party representative will rarely be excused by the Court, and then only upon separate written application demonstrating substantial hardship served on opposing counsel and lodged as early as the basis for the hardship is known but no later than the Settlement Conference Statement.

Each party shall prepare a Settlement Conference Statement, which must be LODGED with the undersigned's Chambers (NOT electronically filed) no later than fourteen (14) days prior to the conference. Please 3-hole punch the document at the left side.

Each party shall also submit their Settlement Conference Statement in .pdf format and email their statement to JCSsettlement@cand.uscourts.gov.

The Settlement Conference Statement need not be served on opposing counsel. The parties are encouraged, however, to exchange Settlement Conference Statements. If Settlement Conference Statements are exchanged, any party may submit an additional confidential settlement letter to the Court not to exceed three (3) pages. The contents of this confidential settlement letter will not be disclosed to the other parties.

The Settlement Conference Statement shall include the following:

1. A brief statement of the facts of the case.

2. A brief statement of the claims and defenses including, but not limited to, statutory or other grounds upon which the claims are founded, and a **candid** evaluation of

the parties' likelihood of prevailing on the claims and defenses. The more candid the parties are, the more productive the conference will be.

3. A list of the key facts in dispute and a brief statement of the **specific** evidence relevant to a determination of those facts.

4. A summary of the proceedings to date and any pending motions.

5. An estimate of the cost and time to be expended for further discovery, pretrial and trial.

6. The relief sought, including an itemization of damages.

7. The party's position on settlement, including present demands and offers and a history of past settlement discussions. The Court's time can best be used to assist the parties in completing their negotiations, not in starting them. The parties are urged to carefully evaluate their case before taking a settlement position since extreme positions hinder the settlement process.

Settlement Conference Statements **may** be submitted on CD-ROM with hypertext links to exhibits. Otherwise, the portion of exhibits on which the party relies shall be highlighted.

It is not unusual for the conference to last three (3) or more hours. Parties are encouraged to participate and frankly discuss their case. Statements they make during the conference will not be admissible at trial in the event the case does not settle. The parties should be prepared to discuss such issues as:

1. Their settlement objectives.

2. Any impediments to settlement they perceive.

3. Whether they have enough information to discuss settlement. If not, what additional information is needed.

4. The possibility of a creative resolution of the dispute.

The parties shall notify Chambers immediately at (415) 522-3691 if this case settles prior to the date set for Settlement Conference. Counsel shall provide a copy of this order to each party who will participate in the conference.

IT IS SO ORDERED.

Dated: August 23, 2019

JOSEPH C. SPERO
Chief Magistrate Judge

United States District Court
Northern District of California

Miscellaneous Docket No. ___

IN THE
United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner,

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:18-cv-00372-ADA, Hon. Alan D. Albright

APPLE INC.'S NON-CONFIDENTIAL PETITION FOR WRIT OF MANDAMUS

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Counsel for Petitioner

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re Apple Inc. **v.** _____

Case No. _____

CERTIFICATE OF INTEREST

Counsel for the:
■ (petitioner) ☐ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

Apple Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Apple Inc.	Apple Inc.	None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

Orrick, Herrington & Sutcliffe LLP: Tyler S. Miller
Kelly Hart & Hallman LLP: John R. Johnson, J. Stephen Ravel

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

None

10/16/2019
Date

/s/ Melanie L. Bostwick
Signature of counsel

Please Note: All questions must be answered

Melanie L. Bostwick
Printed name of counsel

cc: _____

Reset Fields

TABLE OF CONTENTS

Page

CONFIDENTIAL MATERIAL OMITTED

The material redacted from pages 9 and 11 of this petition includes the confidential business information of non-party STMicro regarding their involvement with the accused products.

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Apple Inc. respectfully requests that this Court issue a writ of mandamus to correct the district court's refusal to transfer this case to the Northern District of California. The Western District of Texas—following a decision from the Eastern District of Texas—abdicated its responsibility to analyze the facts relevant to a § 1404(a) transfer motion, reasoning that it "must draw all reasonable inferences and resolve factual conflicts in favor of the non-moving party."

The unbalanced effect of such a rule is evident in the district court's decision here. The supposed "factual conflict" was no match. On one side were plaintiff Fintiv, Inc.'s suppositions based on a cobbled-together set of LinkedIn profiles and other Internet search results about Austin-based Apple employees. On the other side, an Apple declarant swore under penalty of perjury that none of those individuals have relevant information about the Apple technology accused of infringement in this case, and that the personnel who work on the accused technology are in or near Cupertino, California. Similarly, the district court applied its flawed legal rule to discount the sworn declaration from a third-party chip supplier showing that its relevant

personnel are in San Jose, California, instead deferring to the factual "conflict" created by Fintiv's presentation of cherry-picked LinkedIn profiles from that chip-supplier's employees, none of whom work on the relevant chip.

The district court relied on this unsupportable legal approach, compounded by other clear legal and factual errors, to deny Apple's request to transfer this case to the Northern District of California. The district court at least recognized that there was no connection to the Waco division where the case was filed, and so granted Apple's backup request for a transfer to the Austin division. But it nonetheless clearly abused its discretion when every key convenience factor favors venue in the Northern District of California.

Mandamus is warranted to correct the district court's patently erroneous refusal to transfer this case to the clearly more convenient forum.

RELIEF SOUGHT

Apple respectfully requests that the Court grant this petition for a writ of mandamus, vacate the district court's order dated September 10,

2019, and remand with instructions to transfer this action to the United States District Court for the Northern District of California.

ISSUE PRESENTED

Whether the district court clearly abused its discretion in refusing to transfer this case to the Northern District of California.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Fintiv Emerges From A Failed Startup And Asserts Its Recently Acquired Patent Against Apple.

Fintiv is the rebranded successor to a disgraced startup known as Mozido, Inc. In spring 2018, after the Securities and Exchange Commission charged Mozido's founder with defrauding investors, the company changed its name and set about enforcing the portfolio of patents it had acquired from other, unrelated companies. Appx94-97; Appx99.

Fintiv is a Delaware corporation, but it purports to have a principal place of business at a WeWork co-working space in Austin, Texas. Appx46; Appx89; Appx73-74. Although Fintiv claims that six employees work out of Austin, it alleges that only two—company president Mike Love and human resources director David Gibson—have information relevant to this case. Appx130.

Fintiv brought this lawsuit in the Western District of Texas. Although that district encompasses the co-working space Fintiv claims as its headquarters, Fintiv chose to file its action not in the Austin division, but a hundred miles away in the Waco division. Appx45.

Fintiv accuses Apple of infringing U.S. Patent No. 8,843,125 ("the '125 patent"). *See* Appx45; Appx31-44. The '125 patent issued to Korean inventors who assigned their rights to SK C&C, a Korean company. Appx31. SK C&C assigned the patent to a Korean Mozido affiliate (Mozido Corfire – Korea, Ltd.) in December 2014, which in turn assigned it to Fintiv in December 2018, days before this lawsuit was filed. Appx91-92; PTO Assignment Abstract, https://tinyurl.com/125assignments. The '125 patent purports to provide improved management of virtual ("contactless") cards used with a mobile wallet application in a mobile device. *See, e.g.*, Appx31 (Abstract); Appx33 (Fig. 1); Appx48. Fintiv alleges infringement of independent claims 11 ("method for provisioning a contactless card applet in a mobile device"), 18 ("wallet management system"), and 23 ("mobile device"), along with several dependent claims. *See* Appx48-49; Appx44.

Fintiv Accuses Apple Technology Designed, Developed, And Maintained In The Northern District Of California.

Fintiv's infringement contentions target Apple Wallet, an application that is part of the iOS and watchOS operating system software present on iPhone and Apple Watch devices, respectively. *See* Appx103; Appx83.[1] Apple Wallet allows users to store electronic representations of credit cards, debit cards, boarding passes, tickets, loyalty cards, and more. Appx109-110. When a user adds a payment card (such as a credit card) to Apple Wallet, the user's device communicates with servers in the Apple Pay network to provide secure setup and authentication. Appx114-116.

On the device side, security is provided through a system-on-a-chip component that includes a Near Field Communication ("NFC") controller and a secure element (collectively, the "Secure Chip"). Appx285. NFC is a wireless technology standard that facilitates communication between a user's device and a point-of-sale terminal.

[1] Apple cites Fintiv's infringement contentions to help the Court understand the subject matter of this dispute and what evidence will likely be relevant. Apple does not admit the truth of any allegation or characterization made by Fintiv.

When you hold your iPhone near a credit-card reader in a store, NFC allows your device to know that contactless payment is available and to complete the mobile payment securely. *See, e.g.*, Appx118; Appx122; Apple Pay Security and Privacy Overview, https://tinyurl.com/ApplePaySecurity. That payment process and its reliance on the NFC standard is not an element of the asserted claims and, thus, not directly relevant to this case. But, in the accused devices, the Secure Chip that houses the NFC component also houses the secure element. Because the secure element is responsible for secure storage and communication within the device and with the Apple Pay servers, it is relevant to the card-management functions at issue. *See* Appx118-120. A Netherlands-based company called NXP supplies all of the Secure Chips in the accused Apple devices. Appx284-285; Appx292-293.

Apple Wallet was designed and developed in or near Apple's headquarters in Cupertino, California; it continues to be marketed, managed, and updated from Cupertino; the proprietary, confidential source code is stored in or near Cupertino; and the employees responsible for that source code in both iOS and watchOS are located in or near Cupertino. Appx83-86. Likewise, the Apple Pay Product

Architecture and Server Engineering teams work almost entirely in or near Cupertino; the few team members not in Cupertino are located outside the United States. Appx84-85.

NXP, the Secure Chip supplier, is a global semiconductor manufacturer headquartered in the Netherlands. Appx284. According to a sworn declaration from NXP's Vice President and General Manager of Secure Embedded Transactions, Charles Dachs, every U.S.-based NXP employee with knowledge of "the design, development, structure, operation, and functionality of … the NFC component as supplied to Apple" is located in San Jose, California. Appx284-285. The other knowledgeable employees are located in Austria, France, Germany, or India. Appx285. In 2015, NXP acquired Austin-based Freescale Semiconductor. Appx285. Thus "NXP" now has a presence in Austin. But although the two companies have merged, their focuses remain separate; legacy Freescale employees (including those based in Austin) focus on the company's microprocessor business, while legacy NXP employees focus on chips that use NFC technology, like the Secure Chips supplied to Apple. Appx285. Mr. Dachs confirmed that "[n]o one

in Austin is or was involved in the design and development" of the Secure Chips in the accused devices. Appx286.

Apple Seeks Transfer To The Northern District Of California, But The District Court Refuses.

Because of the strong connections between this litigation and the Northern District of California, and given the lack of connections to the Western District of Texas, Apple promptly moved to transfer under 28 U.S.C. § 1404(a). Appx69-80. Apple supported its motion with documentation and with a sworn declaration from Michael Jaynes, Apple's Senior Finance Manager. With this evidence, Apple demonstrated how the weight of the § 1404(a) factors strongly favored transfer: in particular, Apple's witnesses and documents, which are most relevant to this case, are in the Northern District of California; Apple's Austin campus has no connection to the accused technology; Fintiv has few sources of proof in—and a tenuous connection to—Texas; and the Northern District of California has both subpoena power over the relevant NXP witnesses and a stronger local interest, given that the accused technology was developed there. *See* Appx75-79.

Fintiv opposed. Its opposition rested heavily on legally flawed contentions, such as deemphasizing the location of documentary

evidence, contrary to Fifth Circuit precedent, Appx264; minimizing the convenience of party witnesses, contrary to the Fifth Circuit's 100-mile rule, Appx270; and suggesting a local interest based not on the subject matter of the litigation but on the mere presence of Apple in Austin, Appx272. But Fintiv rested even more heavily on factual errors. As described in more detail below (at 27-29), Fintiv was unable to identify any Apple employees in Austin who are responsible for the accused Apple Wallet and Apple Pay technology. Instead, Fintiv scoured the Internet trying to find "evidence" linking NFC technology to Apple employees in Austin—even though NFC is not an element of the asserted patent claims. Appx265-266. Fintiv also cited NXP's presence in Austin and similarly dredged up a list of LinkedIn profiles for employees there with supposed experience touching on NFC. Appx267.[2] In reply, Apple demonstrated that none of the individuals Fintiv identified actually worked on the Secure Chip that is in Apple's devices

[2] Fintiv's Internet research also led it to assert that STMicro, a Texas company, had relevant information. Appx268. As Apple pointed out, however, [redacted] Appx277-278; Appx292-293.

or on the accused Apple Wallet and Apple Pay functions. *See* Appx277-281; Appx285-287; Appx290-292.

The district court held a hearing on the motion in August 2019. During that hearing, Fintiv doubled down on the legal and factual flaws in its opposition brief. It also leaned heavily on an incorrect assertion made in passing in a footnote of that brief: that a court considering a convenience-based transfer motion must resolve factual disputes in favor of the non-moving party. *See* Appx323-324; Appx265 n.2 (citing *Weatherford Tech. Holdings, LLC v. Tesco Corp.*, No. 17-cv-456, 2018 WL 4620636 (E.D. Tex. May 22, 2018)). The district court seized on this concept and took it even further, suggesting that assertions made by Fintiv's counsel "as an officer of the Court" might outweigh sworn evidence. Appx321-322. Given this newfound emphasis, Apple sought and was granted leave to file a supplemental brief explaining why the *Weatherford* principle was unsound in this context. *See* Appx1; Appx326-331.

Although the district court claimed to have taken Apple's "additional arguments into consideration," Appx3, its decision denying transfer rested heavily on *Weatherford* without addressing any of

Apple's objections. On the crucial issues of witness convenience, compulsory process, party convenience, and local interest, the district court deferred to Fintiv's unsupportable factual contentions in finding those factors neutral or weighing against transfer. *See* Appx7; Appx9-10; Appx13; Appx15-16.[3]

The district court stretched in other ways to find transfer inappropriate. For example, although Fintiv had offered to make its source code available in Silicon Valley, Appx296, the district court included a lengthy footnote speculating it was "likely" Fintiv had done so as a favor to Apple, not because the source code (if any exists) or Fintiv's lawyers were located there. Appx6 n.1. Likewise, reflecting its skepticism at the hearing that interstate travel would be inconvenient for witnesses, the district court utterly failed to apply the Fifth Circuit's 100-mile rule requiring increased consideration of the inconvenience caused by long travel. Appx12-13; *see, e.g.*, Appx299 (asking whether

[3] The district court was not entirely consistent in following *Weatherford*, however. It discounted Fintiv's reliance on third-party STMicro because of a sworn declaration confirming that [redacted] Appx11. The district court gave no explanation for declining to resolve this factual conflict in Fintiv's favor.

California-based Apple and NXP employees come to Texas routinely for work); Appx300-303 (suggesting that interstate travel is not so inconvenient for witnesses). Similarly, the district court reached to find that the mere presence of some unrelated functions of NXP in the Western District of Texas, with no connection to this case, created a local interest—even though "neither party raise[d] this issue" and NXP itself had disclaimed any Texas-based interest. Appx15; *see* Appx286.

Although it denied Apple's motion to transfer, the district granted Apple's request for alternative relief in the form of a transfer to the Austin division. Appx17.[4] The district court, however, ordered that the case would remain on the original judge's docket and subject to his scheduling order. Appx17. This move allowed the district court to discount Apple's showing of a faster time-to-trial in the Northern District of California as compared to Austin-based patent cases. Appx14-15.

[4] Fintiv may argue that the district court's grant of this alternative request undermines Apple's entitlement to mandamus relief. It does not. Apple was clear, and the record overwhelmingly demonstrates, that Northern California is where this case belongs. *See* Appx281.

REASONS FOR ISSUING THE WRIT

Mandamus is an extraordinary remedy. This case presents extraordinary circumstances.

A petitioner seeking mandamus relief must show (1) a "clear and indisputable" right to the writ; (2) that the petitioner has "no other adequate means to attain the relief he desires"; and (3) "that the writ is appropriate under the circumstances." *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004) (citation omitted). Under Fifth Circuit law, the first and third factors are satisfied if the district court committed a "clear abuse of discretion" amounting to a "patently erroneous result," by relying on clearly erroneous factual findings, erroneous conclusions of law, or misapplications of law to fact. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310-12, 318-19 (5th Cir. 2008) (en banc) ("*Volkswagen II*"). The second factor is necessarily satisfied if a district court clearly abused its discretion in denying transfer under § 1404(a). *Id.* at 319; *In re Radmax, Ltd.*, 720 F.3d 285, 287 n.2 (5th Cir. 2013).[5]

[5] In reviewing a denial of § 1404(a) transfer, "this court applies the laws of the regional circuit in which the district court sits, in this case the Fifth Circuit." *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

Here, the district court's assessment of the § 1404(a) factors was riddled with clearly erroneous factual findings and applications of law. This Court has repeatedly reminded district courts in the Fifth Circuit that, "in a case featuring most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff, the trial court should grant a motion to transfer." *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009); *see also, e.g.*, *In re Toyota Motor Corp.*, 747 F.3d 1338, 1341 (Fed. Cir. 2014); *In re Apple, Inc.*, 581 F. App'x 886, 889 (Fed. Cir. 2014); *In re Acer Am. Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010); *In re Genentech, Inc.*, 566 F.3d 1338, 1348 (Fed. Cir. 2009); *TS Tech*, 551 F.3d at 1322. The district court ignored this directive and denied transfer notwithstanding the clear weight of witnesses, evidence, and interests in the Northern District of California. What's more, it reached that decision largely by relying on a legally flawed approach to resolve supposed factual "conflicts" in favor of the non-moving party, thus crediting Fintiv's unsupported assertions over contradictory sworn testimony from Apple and NXP. For both reasons, mandamus is warranted.

I. A Clear Legal Error Infected the District Court's Analysis.

As demonstrated in Part II below, the district court's abuse of its discretion in analyzing the § 1404(a) factors is sufficiently clear, on its own, to warrant mandamus relief. But the court's factual errors were driven in large measure by a clearly erroneous legal approach, which is an independent abuse of discretion. *See Koon v. United States*, 518 U.S. 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law."); *accord United States v. Yanez Sosa*, 513 F.3d 194, 200 (5th Cir. 2008).

Here, the legal error constituting an abuse of discretion was essentially an abdication of that discretion, and of the court's role as factfinder in the § 1404(a) context. At decisive analytical junctures, the district court resorted to resolving "factual disputes" in favor of the non-moving party and drawing inferences in Fintiv's favor. This error was particularly acute on the most critical § 1404(a) factors: witness convenience and the availability of compulsory process. The district court disregarded Apple's evidence-backed demonstration that the overwhelming number of witnesses are in the Northern District of California, as well as its detailed rebuttal of Fintiv's misguided attempt

to show some connection to its preferred forum. The district court ignored the glaring deficiencies in Fintiv's showing by transposing the principle that a court "'must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party'" into the § 1404(a) context, where it does not belong. Appx3 (quoting *Weatherford*, 2018 WL 4620636, at *2).

There is no support for this approach. Apple is not aware of any appellate decisions endorsing it. The citations provided by the Eastern District of Texas in *Weatherford*—neither of which substantively applied the principle themselves—lead ultimately to two sources: One is a Third Circuit case that undermines the principle by admonishing that defendants seeking transfer should support their motions with evidentiary submissions. *See Plum Tree, Inc. v. Stockment*, 488 F.2d 754, 756-57 (3d Cir. 1973). There would be no reason to demand such evidence if a district court were required to ignore it in favor of a plaintiff's contrary assertions. The other line of citations leads to *Gone To The Beach, LLC v. Choicepoint Services, Inc.*, 434 F. Supp. 2d 534 (W.D. Tenn. 2006), which was not a § 1404(a) case but concerned a motion to dismiss for improper venue.

Whatever role the *Weatherford* principle might play in the improper venue context, it has no place in the analysis and weighing of the § 1404(a) convenience and interest-of-justice factors. Resolving factual disputes about the relative convenience of the forums by resort to default presumptions misapprehends the nature of the § 1404(a) inquiry and the role of the district court.

First, the nature of the inquiry is inconsistent with the principle of resolving factual disputes in favor of the non-moving party. That approach applies, most notably, in the Rule 12(b)(6) context. *See, e.g.*, *Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 385 (5th Cir. 2017) ("[W]e must accept all well-pleaded facts as true and view all facts in the light most favorable to the plaintiff."). When the question is whether the case may go forward at all, and when that question is being asked at the threshold of litigation, it makes sense to exercise caution and put a thumb on the scale for the party whose cause of action is at stake. A motion to dismiss is a preliminary test of the merits of a claim. At the same time, it is "not a procedure for resolving a contest between the parties about the facts or the substantive merits." 5B Wright & Miller, Fed. Prac. & Proc. Civ. § 1356 (3d ed.).

A § 1404(a) motion is different in every way. First, it is not a preliminary test of a question but rather a definitive determination of where the case will be venued. If the facts relevant to the analysis are not actually resolved in a § 1404(a) motion, there is no further chance to do so. Second, a venue transfer does not judge the merits of the cause of action. The convenience and interest-of-justice factors assess the nature and conduct of the litigation, not the facts and legal issues that bear directly on the substantive merits of the case. *See, e.g.*, *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 221 (7th Cir. 1986); *In re Nintendo Co.*, 544 F. App'x 934, 941 (Fed. Cir. 2013). Finally, unlike a Rule 12(b)(6) motion, a § 1404(a) proceeding is very much a mechanism for resolving a contest between the parties about the merits of the issue at hand: the relative convenience of one forum versus another.

That brings us to the role of the district court. A trial court is well-suited to assess the parties' competing submissions and make the requisite factual findings. The facts involved in a § 1404(a) analysis are facts about the conduct of the litigation—such as which documents and witnesses are likely to be needed, whether compulsory process is available, and how quickly the matter may get to trial. District courts

resolve such factual disputes in numerous contexts: when ruling on discovery disputes, setting trial schedules, or even (albeit retroactively) determining whether litigation conduct justifies an award of attorneys' fees under § 285. There is nothing unusual or improper about a district court making definitive factfindings relating to where the litigation should be conducted.

Indeed, although it appears no appellate court has directly confronted the question, there are strong suggestions that a district court can and must make these factual findings. *See, e.g.*, *In re LimitNone, LLC*, 551 F.3d 572, 577 (7th Cir. 2008) ("District courts [addressing § 1404(a) motions] are permitted, indeed, in some instances required, to make whatever factual findings are necessary prior to issuing a preliminary order."); *Hustler Magazine, Inc. v. U.S. Dist. Ct.*, 790 F.2d 69, 71 (10th Cir. 1986) (faulting district court for "fail[ing] to give air to those facts which the petitioners assert entitle them to a transfer of the place of trial"). As this Court has put it, "[a] motion to transfer under § 1404(a) calls upon the trial court to weigh a number of case-specific factors based on the individualized facts on record." *In re Verizon Bus. Network Servs. Inc.*, 635 F.3d 559, 561 (Fed. Cir. 2011).

And the Court has held that a district court abuses its discretion when it "fail[s] to fully consider the facts in the record." *Apple*, 581 F. App'x at 888. Surely a court cannot "fully" consider the "individualized" facts by substituting presumptions and default rules for factual findings.

If there were, in fact, such deference to plaintiffs, one would expect it to have shown up in this Court's extensive § 1404(a) jurisprudence. Instead, this Court has regularly addressed facts in transfer cases without ever a hint that the deck is stacked against defendants in the manner found by the district court here. *See, e.g.*, *id.* at 888-89; *Acer*, 626 F.3d at 1254-56; *TS Tech*, 551 F.3d at 1320-21. Indeed, the *Weatherford* rule is at odds with the appellate standard of review. As noted above (at 13), a reviewing court examines whether the district court made clearly erroneous factual findings. *See, e.g.*, *Volkswagen II*, 545 F.3d at 310. That standard contemplates that the district court will have actually examined the facts and made findings, not automatically resolved disputes in favor of the non-moving party.

In sum, the district court could and should have reviewed the parties' competing factual assertions and made findings regarding each relevant factor. The court's legal error in resorting to *Weatherford*

threatens to eviscerate transfer motions. If the transferor court must defer to a bare allegation of some connection to the chosen forum—even, as here, in the face of clear defects in the showing and sworn rebuttal evidence—then many, many more cases will be tried in inconvenient venues.

The Supreme Court has cautioned against that result. It has warned that courts applying § 1404(a) "should consider whether a suggested interpretation would discriminatorily enable parties opposed to transfer, by means of their own acts or omissions, to prevent a transfer otherwise proper and warranted by convenience and justice." *Van Dusen v. Barrack*, 376 U.S. 612, 623 (1964). So, for example, the Supreme Court refused to interpret § 1404(a) to prevent transfer of a case that included an in rem admiralty claim based on the legal "fiction" that the vessel (located in the transferor forum) is a party; doing so would "scuttle the forum non conveniens statute so far as admiralty actions are concerned," because "[a]ll a plaintiff would need to do to escape from it entirely would be to bring his action against both the owner and the ship." *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 24-25 (1960). Likewise here, if the district court's approach is

upheld, all a plaintiff would need to do to avoid transfer would be to allege that the case would require testimony from some local witnesses or that some company with a local presence had an interest.

At a minimum, therefore, mandamus is justified to correct the district court's clear abuse of discretion in relying on this erroneous legal approach.

II. The District Court's Analysis of the § 1404(a) Factors Was Patently Erroneous.

Guided by the legally erroneous *Weatherford* approach, the district court clearly erred on each of the critical § 1404(a) factors. The statute permits transfer "[f]or the convenience of parties and witnesses, in the interest of justice," to another district or division where the case "might have been brought." 28 U.S.C. § 1404(a). When a moving party demonstrates, based on specified private- and public-interest factors, that "the transferee venue is clearly more convenient," there is "good cause and the district court should therefore grant the transfer." *Volkswagen II*, 545 F.3d at 315.

The private-interest factors are: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses;

and (4) all other practical problems." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) ("*Volkswagen I*"). The public-interest factors are "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws." *Id.*; *see also Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981).

The parties agreed, and the district court correctly found, that the "practical problems," familiarity with the law, and conflict of laws factors are neutral. Appx13; Appx16. But on every other factor, the court's analysis is unsustainable. It treated as neutral the critical witness-based factors that heavily favor transfer here; it gave only slight pro-transfer weight to the access to proof factor despite virtually all sources of proof being in California; and it counted local interest and court congestion as weighing against transfer despite the clearly prevalent interest of the California forum and data suggesting that time-to-trial is at least comparable, if not faster, in California.

Here, as in so many other cases where this Court has issued writs of mandamus to Texas trial courts, "there is simply no rational

argument that … the clearly more convenient venue is not the Northern District of California." *Genentech*, 566 F.3d at 1348; *see also, e.g.*, *In re HP Inc.*, No. 2018-149, 2018 WL 4692486, at *3 (Fed. Cir. Sept. 25, 2018); *In re Google Inc.*, No. 2017-107, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017); *Apple*, 581 F. App'x at 890; *Acer*, 626 F.3d at 1256.

A. The private-interest factors clearly favor transfer.

1. Witness convenience is paramount, and nearly all likely witnesses are in the Northern District of California.

The district court recognized that "[t]he convenience of the witnesses is the single most important factor in the transfer analysis." Appx12. And it acknowledged the Fifth Circuit's rule that, when the distance between the existing venue and the proposed transferee venue is greater than 100 miles, "the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *Volkswagen I*, 371 F.3d at 204-05; *see* Appx12. But after reciting these principles, the district court proceeded to ignore them. The overwhelming majority of likely witnesses will have to travel from Northern California if this case remains in Texas. It was clear error not to consider their convenience as a factor favoring transfer.

a. Apple and NXP identified numerous specific witnesses in the Northern District of California and linked their expected testimony to relevant issues in the case.

As explained above (at 6-8), the Apple engineers who developed the accused Apple Wallet and Apple Pay technology, and who maintain the device- and server-side functions of that technology (including source code), are all located in the Cupertino area. *See* Appx77. Those employees include (1) Glen Steele, head of Apple's Wallet Engineering team, and the knowledgeable members of his team; (2) Greg Novick, head of the Apple Watch Software Engineering Team, and four of his five team members knowledgeable about Apple Wallet source code for watchOS (the fifth being located in Canada); (3) David Brudnicki, head of the Apple Pay Product Architecture team, and the four individuals on his team who work on business, technical, and regulatory requirements for Apple Wallet; and (4) Chris Sharp, Director of Engineering for Apple Pay Server Engineering, along with all 28 U.S.-based members of his team who have knowledge of the server-side code for Apple Wallet and Apple Pay. Appx84-85. A fifth employee, Senior Director of Product Marketing Baris Cetinok, is responsible for product marketing for Apple

Wallet and Apple Pay; he and his three-person team are all in the Cupertino area. Appx85-86. All five individuals—the people within Apple who know the accused technology best—knew of no one *anywhere* in Texas involved in the design or development of Apple Wallet. Appx84-86.

Likewise, every U.S.-based NXP employee who can speak to the Secure Chip in Apple's accused devices, which Fintiv relies on for its infringement allegations, is in the Northern District of California. *See* Appx263 (describing Secure Chip as "relevant" to accused functionality). NXP, a non-party, affirmed that "[t]he NXP team that interfaces with Apple and supports the NFC component supplied to Apple is located in San Jose, California." Appx285; *see also* Appx292.[6] Both Apple and NXP confirmed that they have no knowledgeable witnesses in the Western District of Texas. Appx77; Appx286.

Fintiv's damages case, too, is likely to depend on witnesses in Cupertino. In addition to the marketing personnel on Mr. Cetinok's

[6] The NXP employees who design and develop the chip are located in other countries. Appx285. Since they will incur costs regardless of where this case is litigated, those witnesses are neutral in the analysis. *See, e.g.*, *Toyota*, 747 F.3d at 1340.

team, Apple's licensing personnel are in Northern California, as is Senior Finance Manager Michael Jaynes, who is knowledgeable about sales and financial information for the accused iPhones and Apple Watches. Appx86. Even the likely invalidity witnesses are in Northern California. *See* Appx74-75.

In the face of this overwhelming demonstration, Fintiv could not muster much in the way of relevant witnesses in its chosen forum. It did not even try to identify any relevant witnesses in Waco. And although Fintiv identified two of its four anticipated witnesses as based in Austin, it gave either minimal or no explanation of how those witnesses' testimony would be relevant to this case. Fintiv labeled its President, Mike Love, a "Payments Industry Expert" with unspecified knowledge about Fintiv's "licensing practices." Appx266; Appx130. And it asserted without explanation that David Gibson, Fintiv's "Human Resources Director," would be called as a witness—without identifying any possible information Mr. Gibson might have that would be relevant to the parties' dispute. Appx129-130. Fintiv's remaining witnesses are located in Missouri and Georgia. Appx130; Appx266.

Instead of showing actual likely Apple or NXP witnesses in the Western District of Texas, Fintiv stretched and speculated. To justify its preferred forum, Fintiv appears to have searched public LinkedIn profiles for (1) Apple or NXP employees (2) located in Austin that (3) mention the term "NFC." For example, Fintiv identified Apple employee Ruotao Wang, whose pre-Apple experience as an undergraduate student in China included a project involving NFC. Appx132-134. Fintiv similarly found 41 other Apple employee LinkedIn profiles and five NXP employee LinkedIn profiles that mentioned the term "NFC." *See* Appx265-267; Appx135-258.

But Apple demonstrated through sworn testimony that none of these people is a potential witness in this case. To begin with, NFC is not the accused technology. The '125 patent claims do not mention the NFC standard or any other communication between the mobile device and a contactless card reader; NFC is of ancillary relevance, at most, because the component that Fintiv identifies as the claimed "secure element" is located on a chip that separately provides NFC capability. *See supra* 6. Moreover, Apple and NXP explained, under penalty of perjury and in painstaking, individualized detail, how none of the

employees identified through Fintiv's Internet canvassing has any connection to the Secure Chip supplied by NXP or to the accused Apple Wallet or Apple Pay functions. *See* Appx280; Appx290-292; Appx286-287.

The district court waved all of this away, and deemed this critical factor "neutral," with the bare statement that "both parties have identified a few potential witnesses in both NDCA and WDTX." Appx7. The district court did not acknowledge the clear imbalance of party witnesses, with a single potentially relevant individual (Mr. Love) in Austin while virtually every knowledgeable Apple employee is in or near Cupertino and several NXP witnesses are in San Jose. Most troubling, the district court utterly failed to engage with how the various individuals' testimony might possibly be relevant to this case. *See Genentech*, 566 F.3d at 1343 ("A district court should assess the relevance and materiality of the information the witness may provide."). The court paid lip service to examining such factors as witnesses' titles, experience, and "likelihood that a witness may have relevant information." Appx8. But it never actually did so.

Instead, the district court resorted (either expressly or implicitly) to the legally flawed idea that Fintiv had created a factual conflict by dumping a list of names into the record, and that the court should resolve that "conflict" in favor of Fintiv. *See* Appx7; Appx13. The district court's complete failure to address the parties' competing submissions amounts to a failure "to fully consider the facts in the record." *Apple*, 581 F. App'x at 888; *cf. In re Link_A_Media Devices Corp.*, 662 F.3d 1221, 1224 (Fed. Cir. 2011) (applying Third Circuit law and faulting district court for failing to "analyze the merits of the parties' arguments").

When those facts are fully and fairly considered, it is clear that the likely witnesses in the Northern District of California—Apple's engineers, marketing and finance personnel, and licensing staff, as well as NXP's employees—far outnumber the lone likely witness (Mr. Love) in Austin, Texas. And an Apple engineer is far more likely to have information relevant to this patent-infringement dispute than Fintiv's employees. In these circumstances, the district court clearly erred in failing to weigh this factor in favor of transfer. *See HP*, 2018 WL 4692486, at *3 (error not to weigh witness-related factors in favor of

transfer when several likely witnesses were in transferee forum and only one of plaintiff's witnesses was in transferor forum).

b. The district court compounded its factual error with a legal one—failing to apply the Fifth Circuit's 100-mile rule.

The Western District of Texas is more than 1700 miles away from the Northern District of California. Appx281. But the district court gave no attention to the considerably increased inconvenience imposed on virtually all likely witnesses if this case remains in Texas. The district court's neglect of that inconvenience is contrary to the Fifth Circuit's "obvious conclusion" that "[a]dditional distance means additional travel time; additional travel time increases the probability for meal and lodging expenses; and additional travel time with overnight stays increases the time which these fact witnesses must be away from their regular employment." *Volkswagen I*, 371 F.3d at 205. For legions of likely witnesses, a trial in Northern California means a short day-trip to a courthouse in San Francisco, Oakland, or San Jose; a trial in the Western District of Texas means long plane rides, extended hotel stays, and time away from their families and from the jobs for which Apple and NXP employ them. *See* Appx304 ("My point is that

there's not a single witness who's going to sleep in their own bed in a trial in the Western District of Texas."). The district court was wrong to ignore those human and financial costs. *See Apple*, 581 F. App'x at 889 (faulting district court for failing to follow 100-mile rule); *TS Tech*, 551 F.3d at 1320 ("The district court's disregard of the 100-mile rule constitutes clear error.").

2. Compulsory process for critical NXP witnesses is available only in the Northern District of California.

The district court's clearly erroneous treatment of witness convenience affected its analysis of this separate factor as well. Fintiv insists that NXP witnesses will be crucial to its infringement case. As demonstrated by sworn testimony, the U.S.-based NXP employees with knowledge of the Secure Chip in the accused Apple devices are located in San Jose. Appx285-287; Appx292. Those employees are subject to compulsory process in the Northern District of California but not in the Western District of Texas. Unless this case is transferred, they cannot be compelled to testify at trial.

The district court nonetheless deemed this factor "neutral." It did so by erroneously invoking the *Weatherford* principle which, as

explained above (in Part I), is contrary to law. *See* Appx11 ("resolv[ing] factual conflicts in favor of the non-movant"). The district court's error here was particularly unjustifiable. It gave decisive weight to representations made by Fintiv's counsel during the hearing that the Austin-based NXP employees Fintiv had cherry-picked through Internet research were somehow relevant to this case simply because their LinkedIn profiles mention the NFC standard. *See* Appx11. Those representations contradicted a sworn statement from NXP. Appx286-287. Even if it were appropriate to default to resolving conflicting evidence in favor of Fintiv, "[a]ttorney argument is not evidence." *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017); *see also Vargas v. McHugh*, 630 F. App'x 213, 217 (5th Cir. 2015); *Salazar v. Maimon*, 750 F.3d 514, 522 (5th Cir. 2014).

The district court's error becomes particularly stark when considering how third-party discovery works. NXP is not a party to this litigation. If Fintiv wants specific, Austin-based NXP employees to provide documents or testimony, it has to subpoena them. If Fintiv did so, and if NXP brought a motion to quash the subpoena that was supported by the precise sworn statements in Mr. Dachs's declaration

here, the district court would undoubtedly grant that motion. *See, e.g.*, *MetroPCS v. Thomas*, 327 F.R.D. 600, 627-28 (N.D. Tex. 2018) (quashing subpoena based on non-party's representation that she knew nothing about the topics relevant to the suit); *Babin v. Breaux*, No. 10-368, 2012 WL 83672, at *1-*3 (M.D. La. Jan. 11, 2012) (quashing subpoena based on non-party's affidavit that he had no personal knowledge of layoffs challenged in suit). There is no justification for deferring to Fintiv's unsupported allegations about these NXP employees for transfer purposes when those same allegations would be insufficient to actually compel the testimony of the individuals in question.

The district court clearly erred by failing to treat this factor as favoring transfer.

3. All relevant documentary evidence, and all but one of the likely party witnesses, are in the Northern District of California.

Access to sources of proof is the lone factor the district court acknowledged as favoring transfer—albeit "only slightly." Appx8. The district court's failure to give this factor more pro-transfer weight is another clear error.

First, as to documents, the district court acknowledged that "because Apple is the accused infringer, it is likely that it will have the bulk of the documents that are relevant in this case." Appx6; *see Acer*, 626 F.3d at 1256. But the district court's order contains clues that it did not give this factor proper consideration. The Fifth Circuit and this Court have repeatedly confirmed that the location of documentary evidence remains relevant notwithstanding advances in technology and electronic discovery. *See, e.g.*, *Volkswagen II*, 545 F.3d at 316; *TS Tech*, 551 F.3d at 1321; *see also Uniloc USA, Inc. v. Apple Inc.*, No. 18-cv-990-LY, 2019 WL 2066121, at *3 (W.D. Tex. Apr. 8, 2019) ("[W]hether the relevant evidence is in electronic form or not, access to the relevant proof tends to favor venue of this action in the Northern District of California."). Yet the district court's order contains an entire page expressing the belief "that this factor is at odds with the realities of modern patent litigation." Appx8-9. Such statements at least raise doubt about whether the court gave this factor proper weight.

The district court's error on access to party witnesses is unambiguous. As explained above (at 27-29), the district court erred by invoking *Weatherford* to credit Fintiv's absurd assertion that Ruotao

Wang—an Austin-based Apple employee who does not work on Apple Wallet or Apple Pay, but who completed a project involving NFC during his undergraduate education—is a potential witness in this case. Appx7. The district court even criticized Apple for failing to provide a declaration from Mr. Wang (one of scores of Apple employees identified by Fintiv), Appx7, even though Apple did provide a sworn declaration addressing Mr. Wang's lack of relevant knowledge and even though sworn statements are not required under Fifth Circuit law. *See Volkswagen II*, 545 F.3d at 317 n.12. The district court also erred in finding that AppleCare support employees based in Austin might have relevant information—accepting Fintiv's counsel's representation over a sworn statement to the contrary from Apple employee Mr. Jaynes, and without considering how customer support personnel might possibly have information relevant to the technical claim limitations of the '125 patent. *See* Appx7.

Because the vast majority of actual likely party witnesses are in the Northern District of California, the court erred in treating this factor as neutral. *See, e.g.*, *Acer*, 626 F.3d at 1256; *Nintendo*, 589 F.3d at 1199.

B. The public-interest factors clearly favor transfer.

1. The interest of the district where Apple's accused technology was designed and developed, and where Apple employees work to maintain and promote their product, is self-evident.

The local interest factor looks at whether a "relevant factual connection" exists between the litigation and one or the other possible forums. *Volkswagen II*, 545 F.3d at 318. Because the accused Apple technology was entirely "developed and tested" in the Northern District of California, and because Fintiv's suit "calls into question the work and reputation of several individuals residing" in that district, the district's interest in this matter is "self-evident." *In re Hoffman-La Roche, Inc.*, 587 F.3d 1333, 1336, 1338 (Fed. Cir. 2009).

In contrast, the only connection between the subject matter of this suit and the Western District of Texas is Fintiv's headquarters at an Austin co-working space. *See* Appx79. The mere presence of a party does not create a local interest; otherwise, this factor would be redundant with private-interest factors such as party and witness convenience. *See Hoffman-LaRoche*, 587 F.3d at 1338 (faulting district court for "essentially render[ing] this factor meaningless" by reducing it to be redundant with private-interest factors). And this is not a case

where a patent plaintiff's presence in the transferor forum reflects some meaningful local interest, such as the residence of named inventors. *See, e.g.*, *In re Telebrands Corp.*, 773 F. App'x 600, 604 (Fed. Cir. 2016). The inventors are in Korea, and Fintiv—itself a nominal Texas company at most—acquired the patent from Mozido's Korean affiliate just days before filing this litigation. *See supra* 4.

Incredibly, however, the district court found that this factor weighed against transfer. Appx16. It did so based in part on a factual error driven by the *Weatherford* principle: namely, accepting Fintiv's baseless assertions that there are relevant witnesses in Austin. *See* Appx15.

The district court also erred more broadly by misapprehending the nature of the local-interest factor. The court relied heavily on the notion that, because Apple and NXP are significant employers in Austin, and because Apple may receive taxpayer funding to build a new campus there, the Western District of Texas has an interest in this case. Appx15-16. There is no support for invoking this purported "local interest" untethered to the subject matter of the *actual* dispute. The question is whether there are "significant connections between a

particular venue and *the events that gave rise to a suit*." *Acer*, 626 F.3d at 1256 (emphasis added). Whatever general connections Apple or NXP may have to the Texas district, they have nothing to do with the technology accused in this case—and the district court offered no reason to think otherwise. *See DataQuill, Ltd. v. Apple Inc.*, No. 13-CA-706-SS, 2014 WL 2722201, at *4 (W.D. Tex. June 13, 2014) (recognizing that local interest weighed in favor of transfer notwithstanding Apple's Austin presence because "this case is about Apple's actions in designing and developing [the accused products], all of which happened in Cupertino").

The only arguable local interest of the Western District of Texas is based on Fintiv's purported presence in Austin. That insignificant tie to the forum cannot neutralize the overwhelming interest of the Northern District of California, and it certainly cannot tip this factor against transfer.

2. The district court's speculation about its untested trial-administration plan cannot outweigh all the factors that heavily favor transfer.

Finally, the district court clearly erred in weighing court congestion as a factor favoring trial in the Austin division but under a

scheduling plan issued by a Waco judge. *See* Appx14-15. The district court found that this solution would lead to a faster trial than transfer by comparing the California court's track record to a "patent-specific Order Governing Proceedings," which the district court announced earlier this year but has not yet followed through to trial in any case. Appx14; *see* https://tinyurl.com/AlbrightOGP. The court relied on this plan to discount actual statistics showing that patent cases in the Western District of Texas go to trial later than those in the Northern District of California. Appx14. That was clear error. At a minimum, even if the district court were correct that time to trial would be faster in the Western District of Texas, that alone cannot tip the balance against transfer when several factors favor it and others are neutral. *See Genentech*, 566 F.3d at 1347.

CONCLUSION

The Court should grant Apple's petition, vacate the district court's order, and remand with instructions to transfer this case to the Northern District of California.

Respectfully submitted,

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October 16, 2019

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on October 16, 2019.

A copy of the foregoing was served upon the following counsel of record and district court judge via UPS:

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CERTIFICATE OF COMPLIANCE

The petition complies with the type-volume limitation of Fed. R. App. P. 21(d)(1) because this petition contains 7774 words, including 12 unique words marked as confidential.

This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Century Schoolbook 14-point font.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

STC.UNM, Plaintiff,	§	
v.	§	**CIVIL ACTION 6:19-cv-00428-ADA**
APPLE INC., Defendant.	§	**JURY TRIAL DEMANDED**

ORDER DENYING DEFENDANT APPLE'S
MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

Came on for consideration this date the Motion of Defendant Apple to transfer under 28 U.S.C. § 1404(a), filed on November 1, 2019. ECF No. 22. Plaintiff STC.UNM filed its response on November 14, 2019 (ECF No. 31) and Apple replied on November 26, 2019 (ECF No. 38). The Court held a hearing on this motion on March 31, 2020. ECF No. 58.

After careful consideration of the briefing and arguments made at the hearing, the Court **DENIES** Apple's motion to transfer the case to the Northern District of California ("NDCA"), but **GRANTS** Apple's alternative motion to transfer the case to the Austin Division of the Western District of Texas ("WDTX"), for the reasons described below.

I. Factual Background and Procedural History

STC.UNM filed this lawsuit on July 19, 2019 alleging infringement of U.S. Patent Nos. 8,249,204 ("'204 Patent"), 8,565,326 ("'326 Patent"), and 8,265,096 ("'096 Patent"). ECF No. 1. The '204 Patent, the '326 Patent, and the '096 Patent are titled "Apparatus and Method for Channel State Information Feedback," "Method for Constructing Frame Structures," and "System and Method for Bit Allocation and Interleaving," respectively. *Id.* at ¶¶ 23, 30, 37.

STC.UNM alleges that Apple products that comply with the IEEE 802.11ac wireless networking standard infringe the '204, '326, and '096 Patents. *See Id.* at ¶¶45, 46, 54, and 62.

II. Standard of Review

Title 28 U.S.C. § 1404(a) provides that, for the convenience of parties and witnesses, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented. "Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). The party moving for transfer carries the burden of showing good cause. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 314 (5th Cir. 2008) (hereinafter "*Volkswagen II*") ("When viewed in the context of § 1404(a), to show good cause means that a moving party, in order to support its claim for a transfer, must . . . clearly demonstrate that a transfer is '[f]or the convenience of parties and witnesses, in the interest of justice.'") (quoting 28 U.S.C. § 1404(a)).

"The preliminary question under § 1404(a) is whether a civil action 'might have been brought' in the destination venue." *Volkswagen II*, 545 F.3d at 312. If so, in the Fifth Circuit, the "[t]he determination of 'convenience' turns on a number of public and private interest factors, none of which can be said to be of dispositive weight." *Action Indus., Inc. v. U.S. Fid. & Guar. Co.*, 358 F.3d 337, 340 (5th Cir. 2004). The private factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *In re Volkswagen AG*, 371 F.3d 201, 203 (5th Cir. 2004) (hereinafter "*Volkswagen I*") (citing to *Piper Aircraft Co. v. Reyno*, 454

U.S. 235, 241 n.6 (1982)). The public factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law." *Id.* Courts evaluate these factors based on "the situation which existed when suit was instituted." *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960).

A court may "consider undisputed facts outside the pleadings, but it must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party." *Weatherford Tech. Holdings, LLC v. Tesco Corp.*, No. 2:17-CV-00456-JRG, 2018 WL 4620636, at *2 (E.D. Tex. May 16, 2019).

A plaintiff's choice of venue is not an independent factor in the venue transfer analysis, and courts must not give inordinate weight to a plaintiff's choice of venue. *Volkswagen II*, 545 F.3d at 314 n.10, 315 ("[W]hile a plaintiff has the privilege of filing his claims in any judicial division appropriate under the general venue statute, § 1404(a) tempers the effects of the exercise of this privilege."). However, "when the transferee venue is not clearly more convenient than the venue chosen by the plaintiff, the plaintiff's choice should be respected." *Id.* at 315; *see also QR Spex, Inc. v. Motorola, Inc.*, 507 F.Supp.2d 650, 664 (E.D. Tex. 2007) (characterizing movant's burden under § 1404(a) as "heavy").

III. Discussion Regarding Plaintiff STC.UNM's Sovereignty Objections

STC.UNM claims that the University of New Mexico ("UNM"), the Board of Regents of UNM, and STC.UNM are arms of the State of New Mexico and thus enjoy the rights afforded to a sovereign. ECF No. 1 at ¶7. STC.UNM raises the objection on the grounds of its claimed sovereign status that "it is entitled to litigate within any forum having requisite jurisdiction, and

it cannot be forced to proceed in a forum of the defendant's choice based on a venue statute." ECF No. 32 at 1. Apple argues that STC.UNM's identity as a nonprofit research park corporation does not equate to a sovereign; additionally, Apple cites the Federal Circuit's recent holding that filing a patent infringement suit operates as a nationwide waiver of jurisdiction such that a sovereign can be transferred to a different district. ECF No. 38 at 6. In response, STC.UNM argues that this Court should at least afford a sovereign plaintiff "heightened deference" when analyzing the factors for transfer. ECF No. 31 at 1 n.1.

Even if STC.UNM enjoys sovereign immunity, this Court finds that this case may still be transferred pursuant to Apple's motion to transfer under 28 U.S.C. § 1404(a). *Bd. of Regents of the Univ. of Tex. Sys. v. Bos. Sci. Corp.*, 936 F.3d 1365, 1377 (Fed. Cir. 2019) (holding that "sovereign immunity cannot be asserted to challenge a venue transfer in a patent infringement case where a State acts solely as a plaintiff"). Further, this Court finds that STC.UNM must "abide by federal rules and procedures—including venue rules—like any other plaintiff." *Id.* At 1379. This Court will not adjust its method of weighing the venue transfer factors to give heightened deference to a sovereign plaintiff. The inherent powers of a sovereign do not nullify the venue rules in a patent infringement suit once the sovereign choses to file such a suit in federal court. *Id.*

IV. Discussion Regarding Transfer to the Northern District of California

Aside from STC.UNM's objection on sovereignty grounds, neither party contests the fact that venue is proper in NDCA and the suit could have been filed there. Because STC.UNM could have originally filed suit in the NDCA, the Court moves past the preliminary question and weighs the private and public interest factors to determine whether transfer is warranted.

a. Relative ease of access to sources of proof

In considering the relative ease of access to proof, a court looks to where documentary evidence, such as documents and physical evidence, is stored. *Volkswagen II*, 545 F.3d at 316.

In its initial motion to transfer, Apple argues that this factor weighs in favor of transfer because "the overwhelming majority of the sources of proof regarding the Accused Technology and the Accused Products" are in the NDCA. ECF No. 22 at 9. Apple claims that the "Accused Technology in the Accused Products was designed and developed by Broadcom employees in California," and that "documents relating to the design and development of the Accused Technology were generated in California." *Id.* Additionally, Apple claims that its own documents and personnel related to the marketing, sales, and financial information for the Accused Products are located in and around Cupertino, California. *Id.* Apple lists three specific individuals and notes their location in the NDCA, and further argues that STC.UNM has neither physical presence nor sources of proof located in the WDTX. *Id.* at 4, 9.

In its response, STC.UNM argues that Apple's sources of proof are as easy to access in the WDTX as in the NDCA and that the location of third-party sources weighs against transfer. First, STC.UNM argues that this factor rests on the "*relative* ease of access, not *absolute* ease of access" of the documents in each location. ECF No. 31 at 6 (quoting *In re Radmax, Ltd.*, 720 F.3d 285, 288 (5th Cir. 2013)). According to STC.UNM, Apple's declaration of unspecified yet relevant documents located in or around Cupertino does not demonstrate how "it is 'relatively' easier to access these documents at [Apple's] Northern California headquarters than at [Apple's] vast Austin campus." *Id.* at 5–6. STC.UNM notes that these documents are likely not sitting as hard copies in a warehouse, but rather are electronically stored on a server and are therefore just as accessible in Apple's location in Austin as in Cupertino. *Id.* at 7 n.6. Also, STC.UNM points

to Apple's Austin campus which employs at least 500 engineers who work on chips for Apple products. *Id.* at 8, Ex. 12. Further, STC.UNM points to recent job openings for a "Senior Wifi Network Engineer for its Austin Campus who must have a strong knowledge of the 802.11ac standard" to indicate that sources of proof are located within the WDTX. *Id.*

STC.UNM does not refute that it has neither a physical presence nor party witnesses located in the WDTX. Instead, STC.UNM claims that third-party sources actually favor WDTX over NDCA, despite Apple's reliance on Broadcom's activities in California. First, STC.UNM claims that its current infringement theories do not depend upon Broadcom's chip design, and that Broadcom's activities in any event are not centered in NDCA. *Id.* at 9–10. STC.UNM argues that its patents are infringed by any device that practices the 802.11ac standard, and thus "the design of the [Broadcom] chips is irrelevant." *Id.* at 9. Additionally, STC.UNM notes that the Broadcom documents were "generated somewhere in the State of California," but are not necessarily stored there; according to STC.UNM, Broadcom has an Austin office through which it could produce any relevant documents and none of the addresses from which Broadcom delivers components to Apple are located in the NDCA. *Id.* Finally, STC.UNM claims that the Wi-Fi Alliance, located in Austin within the WDTX, will be a far more critical third-party witness because it certifies which products comply with the 802.11ac standard. *Id.* at 10.

In its reply, Apple raises several counterarguments. First, Apple argues that STC.UNM is plainly wrong to base infringement allegations entirely on the accused products supporting the 802.11ac Wi-Fi standard and not on the design of the Broadcom chips. ECF No. 38 at 1. From this point, Apple additionally argues that any individuals related to the Wi-Fi Alliance will not be relevant third-party witnesses for this case. *Id.* at 4. Additionally, Apple reemphasizes both its identified personnel and the identified personnel of Broadcom which are both located in the

NDCA. *Id.* at 2–3. Finally, Apple argues that STC.UNM's broad references to industry groups, manufacturing of alleged infringing products within the WDTX, and Apple job-postings in the WDTX that specifically reference the 802.11ac standard are irrelevant to the transfer analysis. *Id.* at 4–5.

The Court finds that the "relative ease of access to sources of proof" weighs in favor of transfer for the reasons that follow. First, because Apple is the accused infringer, it will likely have most of the documents relevant in this case. *See, e.g.*, *In re Genetech, Inc.*, 566 F.3d 1338, 1345 (Fed. Cir. 2009). These documents, if physical copies are present at all, will likely be in the NDCA where Apple has its largest number of employees. ECF No. 22 Ex. 1 at ¶¶8–9. Additionally, to the extent that any Broadcom documentation of the chip design is necessary, Broadcom documentation is also likely located in California where the chips were originally developed. *Id.*

Turning to the plaintiff's arguments regarding documentation, STC.UNM lacks a physical presence in this district, and none of its documentation will likely be physically present in the WDTX or the NDCA. However, STC.UNM has argued that it will heavily rely on the Wi-Fi Alliance located in Austin as a source of proof to such an extent that any Broadcom documentation is irrelevant. ECF No. 31 at 9–10. The Court finds it possible—if not likely—that STC.UNM could require the Wi-Fi Alliance as a significant source of proof. While this does not necessarily indicate that the Broadcom source is irrelevant, the presence of the Wi-Fi Alliance and its documentation in the WDTX still push back against transfer. Regardless, the two-sources of documentation in the NDCA, with one being the alleged infringer, tip this factor slightly in favor of transfer.

Second, the Court finds that the sources of proof relating to witnesses and personnel also slightly favor transfer. STC.UNM has identified no employees or party witnesses in the WDTX. Apple has identified three employees and their teams located in the NDCA with information related to the marketing, licensing, and finances of the Accused Products. ECF No. 22 at 4. According to STC.UNM, Apple employees at the Austin campus likely have "vastly more relevant knowledge" related to research, development, and design of the technology involved than the employees Apple offers in the NDCA. *Id.* Additionally, Apple's declarations in support of transfer are silent regarding its Texas non-retail employees' knowledge of the research, development, and design of the Accused Technology. *See* ECF No. 22 Ex. 2 at ¶¶14–15. However, while there could potentially be Apple employees in the WDTX with an understanding of the Accused Technology, the Court finds that there are employees with knowledge of the research, development, and design of the Accused Technology in the NDCA. ECF No. 38 at 10 n.5; *See also* ECF No. 22 Ex. 1 ¶¶8–9. Considering the totality of the circumstances, the Court finds that the weight of Apple's witnesses slightly favors the NDCA.

Concerning third party employees and witness, the Court finds that the Broadcom engineers located in California and the Wi-Fi Alliance personnel located in the WDTX counteract each other in terms of convenience. Thus, overall, the location of witnesses and personnel slightly favors transfer. Because the relative sources of proof of documentation and personnel both slightly favor transfer, the Court finds that the first factor favors transfer to the NDCA.

b. Availability of compulsory process to secure the attendance of witnesses

In this factor, the Court considers the availability of compulsory process to secure the attendance of witnesses, particularly non-party witnesses whose attendance may need to be secured by a court order. *Volkswagen II*, 545 F.3d at 316.

In its motion to transfer, Apple argues that this factor weighs in favor of transfer because "the key witnesses … regarding the design, development, and operation" of the Accused Technology will be Broadcom witnesses in the NDCA. ECF No. 22 at 10. In Apple's view, Apple cannot control the Broadcom witnesses and cannot force them to attend trial absent the ability to subpoena them. *Id.*

In its reply, STC.UNM claims that the subpoena power of the NDCA will be unnecessary because Broadcom is not an unwilling third-party witness. ECF No. 31 at 11. According to STC.UNM, the close and ongoing business relationship between Apple and Broadcom indicates that Apple will not have to resort to subpoena to force Broadcom to testify in its favor. Additionally, STC.UNM claims that this Court's subpoena power will be necessary to obtain documents and testimony from third-parties within the WDTX. *Id.* at 12. STC.UNM claims that the Wi-Fi Alliance will be unlikely to voluntarily cooperate with STC.UNM because Apple and Broadcom are two of the organization's largest sponsors. *Id.* Further, STC.UNM claims that subpoena power over Apple's manufacturer for the Mac Pro in Austin, Flex Ltd., will be necessary to demonstrate that Accused Products are being manufactured and direct infringement is occurring in this District. *Id.*

Apple argues in its response that any information from the Wi-Fi Alliance will be irrelevant and that the organization is comprised of multiple member companies, many of which compete with Apple. ECF No. 38 at 4. Further, Apple argues that any information from the Wi-

Fi Alliance would be irrelevant.[1] *Id.* Additionally, Apple argues that evidence regarding the manufacturing of the Accused Products would be irrelevant because STC.UNM's arguments focus solely on determining whether there is compliance with the 802.11ac standard. *Id.*

This Court finds that this favor is neutral towards transfer. To the extent that STC.UNM wishes Broadcom to testify or provide evidence, STC.UNM will likely require compulsory process to ensure Broadcom's compliance.[2] However, STC.UNM similarly relies on a substantial third-party witnesses within this District, the Wi-Fi Alliance, which may also require subpoenas to secure testimony. Further, the Court finds it unlikely that the manufacturer of the end products, Flex Ltd., will possess any knowledge of patent design and technology at question. Therefore, this factor weighs neutrally with respect to transfer.

c. Cost of attendance for willing witnesses

The convenience of witnesses is the single most important factor in the transfer analysis. *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009). The Court should consider all potential material and relevant witnesses. *See Alacritech Inc. v. CenturyLink, Inc.*, No. 2:16-cv-693, 2017 WL 4155236, at *5 (E.D. Tex. Sept. 19, 2017). "When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be travelled." *Id.* at 1343. The convenience of party witnesses is given little weight. *See ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, No. A-09-CA-773-LY, 2010 WL 1170976, at

[1]Apple's concerns regarding the relevance of the Wi-Fi Alliance testimony were also raised during the telephonic hearing. Particularly, Apple argued that the technology at issue includes optional features that demonstrate that the 802.11ac standard will not be sufficient to establish infringement. However, the Court notes that even though these features are denoted as "optional," the Wi-Fi Alliance still conducts tests on these features to ensure that they comply with the 802.11ac standard and are interoperable with other Wi-Fi devices. Thus, the certificates and evidence that STC.UNM may seek from the Wi-Fi alliance will still be relevant as to these features.

[2] Apple may also need compulsory process to ensure Broadcom's compliance, but given the size of the business relationship between the two companies, the Court finds that Apple is less likely to need compulsory process than STC.UNM is.

*4 (W.D. Tex. Mar. 23, 2010), report and recommendation adopted in A-09-CA-773-LY (ECF No. 20) (Apr. 14, 2010).

As a preliminary matter, given typical time limits at trial, the Court does not assume that all of the party and third-party witnesses listed in 1404(a) briefing will testify at trial. Rather, in addition to the party's experts, the Court assumes that no more than a few party witnesses—and even fewer third-party witnesses, if any—will testify live at trial. Therefore, long lists of potential party and third-party witnesses do not affect the Court's analysis for this factor.

After considering the convenience of both willing party and non-party witnesses, the Court finds that this factor weighs in favor of transfer. First, the cost of attendance of party witnesses weighs generally in favor of transfer. Apple claims that its witnesses are all located entirely in the NDCA; however, Apple's substantial presence in Austin, including job-postings for personnel with "strong knowledge" of the 802.11ac standard, weaken the strength of this assertion. Regardless, the Court finds that the NDCA would be more convenient for Apple because it is the location of employees with knowledge of the finances, marketing, and licensing of the Accused Products as well as the possible location of employees with knowledge of the operation and design of the Accused Technology. While travel time for STC.UNM is an additional hour to the NDCA than to the WDTX, STC.UNM's witnesses must travel regardless of which forum is ultimately chosen and a one-hour increase in the duration of a single flight does not sufficiently shift the balance of the transfer analysis.

Turning to non-party witnesses, Apple claims that Broadcom in the NDCA will provide essential third-party witnesses and knowledge relevant to the case at hand. Conversely, STC.UNM claims that the Wi-Fi Alliance in the WDTX will be a crucial source of witnesses relevant to its infringement theories and determining whether the Accused Products comply with

the 802.11ac standard. Because the parties have identified—with relative degrees of specificity—relevant witnesses in both districts, the Court finds that the non-party witnesses neither weigh for nor against transfer.

Because party witnesses weigh in favor of transfer and the Broadband and Wi-Fi Alliance witnesses taken together are neutral towards transfer, this factor weighs in favor of transfer.

d. All other practical problems that make trial of a case easy, expeditious and inexpensive

In its motion, Apple claims that this factor is neutral and states that it is unaware of any related cases pending in either District. ECF No. 22 at 13.

In its response, STC.UNM argues that it has filed an additional lawsuit in this Court asserting the same claims of the patents at issue. *See STC.UNM v. TP-Link Techs. Co.*, No. 6:19-cv-262 (W.D. Tex. 2019) (the "TP-Link case"). STC.UNM argues that transferring this case would disrupt judicial economy because the patents and claims at issue in this case and the TP-Link case are the same. ECF No. 31 at 14.

In its reply, Apple notes that there has been "no substantive activity" in the TP-Link case and therefore the factor as a whole should be neutral towards transfer.

The Court finds that this factor weighs slightly against transfer for the reasons that follow. First, the TP-Link case was filed before this suit and would still be required to be adjudicated if this case were transferred. Despite not being as developed as the current case, the TP-Link case involves the same patents and claims at issue, and transfer of this case "would lead to two separate cases in two separate Courts about the same claims in the same patents, which would create a disruption in judicial economy, not to mention a possibility of obtaining inconsistent rulings." *East Texas Boot Co., LLC v. Nike, Inc.*, No. 2:16-cv-0290-JRG-RSP, 2017

WL 2859065, at *6 (E.D. Tex. Feb. 15, 2017). On the other hand, keeping these cases together would promote consistency as the same Court would hold *Markman* hearings and provide claim constructions for the same patent—avoiding the potential of having the same patent claims interpreted to have different meanings by various Courts.

e. Administrative difficulties flowing from court congestion

The relevant inquiry under this factor is actually "[t]he speed with which a case can come to trial and be resolved[.]" *In re Genentech, Inc.*, 566 F.3d 1338, 1347 (Fed. Cir. 2009).

In its motion, Apple argues that the NDCA has a shorter time to trial for patent cases than this District, but Apple notes that this Court is now scheduling patent cases for trial faster than it did in the past. ECF No. 22 at 14.

In its response, STC.UNM notes that the current Scheduling Order in this case anticipates that trial will commence in March of 2021, only 20 months after the case was filed compared to median time of 28 months in the NDCA. ECF No. 31 at 14.

Currently, the Markman hearing for this case is scheduled for April 3, 2020, with trial scheduled March 19, 2021, 50 weeks following the Markman hearing. Following this schedule, trial will commence 20 months from the date of filing, July 19, 2019. The Court finds that this factor weighs in favor of transfer because the 20-month time to trial of this case is significantly shorter (and approximately 30% faster) than the median of 28.4 months to trial in the NDCA.[3] *See Fintiv, Inc. v. Apple Inc.*, 6:18-CV-00372-ADA, 2019 WL 4743678, at *7 (W.D. Tex. Sept. 13, 2019).

[3] As noted in the hearing, the Court finds any arguments relying on the impact of the COVID-19 virus too speculative at this time to weigh either for or against transfer. It was noted that the virus has had a substantially greater impact and has significantly slowed down the dockets in the NDCA, while conversely it was noted that the virus could also discourage air-travel from California to the WDTX. Because these factors look too far forward and speculate as to the uncertain impact of the virus, the Court declines to find that they weigh either for or against transfer when analyzing this factor.

f. Local interest in having localized interests decided at home

In its motion, Apple argues that the NDCA has a stronger local interest in this litigation than the WDTX because (1) the Accused Technology from Broadcom was designed and developed in the NDCA, (2) Apple's headquarters are located in the NDCA, and (3) all of Apple's relevant employees are based in the NDCA. ECF No. 22 at 14–15. Apple also argues that STC.UNM has no connection to the WDTX. *Id.* at 14.

In its response, STC.UNM argues that this factor weighs against transfer because (1) the entity responsible for certifying and promoting the 802.11ac standard central to this suit is headquartered in Austin, Texas, (2) Apple is soon to be—if not already—the largest employer in the WDTX, and (3) Accused Products are being manufactured—and therefore direct infringement is allegedly occurring—within the WDTX. ECF No. 31 at 14–15.

The Court finds that this factor weighs against transfer for the following reasons. First, STC.UNM lacks substantial local connections to either the NDCA or the WDTX and is neutral with respect to this factor. Turning to Apple, both the NDCA and the WDTX have a significant interest in this case because Apple is likely one of the largest employers in each District. Additionally, while Apple claims that all its employees with relevant knowledge are in the NDCA, the Austin job-posting requiring that Apple engineers have "strong knowledge" of the 802.11ac standard demonstrates that the employees and business Apple conducts within this District will be affected by the determinations regarding the standard and infringement made in this case.

Further, one of the Accused Products is being manufactured within this District. Apple's flagship desktop computer, the Mac Pro, is an Accused Product in this case and is made in Austin, Texas. Although courts must disregard "interests that 'could apply virtually to any

judicial district or division in the United States,' such as the nationwide sale of infringing products." here, however, the manufacturing of an infringing product occurs solely within this District, giving those involved with its manufacture a localized interest in determinations made regarding the infringement—or lack thereof—found in this case. *Texas Data Co., LLC v. Target Brands, Inc.*, 771 F. Supp. 2d 630, 647 (E.D. Tex. 2017) (quoting *Volkswagen II*, 545 F.3d at 318)) (finding that a manufacturing facility of an infringing product within a District "creates a local interest" in that District).

Second, the localized interests of the third-parties also weighs in favor of the WDTX. The Wi-Fi Alliance in headquartered in Austin, Texas and currently STC.UNM contends that evidence obtained from the Wi-Fi Alliance will be essential to establishing infringement. ECF No. 31 at 10, 12. The Wi-Fi Alliance works to promote, certify, and ensure uniform adoption of Wi-Fi standards that include the 802.11ac standard which STC.UNM alleges is central to this case; thus, the Wi-Fi Alliance has a heavy localized interest in this case because infringement based on compliance with the 802.11ac standard would affect the Wi-Fi alliances promotions and certifications. If it is found that compliance with the 802.11ac is enough to establish infringement as STC.UNM contends, then the Wi-Fi Alliance's goal of spreading use and adoption of the standard may be hindered. Additionally, while Broadcom is headquartered in the NDCA and the Broadcom chips may be designed in the NDCA (although the Court finds it more reasonable to assume that the chips were designed in the Central or Southern Districts of California), STC.UNM contends that the chip design "is not relevant" and notes that none of the locations from which Broadcom delivers the components to Apple originate within the NDCA. *Id.* at 9. Further, Broadcom has a significant presence in the WDTX and office in Austin.

Considering the local interests of the Wi-Fi Alliance and Broadcom, the Court finds that the local interests of the third-parties weighs more towards the WDTX.

Accordingly, the Court finds that the local interest in having localized interests decided at home weighs against transfer.

g. Familiarity of the forum with the law that will govern the case

Both parties agree that this factor is neutral. ECF No. 22 at 15 (Apple); ECF No. 31 at 15 n.20 (STC.UNM). The Court also agrees.

h. Avoidance of unnecessary problems of conflict of laws or in the application of foreign law

Both parties agree that this factor is neutral. ECF No. 22 at 15 (Apple); ECF No. 31 at 15 n.20 (STC.UNM). The Court also agrees.

i. Conclusion

The Court finds that, while the relative access to the sources of proof and the cost of attendance for willing witnesses factors favor transfer, the administrative difficulties flowing from court congestion and the local interests in having localized issues at home factors weigh against transfer. Additionally, the Court finds that the other practical problems factor slightly weighs against transfer. Thus, because two factors weigh against transfer, one factor slightly weighs against transfer, and two factors weigh in favor of transfer with the other factors neutral, the Court concludes that Apple has not demonstrated that the NDCA is more convenient let alone meet its "heavy burden" of showing that the NDCA is "clearly more convenient." *Volkswagen II*, 545 F.3d at 314 n.10, 315.

V. Discussion regarding alternative motion to transfer to Austin

The Court agrees that the Austin Division is more convenient than the Waco Division for the reasons Apple has described and because the Wi-Fi Alliance has as significant presence in Austin but not in Waco. In short, whatever facts weigh against transfer to NDCA from WDTX also weigh in favor of transferring to Austin from Waco. Therefore, the Court finds that Apple has met its "heavy burden" of demonstrating that Austin is "clearly more convenient."

VI. Conclusion

It is therefore **ORDERED** that Apple's motion for transfer venue to the Northern District of California is **DENIED**. It is further **ORDERED** that Apple's alternative motion is **GRANTED** and that the above-styled case be **TRANSFERRED** to the Austin Division but remain on the docket of United States District Judge Alan D Albright and according to the scheduling order that was entered in this case on November 3, 2019.

SIGNED this 1st day of April, 2020.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Date: April 29, 2020 Judge: Hon. James Donato

Time: 10 Minutes

Case No. **C-19-01905-JD**
Case Name **Uniloc 2017 LLC v. Apple Inc.**

Attorney(s) for Plaintiff(s): James J. Foster
Attorney(s) for Defendant(s): Michael Pieja/Doug Winnard

Deputy Clerk: Lisa R. Clark

PROCEEDINGS

Telephonic Discovery Hearing -- Held (Not Reported)

NOTES AND ORDERS

For RFPs 70-73 in Apple's discovery letter, Dkt. No. 88, Uniloc 2017 will file one or more declarations, as warranted, averring that it did not use the Centurion platform in any way with respect to the patents in suit, or for damages or royalties calculations. Apple may serve targeted discovery going to the *Georgia-Pacific* factors.

For discovery related to agreements between Uniloc 2017 and Fortress with respect to patent ownership and assertion rights, the parties advise that this issue will be addressed in the first instance by Magistrate Judge Ryu in another case. The Court will reserve further consideration of this issue pending Judge Ryu's decision. The parties may raise any related issues not resolved there in a later discovery letter.

Miscellaneous Docket No. ___

IN THE
United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 1:20-cv-00351-ADA, Hon. Alan D Albright

APPLE INC.'S PETITION FOR WRIT OF MANDAMUS

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FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re Apple Inc. **v.** _____

Case No. _____

CERTIFICATE OF INTEREST

Counsel for the:
■ (petitioner) ☐ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

Apple Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Apple Inc.	Apple Inc.	None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court **(and who have not or will not enter an appearance in this case)** are:

DLA Piper LLP: Christine K. Corbett, Mark D. Fowler, Summer Torrez

Thompson & Knight LLP: Max Ciccarelli, Adrienne E. Dominguez, Bruce S. Sostek, Austin Teng, Richard L. Wynne, Jr.

FORM 9. Certificate of Interest **Form 9**
Rev. 10/17

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. *See* Fed. Cir. R. 47. 4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

None

5/13/2020
Date

/s/ Melanie L. Bostwick
Signature of counsel

Please Note: All questions must be answered

Melanie L. Bostwick
Printed name of counsel

cc: _____

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INTRODUCTION

This is the latest in an emerging pattern of decisions by the Waco Division of the Western District of Texas denying transfer of a patent case with no connection to that forum—although virtually all § 1404(a) considerations weigh heavily in favor of transfer to the Northern District of California. Here, the district court applied § 1404(a) to deny transfer in a case brought by a New Mexico affiliate of the University of New Mexico; asserting patents developed by Taiwanese individuals at a Taiwanese research institute and acquired from a Taiwanese entity; and alleging that products of California corporation Apple Inc. infringe those patents, based on Apple's use of wireless chips developed by California-based Broadcom Inc. The best STC.UNM could muster to link this case to its chosen forum is unsupportable speculation—contradicted by record evidence—about Apple's Texas operations and the information and interests of a wireless industry group. Because those hypothetical ties are to Austin, not Waco, the district court transferred to the Austin Division, while keeping the case on its own docket and denying transfer to California.

To be sure, the district court recited each § 1404(a) factor and purported to consider them. But this Court has repeatedly found this insufficient and has granted mandamus where, as here, the substance of the district court's analysis rests on a series of plain legal and factual errors. Reliance on such errors was the only way the district court could justify keeping this case in Texas. It clearly abused its discretion in refusing to grant Apple's transfer motion. This Court should issue a writ of mandamus directing the district court to do so.

RELIEF SOUGHT

Apple respectfully requests that the Court grant this petition for a writ of mandamus, vacate the district court's order dated April 1, 2020, and remand the case with instructions to transfer this action to the United States District Court for the Northern District of California.

ISSUE PRESENTED

Whether the district court clearly abused its discretion in refusing to transfer this case to the Northern District of California.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

STC.UNM, A New Mexico Entity, Acquires Patents Developed in Taiwan.

STC.UNM is a New Mexico corporation owned and controlled by the Board of Regents of the University of New Mexico. Appx28. It is located in Albuquerque and has no known ties to Texas. Appx28; *see also* Appx153-182.

In August 2018, STC.UNM acquired three patents from Sino Matrix Technology, Inc., a Taiwanese corporation; months earlier, Sino Matrix acquired those patents from the original assignee, a Taiwanese research institute. Appx32-34. The patents are U.S. Patent No. 8,249,204, titled "Apparatus and Method for Channel State Information Feedback"; No. 8,265,096, titled "Method for Constructing Frame Structures"; and No. 8,565,326, titled "System and Method for Bit Allocation and Interleaving." Appx32-34. According to STC.UNM, the patents "describe and disclose methods that make high speed MIMO (multiple input, multiple output) wireless communication possible," and STC.UNM contended in its transfer opposition that "their teachings are required by the adopted Wi-Fi standard known as IEEE 802.11ac."

Appx188.[1] All ten named inventors are in Taiwan. Appx51; Appx77; Appx92.

STC.UNM Accuses Technology Designed and Developed in California.

STC.UNM contends that several models of Apple iPhones, iPads, Apple TVs, and Mac computers infringe by supporting the 802.11ac wireless networking standard established by the Institute of Electrical and Electronics Engineers. Appx40. The accused products support that standard via semiconductor chips designed and developed by Broadcom and manufactured by third-party fabricators in Asia. Appx139.

Broadcom is headquartered in San Jose, within the Northern District of California. Appx138. According to a sworn declaration submitted by a Broadcom vice president who works closely with engineers and designers on developing the chips at issue, the "vast majority of the research, design, and development of the Broadcom chips that provide Wi-Fi functionality for" the accused products "takes place in California," specifically within a business unit spread across

[1] Apple cites STC.UNM's allegations to help the Court understand the nature of the dispute and what evidence will likely be relevant. Apple does not admit the truth of any allegation by STC.UNM.

San Jose, Irvine, and San Diego. Appx139-140. Documents related to the design and development of the Broadcom chips and the incorporated wireless technology are generated in California, and Broadcom's related marketing, leadership, accounting, and financial work is conducted out of San Jose. Appx141. Although Broadcom has an Austin, Texas, facility, no work related to the accused chips takes place there; that facility develops different chips, none of which support wireless communication or the 802.11ac standard. Appx139 & n.1.

Apple, meanwhile, is headquartered in Cupertino, within the Northern District of California. Appx144. Apple's management, primary research and development, and marketing facilities are in or near Santa Clara Valley, California, and its primary operation, marketing, sales, and finance decisions occur in or near Cupertino, all within the Northern District. Appx144-146. Although Apple has an Austin campus, the record contains no evidence of any Apple employees in Texas with relevant knowledge regarding the research, design, development, marketing, licensing, or financials of the accused products or technology. Appx145. On the contrary, Apple's sworn testimony confirmed that, to the best of its knowledge, all employees with relevant

information are in the Northern District of California. Appx145. Meetings between Apple and Broadcom personnel regarding the Broadcom chips providing wireless functionality occur regularly in Cupertino and San Jose—not Texas. Appx139-140.

STC.UNM Files Suit in the Western District of Texas, and Apple Seeks Transfer to the Northern District of California.

Although its infringement claims have a strong connection to the Northern District of California and nothing to do with Texas, STC.UNM filed this lawsuit in the Western District of Texas, in the Waco Division. Apple promptly moved to transfer the case pursuant to 28 U.S.C. § 1404(a), Appx116-137, supporting its motion with documentation and sworn declarations from Michael Jaynes, a Senior Finance Manager at Apple, and Rohit Gaikwad, a Vice-President of Research and Development at Broadcom. With this evidence, Apple established that the weight of the § 1404(a) factors clearly favored transfer: It provided sworn testimony that the specific Apple and Broadcom witnesses who were likely to testify were located in the Northern District of California, as was relevant documentation for both entities, such that the § 1404(a) factors regarding witness convenience, availability of compulsory process, and access to sources of proof all favored transfer; it

demonstrated that the Northern District of California has a faster time to trial than the Western District of Texas and thus that the court-congestion factor further favored transfer; it showed that STC.UNM has no presence whatsoever in Texas; and it established that there were no practical problems or local interests weighing against transfer.

By contrast, STC.UNM's primary argument against transfer was that it was purportedly immune to a venue-transfer motion by virtue of its sovereign status. Appx29; Appx187; Appx192; Appx306. The rest of its opposition did not identify a single person or document in or near Texas that might be relevant to its infringement claims; it did not even attempt to take discovery to identify some legitimate connection to its chosen forum. Instead, STC.UNM offered only speculation and attorney argument to counter the sworn testimony Apple provided and manufacture some connection to the Western District of Texas. For instance, in response to Apple's sworn declaration identifying the Apple employees with relevant knowledge (who are in the Northern District of California) and confirming that none are in Texas, STC.UNM proclaimed that wireless design engineering takes place at Apple's Austin campus. In support, STC.UNM cited (1) a sentence in a 2016

New York Times article that Apple engineers in Austin "work on the chips that will run the next round of Apple's products," without specifying which kinds of "chips," and (2) a two-day-old Apple job posting seeking an engineer with knowledge of the 802.11ac standard, a prospective employee who by definition does not yet exist and who necessarily had no involvement in existing Apple products. Appx190. At the same time, STC.UNM did not detail any testimony it might solicit from Apple Austin employees, in fact suggesting that the Broadcom engineers who actually developed and designed the chips at issue would not offer relevant testimony.

Instead, STC.UNM took the position that its infringement case depends on compliance with the 802.11ac standard, not anything specific to the Broadcom chips or the Apple products. Appx188-189. It claimed it would prove infringement by relying substantially on witnesses from the Wi-Fi Alliance, an industry group headquartered in Texas that is responsible for certifying interoperability with the standard and allowing certified products to use the trademarked "Wi-Fi" logo. Appx189; Appx196; Appx198. But STC.UNM did not point to a single Wi-Fi Alliance witness from whom it might seek testimony or

acknowledge that the interoperability testing for certification is actually conducted by independent authorized laboratories, none of which is in Texas. Nor did it explain how it could prove infringement without relying on product-specific information from Apple and Broadcom, particularly in light of (1) this Court's caselaw emphasizing that products, not standards, infringe patents; (2) the fact that interoperability testing does not demonstrate how interoperability is achieved, much less guarantee compliance with every technical detail in the standard document; and (3) the fact that many of the allegedly infringing features are *optional* under the 802.11ac standard. *See* Appx250-251.

The district court heard argument on the motion on March 31, 2020. During that hearing, STC.UNM offered no evidence weighing against transfer, instead hinting at imagined Apple connections to Austin and speculating that Broadcom might not be an "unwilling" third party. Appx302. Counsel for STC.UNM initially "guarantee[d]" it would "never notice" any of the six identified Apple and Broadcom witnesses for depositions, later acknowledging it would depose them if they "show up as a 30(b)(6)." Appx302; Appx309-310; Appx315.

STC.UNM also described information it purported to seek from the Wi-Fi Alliance, such as "how [the 802.11ac] standard was set," "Apple and Broadcom's participation in the setting of that standard," why "that standard [is] necessary over and above the prior standards," and how "that standard create[s] improvements and how … those improvements [are] realized." Appx303. STC.UNM appeared oblivious to the fact that all these questions would need to be directed to the IEEE, the body responsible for setting the 802.11ac standard, Appx260-286, rather than the Wi-Fi Alliance, which is responsible only for affixing an interoperability certification to products tested by outside laboratories, Appx204. *See also* Appx311.

The court had few substantive questions. It asked counsel for Apple whether there was reason to believe Broadcom's witnesses would be "unwilling" to attend trial (to which counsel answered that Apple did not yet know) and whether the California-based witnesses Apple identified ever traveled to the Austin campus for work (to which the answer was no). Appx294-295; Appx309. And it indicated that the court-congestion factor would "always" counsel against transfer because

"I certainly know my ability to control my docket," whereas other districts' capabilities are "unknown." Appx312-313.

The District Court Denies Apple's Transfer Motion.

One day later, the district court denied the transfer motion. Appx17. The court concluded that the § 1404(a) factors regarding access to sources of proof and convenience of witnesses favored transfer, while the court-congestion and local-interest factors weighed against transfer and the practical-problems factor "slightly" weighed against transfer. Appx16.

The district court's opinion was predicated on clear legal and factual errors. For instance, after recognizing that the convenience of witnesses is the "single most important factor" under § 1404(a), the court failed to award that factor any additional weight, in part because it erroneously concluded that the convenience of *party* witnesses receives "little weight." Appx10-11; Appx16. Despite acknowledging the Fifth Circuit's 100-mile rule requiring increased consideration of the inconvenience caused by long travel, the district court utterly failed to incorporate that rule into its analysis. Appx10. Deferring to STC.UNM's baseless speculation over Apple's and Broadcom's sworn

declarations, the district court overlooked that STC.UNM had not identified a *single* witness anywhere in Texas, instead crediting the notions that some future potential Apple employee in Austin might have relevant testimony and that a Wi-Fi Alliance representative might serve as a witness. Appx7-8; Appx10.

The court stretched to find additional reasons to retain the case. It determined that a case in the Western District of Texas involving the same patents, in which service on the foreign defendant had not yet been effected, posed a "practical problem" to transferring this case. Appx12-13. In concluding that the "local-interests" factor weighed against transfer, the court acknowledged the strong interest of the Northern District of California but immediately discounted it, relying on assumptions that contradicted sworn evidence and acceptance of STC.UNM's implausible assertions about the role of the Austin-based Wi-Fi Alliance. Appx15. And it disregarded statistics regarding historical time to trial in Austin, instead looking only to its own, untested scheduling order to evaluate the court-congestion factor. Appx13.

Although it denied Apple's transfer motion, the district court granted Apple's alternative request for relief and transferred the case to the Austin Division. Appx17. This decision reflected the fact that the district court's reasons for keeping the case in Texas—however erroneous—were all based on supposed ties to Austin, not Waco. But the court maintained this case on the original judge's docket, subject to his initial scheduling order. Appx17.

REASONS FOR ISSUING THE WRIT

A petitioner seeking mandamus relief must (1) show a "clear and indisputable" right to the writ; (2) have "no other adequate means to attain the relief he desires"; and (3) demonstrate that "the writ is appropriate under the circumstances." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 311 (5th Cir. 2008) (en banc) ("*Volkswagen II*") (quoting *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004)). The first and third prongs are satisfied where a district court reaches a "patently erroneous result" by relying on clearly erroneous factual findings, erroneous conclusions of law, or misapplications of law to fact. *Id.* at 310-12, 318-19. The second prong is necessarily satisfied where a district court improperly denies transfer under § 1404(a). *See id.* at

319; *see also In re Radmax, Ltd.*, 720 F.3d 285, 287 n.2 (5th Cir. 2013). In reviewing issues related to § 1404(a), "this court applies the laws of the regional circuit in which the district court sits, in this case the Fifth Circuit." *In re TS Tech USA Corp.*, 551 F.3d 1315, 1319 (Fed. Cir. 2008).

The Fifth Circuit conducts the § 1404(a) transfer analysis with reference to well-established private- and public-interest factors. The private-interest factors include: "(1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive." *Volkswagen II*, 545 F.3d at 315. The public-interest factors include: "(1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws [or in] the application of foreign law." *Id.* (alteration in original).

"[I]n a case featuring most witnesses and evidence closer to the transferee venue with few or no convenience factors favoring the venue chosen by the plaintiff, the trial court should grant a motion to transfer." *In re Nintendo Co.*, 589 F.3d 1194, 1198 (Fed. Cir. 2009) (granting mandamus and ordering transfer). That is the situation here. But that is not the outcome the district court reached.

The court's analysis was riddled with errors of law and fact, discussed below. The cumulative effect of those errors is that the district court failed to "*meaningfully* consider the merits of the transfer motion." *In re Barnes & Noble, Inc.*, 743 F.3d 1381, 1383 (Fed. Cir. 2014) (emphasis added). It cannot be enough to simply recite the correct factors if the analysis of those factors is unlawful at every turn. Because the district court abused its discretion, the Court should grant Apple's petition.

I. The District Court's Analysis of the § 1404(a) Factors Was Patently Erroneous.

At every juncture in its analysis, the district court ignored the "stark contrast in relevance, convenience, and fairness between the two venues." *Nintendo*, 589 F.3d at 1198.

A. The district court clearly erred in its analysis of the cost for willing witnesses.

The convenience for willing witnesses is the most important factor in the § 1404(a) analysis. *See, e.g.*, *In re Google Inc.*, No. 2017-107, 2017 WL 977038, at *3 (Fed. Cir. Feb. 23, 2017); *In re Genentech, Inc.*, 566 F.3d 1338, 1342 (Fed. Cir. 2009). Yet the district court afforded no meaningful weight—and certainly no special weight—to this factor, while reaching numerous legally and factually erroneous conclusions about witness convenience.

1. All identified witnesses are in California—and there are no plausible witnesses in Texas.

Every single identified witness is in California, and most are in the Northern District. Apple and Broadcom identified numerous specific witnesses there and, in sworn declarations, carefully linked their testimony to the issues in the case. They also verified that Apple and Broadcom employees in Austin did not have relevant knowledge and would not be appropriate witnesses. Appx139-141; Appx144-145. STC.UNM, meanwhile, identified no witnesses in the Western District of Texas or anywhere else in the state.

Nonetheless, the district court tempered this stark imbalance by erroneously accepting STC.UNM's groundless speculation and attorney argument about hypothetical, unidentified categories of witnesses. *See, e.g.*, *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017) ("Attorney argument is not evidence."). Perhaps most significantly, the court accepted STC.UNM's argument that witnesses from the Wi-Fi Alliance would be a "crucial" source of information for STC.UNM, Appx11, and, presumably, that such hypothetical witnesses would be based in Austin where the Alliance is headquartered. Those conclusions are patently wrong, for several reasons.

For one thing, any information the Wi-Fi Alliance might have is irrelevant to STC.UNM's infringement claims: A product's interoperability certification by the Wi-Fi Alliance does not demonstrate how a product achieves interoperability, nor that its hardware and software implementation precisely tracks every feature of the IEEE standard. Appx250. And here, STC.UNM's infringement allegations target numerous standard-optional features, which are not required to be implemented in 802.11ac-compatible products. Appx250-251; Appx260-86. As a matter of law, STC.UNM cannot prove infringement

of those features by simply showing standards compliance, much less interoperability certification. *See, e.g.*, *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1327-28 (Fed. Cir. 2010) (when "the relevant section of the standard is optional," "standards compliance alone would not establish that the accused infringer chooses to implement the optional section"). The district court acknowledged this fact, but avoided the problem by asserting, incorrectly and without evidence, that "the Wi-Fi Alliance still conducts tests on these [optional] features to ensure that they comply with the 802.11ac standard." Appx10 n.1. Nothing in the record supports this, and the district court was not permitted to substitute its unfounded assumptions for evidence. Even if it were true, and even for any non-optional features that might be relevant to infringement, STC.UNM has offered no reason to doubt that this is one of the "many instances" in which "an industry standard does not provide the level of specificity required to establish that practicing that standard would always result in infringement"; if it is, STC.UNM cannot prove infringement through standards compliance (or interoperability certification) but must "compare the claims to the accused products." *Fujitsu*, 620 F.3d at 1327-28.

Moreover, even to the extent information about the standard has some relevance to STC.UNM's infringement claims, there is no basis to find that the Wi-Fi Alliance is the best or even an appropriate source for that information. STC.UNM's complaint and infringement contentions cite the IEEE standard; they cite nothing from the Wi-Fi Alliance. Appx40-47; Appx319-417. Counsel for STC.UNM described at the hearing the information it might seek from the Wi-Fi Alliance, questions like "how the [802.11ac] standard was set," "the reasons for the standard," and "why … that standard [is] necessary over and above the prior standards." Appx303-304. But nothing in the record indicates that the Wi-Fi Alliance has that information. Indeed, those are all questions best directed to the IEEE, which sets the 802.11ac standard and is headquartered in New Jersey. Appx148-152; Appx260-286.

Further, even if witnesses from the Wi-Fi Alliance might have relevant testimony, STC.UNM failed to identify any such witness, despite having ample opportunity to do so. STC.UNM declined to pursue any discovery on the question, Appx297-298, and never identified any Wi-Fi Alliance witnesses it might call. And there is no reason to believe any such witness would be in Austin. The Wi-Fi

Alliance is an industry group comprising hundreds of member companies, Appx207-248, and it outsources all interoperability testing to independent authorized laboratories, Appx204. Those laboratories are scattered around the world; the vast majority are in Asia, and the only two with a U.S. presence are in the Northern District of California. *See Authorized Test Laboratories*, Wi-Fi Alliance, https://tinyurl.com/y8g4ovjq (last visited May 13, 2020).

The district court similarly relied on implausible speculation about likely Apple witnesses. Flatly contradicting Apple's sworn testimony, the court credited STC.UNM's suggestion that there could be Apple employees at the Austin campus with "vastly more relevant knowledge" regarding the research, development, and design of the accused products. Appx8. Setting aside that this contention is at odds with STC.UNM's argument that its infringement claims depend only on Wi-Fi Alliance interoperability certification, it also has no foundation. STC.UNM did not identify any knowledgeable Apple employee in Austin or information it would seek from such a person; it simply speculated that there existed a "lead WiFi engineer working in Austin" who was "going to be one of our deponents for Apple." Appx305. This

unusual suggestion of specifying the location of a Rule 30(b)(6) deponent signals that STC.UNM's motivation to manufacture a venue connection is stronger than its desire to obtain a knowledgeable witness. Regardless, speculation about nonexistent Austin ties should not be permitted to overcome unrebutted record evidence that the Apple and Broadcom teams in California have the information STC.UNM might require.

With the clear weight of likely identified witnesses in the Northern District of California, and with nothing to support STC.UNM's speculation that there might be relevant witnesses in the Western District of Texas, the district court clearly erred in finding that this factor only "slightly" favored transfer. *See In re HP Inc.*, No. 2018-149, 2018 WL 4692486 (Fed. Cir. Sept. 25, 2018).

2. The convenience of party witnesses is not given "little weight."

Compounding its error, the district court wrongly posited that the convenience of *party* witnesses is given "little weight." Appx10. In support, the court cited only one unpublished district court ruling. *See* Appx10 (citing *ADS Sec. L.P. v. Advanced Detection Sec. Servs., Inc.*, No. 09-CA-773 (LY), 2010 WL 1170976, at *4 (W.D. Tex. Mar. 23, 2010),

report and recommendation adopted, No. 09-CA-773 (LY), Dkt. No. 20 (W.D. Tex. Apr. 14, 2010). That ruling, in turn, relied on two Texas district court decisions indicating that convenience of party witnesses might receive *relatively* less weight than that of nonparty witnesses in the § 1404(a) analysis, not "little" weight in absolute terms. *See Gardipee v. Petroleum Helicopters, Inc.*, 49 F. Supp. 2d 925, 929 (E.D. Tex. 1999); *In re Triton Ltd. Sec. Litig.*, 70 F. Supp. 2d 678, 690 (E.D. Tex. 1999).

Beyond being a misstatement of the cited rulings, the notion that party witness convenience is afforded "little weight" runs contrary to Fifth and Federal Circuit precedent recognizing the significance of convenience to party and nonparty witnesses alike and hinting at no differentiation between them. *See, e.g.*, *In re Acer Am. Corp.*, 626 F.3d 1252, 1255 (Fed. Cir. 2010) (noting that a "substantial number of party witnesses, in addition to the inventor and prosecuting attorneys, reside in or close to the" transferee district and that "[i]f all of these witnesses were required to travel to" the transferor district, "the parties would likely incur significant expenses for airfare, meals, and lodging, as well as losses in productivity from time spent away from work"); *Nintendo*,

589 F.3d at 1198-99; *Genentech*, 566 F.3d at 1343-45; *Volkswagen II*, 545 F.3d at 317.

The discounting of party witness convenience is also inconsistent with the rationale underlying this factor and its preeminence in transfer analysis: As the Fifth Circuit has established, "[a]dditional distance means additional travel time; additional travel time increases the probability for meal and lodging expenses; and additional travel time with overnight stays increases the time which these fact witnesses must be away from their regular employment." *In re Volkswagen AG*, 371 F.3d 201, 205 (5th Cir. 2004) ("*Volkswagen I*"). These concerns apply equally to all witnesses, and the district court was wrong to discount their importance for party witnesses.

3. The 100-mile rule requires courts to afford proportionate weight based on additional travel distance.

The district court's minimizing of witness convenience violated Fifth Circuit law in another way. "Because it generally becomes more inconvenient and costly for witnesses to attend trial the further they are away from home," the Fifth Circuit's "100-mile rule" requires that "[w]hen the distance between an existing venue for trial of a matter and

a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *TS Tech*, 551 F.3d at 1320 (quoting *Volkswagen I*, 371 F.3d at 204-05); *In re Apple, Inc.*, 581 F. App'x 886, 889 (Fed. Cir. 2014) (same). Here, not a single specified witness is within 100 miles of the Western District of Texas, and the likely witnesses are far outside that zone: The Northern District of California, where most of the likely witnesses reside, is more than 1700 miles away from Austin, and for every identified witness, a trial in the Western District of Texas would mean multiple long flights, extended hotel stays, days apart from their families, and time needlessly spent away from their ordinary jobs.

While the district court recited the 100-mile rule at the outset of its order, Appx10, it did not actually apply the rule or give any consideration to the significant distances witnesses would have to travel. And the court's questions at the hearing—such as asking whether the named Apple employees have ever traveled to Apple's Texas offices (they have not, Appx309)—suggest that the district court was not seriously focused on the costs of long-distance travel. Appx294-

295. It was clear error to ignore those costs. *See TS Tech*, 551 F.3d at 1320 ("The district court's disregard of the 100-mile rule constitutes clear error.").

B. The compulsory-process factor supports transfer.

The district court clearly erred in failing to treat the availability of compulsory process as favoring transfer, for reasons related to the errors above. As discussed above (at 17-20), the district court described the Wi-Fi Alliance as "a substantial third-party witness[] within this District." Appx10. But witnesses who might speak to the interoperability testing of the accused products, to the extent such testimony might be relevant, are likely employed by whatever independent authorized laboratory conducted that testing; though STC.UNM sought no discovery to identify such witnesses, none of those laboratories is in Texas. And witnesses with the information that STC.UNM claims to want regarding the 802.11ac standardization are likely within the ambit of the IEEE, not the Wi-Fi Alliance.

Moreover, the named Broadcom engineers responsible for designing the accused technology—whose testimony will likely be crucial to the infringement case—are subject only to the subpoena

power of the Northern District of California, not the Western District of Texas. The district court concluded that Apple was "less likely to need compulsory process than STC.UNM is" because of its "business relationship" with Broadcom. Appx10 n.2. But this conclusion was based only on STC.UNM's attorney argument and the court's speculation and should not have been considered in the compulsory-process analysis. For these reasons, the compulsory-process factor should also have weighed in favor of transfer.

C. The district court erred in finding that access to proof and party convenience only "slightly" favor transfer.

For substantially the same reasons, the district court erred in finding that the ease of access to documentary proof and party convenience only "slightly" favored transfer. The Fifth Circuit and this Court have repeatedly confirmed that the location of documentary evidence is relevant notwithstanding electronic discovery. *E.g.*, *Volkswagen II*, 545 F.3d at 316; *In re Google Inc.*, 588 F. App'x 988, 991 (Fed. Cir. 2014). The district court's weakening of its pro-transfer weight depended on unfounded speculation that Wi-Fi Alliance documents would be a "significant source of proof" (and would be in Austin). Appx7.

It was also clear error to determine that party convenience only "slightly" favored transfer. Appx7. *See Nintendo*, 589 F.3d at 1198. The district court should not have credited attorney argument that Apple employees in Austin might have relevant information, contrary to Apple's sworn declarations, and should not have surmised without evidentiary support that there "could potentially be Apple employees in the WDTX with an understanding of the Accused Technology." Appx8.

D. No practical problems weigh against transfer.

This factor is about "practical problems that make trial of a case easy, expeditious and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). No such problems weigh against transfer here; on the contrary, particularly because all identifiable witnesses and evidence are in California, a trial there will be much easier and more efficient. *Cf. City of New Orleans Emps. Ret. Sys. ex rel. BP P.L.C. v. Hayward*, 508 F. App'x 293, 297 n.2 (5th Cir. 2013) (declining to consider "other practical problems" because they are "subsumed" within other private-interest factors). Yet the district court found that this prong counsels against transfer (albeit "slightly'), merely because STC.UNM filed another patent case in the same district asserting the same patents

against a different entity—China-based TP-Link. The district court acknowledged that there had been no "substantive activity" in that case and that it was not "as developed as the current case." Appx12. Indeed, STC.UNM has been attempting unsuccessfully to establish that TP-Link's U.S. subsidiary can accept service of process, and there is no indication of when service might occur. *STC.UNM v. TP-Link Techs. Co.*, No. 19-CV-262, Dkt. 9 (W.D. Tex. Feb. 5, 2020). But the court still found that case important enough to weigh against transfer.

That was plainly erroneous. A case in which there has been no "substantive activity"—and none is in sight—can pose no practical impediment to the transfer of *this* case. *See In re Zimmer Holdings, Inc.*, 609 F.3d 1378, 1382 (Fed. Cir. 2010) (co-pending litigation was "in the infancy stages"). And, in any event, the district court made no finding that the *TP-Link* case involves similar accused technology. The speculative possibility of coordinating claim construction on overlapping patent claims in cases proceeding along disparate timelines cannot "negate[] the significance of having trial close to where most of the identified witnesses reside and where the other convenience factors clearly favor." *Id.*; *see also Google*, 2017 WL 977038, at *2 (faulting

court for giving outsized weight to co-pending litigation in light of Google's "strong presence in the transferee district"); *Apple*, 581 F. App'x at 887-89 (improper weight given to judicial economy even though court had construed same patent family "several times"); *In re Verizon Bus. Network Servs. Inc.*, 635 F.3d 559, 562 (Fed. Cir. 2011) (prior claim construction from earlier case insufficient to support denying transfer).

Allowing the district court to deny transfer based on the existence of co-pending litigation will work an exponential unfairness. The Waco Division is attracting a growing number of patent cases. If the mere fact that a plaintiff has filed multiple suits on a patent in Waco can be an obstacle to transfer, it will be increasingly difficult for defendants to secure transfer, no matter how tenuous the connection to the plaintiff's chosen forum. It would also effectively reinstate a presumption in favor of the plaintiff's chosen forum, contrary to Fifth Circuit law, because this factor would always weigh against transfer regardless of the particular facts and parties involved. *See Volkswagen II*, 545 F.3d at 314-15.

E. The public-interest factors clearly favor transfer.

The district court relied primarily on public-interest factors in denying transfer, even though those factors should "rarely" operate to "defeat a transfer motion." *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 64 (2013). They certainly should not do so here; the relevant public-interest factors strongly favor transfer.

1. The interest of the district where the accused technology was designed and developed is self-evidently stronger than that of a district with no tie to this case.

The first public-interest factor considers the "local interest in having localized interests decided at home." *Volkswagen II*, 545 F.3d at 317. For this factor to apply, there must be "significant connections between a particular venue and the events that gave rise to a suit." *Acer*, 626 F.3d at 1256.

There are such significant connections here—to the Northern District of California. The accused technology was designed and developed in the Northern District, and STC.UNM's suit "calls into question the work and reputation of several individuals residing in … that district"; in these circumstances, this Court has held, the Northern

District's localized interest is "self-evident." *In re Hoffman-La Roche, Inc.*, 587 F.3d 1333, 1336, 1338 (Fed. Cir. 2009).

The district court recognized this interest and STC.UNM's lack of connections to the Western District of Texas. Appx14. But it committed several errors in weighing this factor against transfer.

First, the district court diminished the interests of the transferee forum by relying on unfounded assumptions rather than record evidence. Broadcom submitted a sworn declaration explaining that the employees of its relevant business unit are in San Jose, Irvine, and San Diego, and specifically identifying the engineers involved in developing the accused chips who work from Broadcom's San Jose headquarters, within the Northern District. Appx139-140. The district court, however, found it "more reasonable to assume that the [Broadcom] chips were designed in the Central or Southern Districts of California." Appx15. The district court identified no basis for this assumption, which contradicts Broadcom's explanation of its work and is unsupported by anything in the record.

Next, the district court inflated the interest of the Western District of Texas. To begin with, none of the supposedly "local" interests

the district court cited has any connection to the venue STC.UNM actually selected—the Waco Division. But even the supposed Austin-based interests on which the district court relied are either non-existent or not proper considerations under § 1404(a).

For substantially the reasons discussed above (at 17-20), it was clear error to factor the headquarters of the Wi-Fi Alliance into the local-interest analysis. The district court conjectured that an infringement finding in this case "may" hinder the Wi-Fi Alliance's supposed goal of "spreading use and adoption of the standard." Appx15. Absent record evidence to that effect, it is pure speculation to suggest that the Wi-Fi Alliance (particularly as compared to the IEEE, the author of the standard) would be affected by an infringement finding touching on optional features of a standard, or that demand for interoperability certification might be affected. What would certainly be affected by an infringement finding is the Apple and Broadcom employees who actually design the accused technology and products—and they are in the Northern District of California.

The district court also gave unwarranted weight to the general corporate presence of Apple and Broadcom in Austin. *See* Appx14-15.

The mere corporate presence of a party in the transferor district is insufficient; otherwise, this factor would collapse into the private-interest factors. *See Hoffman-La Roche*, 587 F.3d at 1338 (faulting district court for reducing local-interest factor to redundancy with private-interest factors). But instead of identifying case-specific connections to the Western District of Texas, the district court relied on Apple's general connections to the forum, such as the presumption that Apple is "likely" one of the largest employers in the district, or the bare fact that Broadcom has an Austin office. Appx14-15. The district court did not square its reasoning with Broadcom's sworn statement that "none of the Broadcom chips developed at the Austin facility provide support for Wi-Fi communications or the IEEE 802.11ac specifications." Appx139 n.1.

Where the court did purport to find a genuinely relevant local interest, it magnified the most tenuous connections into something significant. For example, the district court bootstrapped a single job posting *looking* for an engineer with knowledge of the 802.11ac standard into a conclusion that Apple's existing engineers in Austin meet that description, Appx14. The district court acknowledged,

Appx3, that motions to transfer must be decided based on "the situation which existed when suit was instituted." *In re EMC Corp.*, 501 F. App'x 973, 976 (Fed. Cir. 2013) (quoting *Hoffman v. Blaski*, 363 U.S. 335, 343 (1960)). But it ignored that principle to rely on this prospective job listing, posted two days before Apple's transfer motion. Appx14.

Similarly, the district court concluded that the assembly of one of the thirty-one accused products—the Mac Pro desktop computer, manufactured by third-party Flex Ltd.—in Austin constitutes a local tie. But the infringement allegations target the chip supplied by Broadcom, not the assembly of that chip and other components into a finished computer. Moreover, even if it were somehow proper to elevate an interest in one accused product above the strong California ties for *every* accused product (including the Mac Pro), this reasoning cannot be reconciled with the district court's logic. On one hand, the district court credited STC.UNM's argument that Broadcom's chip design was irrelevant to infringement claims supposedly based on compliance with the 802.11ac standard, to discount the California connections. Appx15. On the other hand, the district court concluded that it was a sufficient local tie to warrant denying transfer that one of the accused products

containing that chip is assembled in Austin. Appx14. Both propositions cannot be true. Yet the district court credited both in STC.UNM's favor.

Even if it were not error to find some local interest in this case in the Western District of Texas, the district court clearly abused its discretion by weighing the local-interest factor *against* transfer. It is simply not plausible that the attenuated links to another division in the Western District of Texas render that district's localized interest in the case *greater* than that of the Northern District of California, where the vast majority of individuals with an actual connection to the allegedly infringing technology work.

2. The district court's speculation about its untested trial plan was inappropriate and cannot outweigh the factors heavily favoring transfer.

Consistent with its statement at the hearing that the court-congestion factor would always weigh against transfer, the district court relied heavily on this factor to deny Apple's request. It did so based solely on speculation about its own, untested trial schedule, disregarding relevant statistics from both potential forums. *See* Appx13. This was clear error.

Apple cited statistics demonstrating that the Northern District of California has a shorter time to trial for patent cases than the Western District of Texas—a median time of 28 months. Appx134. In opposition, STC.UNM pointed only to the scheduling order in this very case, which anticipates that trial will begin 20 months after the case was filed. Appx200. The district court took the same approach as STC.UNM, relying solely on the (necessarily prospective) scheduling order. The district court has not yet followed its scheduling plan through to a trial, and untested speculation about how this case might unfold should not be allowed to overcome real-world evidence. It was an abuse of discretion for the district court to weigh this factor *against* transfer—effectively giving it decisive weight in the analysis—rather than treating it as neutral.

This weighting is particularly problematic in light of the district court's statement that this factor "cuts to the plaintiff's favor here and *always will*," because "I certainly know my ability to control my docket," whereas "the ability of any other district … is a question." Appx312-313 (emphasis added). It cannot be the case that the court's perceived ability to control its own docket means that the court-congestion factor

inevitably tips the balance against transfer every time. Such bright-line rules have no place in the § 1404(a) analysis. *See, e.g.*, *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (§ 1404(a) analysis requires an "individualized, case-by-case consideration of convenience and fairness" (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964))).

F. The district court clearly erred in balancing the § 1404(a) factors.

It is not enough for a district court to correctly assess the individual § 1404(a) factors; it must also balance them properly. For any § 1404(a) inquiry, the convenience for willing witnesses is the most important factor and must accordingly be given the most weight. *See, e.g.*, *Google*, 2017 WL 977038, at *3; *Genentech*, 566 F.3d at 1342. And the public-interest factors should "rarely defeat a transfer motion." *Atl. Marine Constr.*, 571 U.S. at 64.

Even accepting the district court's erroneous evaluation of the discrete transfer factors, the bottom-line balancing should have favored transfer. The district court found that the "relative access to the sources of proof and the cost of attendance for willing witnesses" favored transfer, while "the administrative difficulties flowing from court congestion" and "the local interests in having localized issues at

home" weighed against transfer and "other practical problems" (that is, judicial economy) weighed "slightly" against transfer. With multiple private-interest factors—including the "single most important" factor, witness convenience—favoring transfer, and only less significant public-interest factors weighing decisively against it, the court should have granted the transfer motion.

Instead, the district court conducted a purely numerical accounting of the factors and found that because two factors favored transfer, two factors weighed against transfer, and one factor "slightly" weighed against transfer, Apple had not demonstrated that the Northern District of California would be a "more convenient" venue. Appx16. Strikingly, while the district court correctly recognized that the convenience of willing witnesses is "the single most important factor in the transfer analysis," Appx10 (citing *Genentech*, 566 F.3d at 1342), it did not give witness convenience any extra weight. This was clear legal error.

So too was the district court's treatment of the less critical public-interest factors as dispositive. Essentially, the district court concluded that a slight purported advantage in time to trial in the Western

District of Texas and the hypothetical interests of a non-party industry association were equally important as the ability to secure testimony from the individuals responsible for designing and marketing the allegedly infringing chips and the access to sources of proof. And, having cancelled out two private-interest factors favoring transfer with two public-interest factors, the district court concluded that a "slight" practical problem—a co-pending suit that may never evolve into active litigation—tipped the balance against transfer. That is far too much weight to give to judicial economy. *See Apple*, 581 F. App'x at 889-90 (granting mandamus in part because of excess weight given to judicial economy). It was especially improper because, as the Fifth Circuit has recognized, other private-interest factors often "subsume[]" the practical problems prong. *City of New Orleans Emps. Ret. Sys.*, 508 F. App'x at 297 n.2. And those factors favor transfer here.

II. A Clear Legal Error Infected the District Court's Analysis.

The district court's abuse of its discretion in analyzing and weighing the § 1404(a) factors is sufficiently clear to warrant mandamus. But another clear legal error underlies many of the district court's missteps, and it warrants this Court's intervention. As it has in

other cases, the district court (at Appx3) cited *Weatherford Technology Holdings, LLC v. Tesco Corp.* as standing for the proposition that a district court considering a § 1404(a) motion "must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party." No. 17-CV-456, 2018 WL 4620636, at *2 (E.D. Tex. May 22, 2018).

The district court plainly relied on that principle in resolving nearly all the key factors. It deferred to STC.UNM's bare assertion that some unidentified, Austin-based Wi-Fi Alliance witnesses would have relevant testimony—over Apple's clear, evidence-backed showing that such testimony would not be relevant and would not, in any event, come from witnesses in Austin. *See supra* 20-21. It treated a prospective job posting seeking wireless-knowledgeable employees in Austin as evidence that Apple had Austin-based engineers who knew about the chips at issue in this case, contrary to Apple's sworn statements. *See supra* 33-34. It even weighed in STC.UNM's favor the unsupported assertion that Apple and Broadcom's Texas activities are relevant, while also weighing in STC.UNM's favor the logically inconsistent notion that 802.11ac interoperability testing, not anything product-

specific, is what determines infringement. *See supra* 17-18, 20. By resolving such supposed factual "conflicts" in this way, the district court was able to treat the private-interest factors and the local-interest factor—all of which should have heavily favored transfer—as only slightly pro-transfer, as neutral, or even as weighing *against* transfer. This analytical approach was decisive.

And it was unlawful. Apple has previously demonstrated that the *Weatherford* principle has no legal foundation and is at odds with all indicators from the Supreme Court and appellate courts of how the § 1404(a) analysis should work. *See* Petition at 15-22, Dkt. 2, *In re Apple Inc.*, No. 20-104 (Fed. Cir. Oct. 16, 2019); Reply at 2-6, Dkt. 20-1, *Apple* (Fed. Cir. Oct. 28, 2019); Reh'g Petition at 8-17, Dkt. 37, *Apple* (Fed. Cir. Jan. 21, 2020). Apple incorporates those arguments here.[2] Apple also explained that, if the Court did not intervene to "prevent this district court and others from applying the same flawed rule in the future," it would "threaten[] to make § 1404(a) transfer nothing more than an illusory remedy." Appx506-507.

[2] For the Court's convenience, Apple has reproduced the cited pages of the briefing from case number 20-104 in the appendix, at Appx418-533.

That prediction has begun to come true. The district court here in fact expanded its unlawful legal approach. STC.UNM did not even try to back up its unfounded assertions about Texas connections with documentary or other evidence. The district court accepted bare assertions and attorney argument, no matter how implausible in light of the actual record. And the district court added its own generous extra-record findings and assumptions to weigh them in STC.UNM's favor as well. The prospect of transfer—even in a case with zero connections to West Texas—has indeed become illusory. Apple again urges the Court to exercise its mandamus authority and remedy this clear legal error.

CONCLUSION

The Court should grant Apple's petition, vacate the district court's order, and remand with instructions to transfer this case to the Northern District of California.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on May 13, 2020.

A copy of the foregoing was served upon the following counsel of record and district court judge via UPS:

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CERTIFICATE OF COMPLIANCE

The petition complies with the type-volume limitation of Fed. R. App. P. 21(d)(1) because this petition contains 7792 words.

This petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this petition has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Century Schoolbook 14-point font.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNILOC USA, INC., et al.,

Plaintiffs,

v.

APPLE INC,

Defendant.

Case No. 5:19-cv-01692-EJD

ORDER GRANTING MOTION TO SUBSTITUTE PARTY

Re: Dkt. No. 98

Before the Court is the motion of Plaintiffs Uniloc USA, Inc. ("Uniloc USA") and Uniloc Luxembourg S.A. ("Uniloc Luxembourg" and together with Uniloc USA, "Plaintiffs") to substitute Uniloc 2017 LLC ("Uniloc 2017"), the new owner of the patent-in-suit, as the plaintiff pursuant to Rule 25(c) of the Federal Rules of Civil Procedure. Dkt. No. 98 (the "Motion"). The Court took the matter under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). Having considered the arguments of the parties and all papers and evidence submitted, the Court **GRANTS** Plaintiffs' Motion.

I. Background

Plaintiffs filed this lawsuit in the Western District of Texas on February 22, 2018, alleging patent infringement. *See* Complaint, Dkt. No. 1. When the Complaint was filed, Uniloc Luxembourg was the owner of the patents-in-suit. *Id.* at ¶ 7. Plaintiff asserts that in an assignment that became effective as of May 2018, Uniloc Luxembourg assigned all its rights, interest, and title in the patent-in-suit, including the right to all causes of action, to Uniloc 2017. *See* Declaration of James J. Foster, Dkt. No. 98-1 ¶ 2. On April 2, 2019, the case was transferred to this Court. Dkt. No. 54.

On January 6, 2020, Plaintiffs informed this Court of their intent to file a motion to add Uniloc 2017 as a party to this action. Joint Case Management Statement and Discovery Plan, Dkt. No. 78. Approximately three months later, on April 1, 2020, Plaintiffs filed the present motion to substitute Uniloc 2017 as plaintiff.

Defendant opposes the motion. Dkt. No. 101 ("Opposition"). Before the Motion was filed, Defendant propounded discovery on Plaintiffs, Plaintiffs responded to those requests, and Defendant submitted discovery disputes to the Court relating to those responses. *Id.* Defendant argues that permitting Plaintiffs to substitute Uniloc 2017 at this stage in the proceedings will cause delay and prejudice to Defendant by forcing it to re-serve discovery on Uniloc 2017. *Id.*

II. Legal Standard

Federal Rule of Civil Procedure 25(c) governs the joinder of a party in an action where there is a transfer of interest:[1]

> (c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.

The purpose of the rule is to maintain existing relationships in the litigation after a transfer of interest. "Rule 25(c) is not designed to create new relationships among parties to a suit but is designed to allow the action to continue unabated when an interest in the lawsuit changes hands." *In re Bernal*, 207 F.3d 595, 598 (9th Cir. 2000) (quoting *In re Covington Grain Co., Inc.*,

[1] Defendant argues that plaintiff must meet the "good cause" standard of Rule 16 of the Federal Rules of Civil Procedure, as the time to amend the pleadings under the Patent Scheduling Order has expired. Given the transfer of interest of the patent-in-suit, the Court finds that the Motion was properly brought under Rule 25(c). The Court further finds that it has discretion to substitute or join parties under Rule 25(c), regardless of whether a party has met the Rule 15 or Rule 16 requirements for amendment. *In re Bernal*, 207 F.3d 595, 598 (9th Cir. 2000).

638 F.2d 1362, 1364 (5th Cir. 1981)).

"When presented with a Rule 25(c) motion, district courts may, in their discretion: (1) permit the predecessor to continue alone; (2) substitute the successor-in-interest for the predecessor; or (3) join the successor-in-interest with the predecessor." *Zest IP Holdings, LLC v. Implant Direct Mfg. LLC*, No. 10-cv-541-GPC(WVG), 2014 WL 11878454, at *3 (S.D. Cal. July 30, 2014) (citing *Hilbrands v. Far East Trading Co.*, Inc., 509 F.2d 1321, 1323 (9th Cir. 1975)); *see also Sun-Maid Raisin Grow. of Cal. v. California Pack. Corp.*, 273 F.2d 282, 284 (9th Cir. 1959) ("Substitution or joinder is not mandatory where a transfer of interest has occurred."). As the Ninth Circuit has noted:

> The most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. The action may be continued by or against the original party, and the judgment will be binding on his successor in interest even though he is not named. An order of joinder is merely a discretionary determination by the trial court that the transferee's presence would facilitate the conduct of the litigation.

In re Bernal, 207 F.3d at 598 (quoting 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1958 (2d Ed. 1986)).

"Under Rule 25(c), '[t]he transferee is not joined because its substantive rights are in question; rather, the transferee is brought into court solely because it has come to own the property in issue.'" *Uniloc USA Inc. v. LG Elecs. U.S.A. Inc.*, No. 18-CV-06737-JST, 2019 WL 690290, at *1 (N.D. Cal. Feb. 19, 2019) (citing *Minn. Min. & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256, 1263 (Fed. Cir. 1985)). Accordingly, "[t]he merits of the case, and the disposition of the property, are still determined vis-a-vis the originally named parties." *Id.* Thus, Rule 25(c) rule "leaves the substitution decision to [the trial] court's sound discretion." *In re Bernal*, 207 F.3d at 598.

III. Discussion

Plaintiffs argue that substitution pursuant to Rule 25(c) is appropriate here because Uniloc USA and Uniloc Luxembourg no longer have an interest in the patent-in-suit or in this litigation.

See Dkt. No. 102, Reply, p. 1. Defendant points out that Plaintiffs waited nearly two years after they transferred their interests in the patent to Uniloc 2017 to file the Motion and argues that this unreasonable delay prejudices Defendant. Opposition, p. 1. Defendant argues that because it has already served discovery on Plaintiffs, it would face delays and additional fees if it were required to re-serve the discovery on Uniloc 2017.

In support of this argument, Defendant points to multiple other cases in this district brought by Uniloc entities against Defendant in which the substitution or joinder of Uniloc 2017 has allegedly resulted in prejudice to Defendant. For example, in *Uniloc 2017, LLC v. Apple Inc.*, Case No. 3:19-cv-01697-VC, currently pending in this district before Judge Chhabria, after Defendant stipulated to the joinder of Uniloc 2017, Uniloc 2017 refused to adopt the discovery objections and responses of Uniloc USA and Uniloc Luxembourg. Defendant was therefore required to re-serve identical discovery requests on Uniloc 2017 as it had on the other Uniloc entities, and it received identical objections from Uniloc 2017 thirty days later. *See* Corbett Decl. Exs. 6-9, Dkt. Nos. 101-7 to 101-10.

In yet another case currently pending before Judge Alsup, the Plaintiffs filed a materially identical motion for substitution. *See Uniloc USA, Inc. v. Apple Inc.*, Case No. 18-cv-00360-WHA, Dkt. No. 119. In that case, Judge Alsup exercised his discretion to join Uniloc 2017 but keep Uniloc Luxembourg and Uniloc USA as part of the litigation, citing concerns about discovery and Plaintiffs' potential strategic behavior:

> "The Court suspects that Uniloc's manipulations in allocating rights to the patents-in-suit to various Uniloc (possibly) shell entities is perhaps designed to insulate Uniloc Luxembourg from any award of sanctions in the event Uniloc loses this litigation (or some substantial part thereof). Therefore, Uniloc Luxembourg shall remain in the above-captioned actions for the purpose for any sanction award if and when such a sanction award would be warranted and for purposes of facilitating any reasonable discovery against Uniloc Luxembourg."

Id. at 164-2.

Given the delay in filing this motion and Plaintiffs' discovery-related behavior in other actions in this district, the Court shares Defendant's concerns about possible delays. However, the Court finds that the possible prejudice to Defendant resulting from any such delays is minimal, and that allowing Uniloc 2017 to participate in the proceedings will ultimately facilitate the litigation. *In re Bernal*, 207 F.3d at 598.

Consistent with other courts in this district and in order to minimize any prejudice to Defendant, the Court exercises its discretion to join Uniloc 2017, rather than substitute it for the existing Plaintiffs. *Uniloc USA Inc. v. LG Elecs. U.S.A. Inc.*, No. 18-CV-06737-JST, 2019 WL 690290, at *2 (N.D. Cal. Feb. 19, 2019) ("In similar circumstances, other courts have exercised their discretion to join the transferee, rather than substituting that entity, until the ownership of the patent could be resolved."); *Hilbrands v. Far East Trading Co.*, Inc., 509 F.2d 1321, 1323 (9th Cir. 1975).

IV. Conclusion

The Court **GRANTS** Plaintiffs' Motion and orders Uniloc 2017 **JOINED** as a plaintiff in this action. Uniloc USA and Uniloc Luxembourg shall remain in the case.

IT IS SO ORDERED.

Dated: May 26, 2020

EDWARD J. DAVILA
United States District Judge

United States District Court
Northern District of California

Miscellaneous Docket No. ___

IN THE
United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

On Petition for Writ of Mandamus to the
United States District Court for the
Western District of Texas
No. 6:19-cv-00532-ADA, Hon. Alan D Albright

DECLARATION OF MELANIE L. BOSTWICK IN SUPPORT OF APPLE INC.'S PETITION FOR WRIT OF MANDAMUS

I, Melanie L. Bostwick, declare as follows:

1. I am a partner at Orrick, Herrington & Sutcliffe LLP and I am representing Apple Inc. in this matter. I make this declaration on personal knowledge.

2. Attached as Exhibit 1 is a chart showing the outcome of every contested § 1404(a) transfer motion to date in which the district judge in this case, Judge Alan D Albright, has issued an order. This chart was compiled on June 12, 2020, under my direction by attorneys who performed a search using the Docket Navigator service to identify all orders by Judge Albright on contested § 1404(a) transfer motions,

then reviewed each of those orders to identify the requested transferee district and the outcome. The chart does not include instances in which Judge Albright granted a joint stipulation to transfer venue to the Austin Division or an unopposed motion to transfer venue to the Austin Division.

3. The chart also includes *Synkloud Technologies, LLC v. Adobe, Inc.*, 6:19-cv-00527 (WDTX), a case that does not appear in Docket Navigator searches because Judge Albright denied transfer without a written order. We are aware of the case because Adobe filed a petition for writ of mandamus in this Court. *See In re Adobe Inc.*, No. 20-126 (Fed. Cir.).

4. Attached as Exhibit 2 is a true and correct copy of the results of a Docket Navigator search performed by attorneys under my direction on June 12, 2020, to determine the median time-to-trial for patent cases in the United States District Court for the Northern District of California and the United States District Court for the Western District of Texas, for the period between January 1, 2008 and June 12, 2020 The results show that the median time-to-trial for patent cases in the Northern District of California is 2.39 years, while the

median time-to-trial for patent cases in the Western District of Texas is 2.62 years.

5. Attached as Exhibit 3 is a true and correct copy of the results of a Docket Navigator search performed by attorneys under my direction on June 12, 2020, to identify active patent cases pending before Judge Albright in the Western District of Texas. The results show that, as of June 12, 2020, there are 355 active patent cases pending before Judge Albright, 260 of which were filed in 2020.

6. Attached as Exhibit 4 is a true and correct copy of the results of a Docket Navigator search performed by attorneys under my direction on June 12, 2020, to identify active patent cases pending before Judge Alsup in the Northern District of California. The results show that, as of June 12, 2020, there are 16 active patent cases pending before Judge Alsup, 3 of which were filed in 2020.

7. Attached as Exhibit 5 is a true and correct copy of the results of a Docket Navigator search performed by attorneys under my direction on June 12, 2020, to identify active patent cases pending before Judge Davila in the Northern District of California. The results

show that, as of June 12, 2020, there are 16 active patent cases pending before Judge Davila, 2 of which were filed in 2020.

8. Attached as Exhibit 6 is a true and correct copy of the results of a Docket Navigator search performed by attorneys under my direction on June 12, 2020, to identify active patent cases pending before Judge Stark in the District of Delaware. The results show that, as of June 12, 2020, there are 306 active patent cases pending before Judge Stark, 63 of which were filed in 2020.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 15, 2020
in Washington, D.C.

Respectfully submitted,

/s/ Melanie L. Bostwick

Melanie L. Bostwick
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(202) 339-8400

Counsel for Petitioner Apple Inc.

Exhibit 1

§ 1404(a) Transfer Decisions By Judge Albright as of June 12, 2020

Case	Requested Venue	Result	Date of Order
Data Scape Limited v. Dell Technologies Inc. et al 6-19-cv-00129 (WDTX)	Austin Division	Granted (case to remain on Judge Albright's docket)	6/7/2019
MV3 Partners LLC v. Roku, Inc. 6-18-cv-00308 (WDTX)	N.D.Ca.	Denied	6/25/2019
VLSI Technology LLC v. Intel Corporation 6-19-cv-00254 (WDTX)	D.Del.	Denied	8/6/2019
Freshub, Inc. et al v. Amazon.com, Inc. et al 6-19-cv-00388 (WDTX)	Austin Division	Granted (case to remain on Judge Albright's docket)	9/9/2019
Fintiv, Inc. v. Apple Inc. 6-18-cv-00372 (WDTX)	N.D.Ca. Austin Division in the alternative	Denied Granted (case to remain on Judge Albright's docket)	9/13/2019
EROAD Limited et al v. PerDiemCo LLC 6-19-cv-00026 (WDTX)	E.D.Tx.	Denied	9/19/2019
VLSI Technology LLC v. Intel Corporation 6-19-cv-00254 (WDTX)	Austin Division	Granted (case to remain on Judge Albright's docket)	10/7/2019
CloudofChange, LLC v. NCR Corporation 6-19-cv-00513 (WDTX)	N.D.Ga.	Denied	3/17/2020
Hammond Development International, Inc. v. Amazon.Com, Inc. et al 6-19-cv-00355 (WDTX)	Austin Division	Granted (case to remain on Judge Albright's docket)	3/30/2020
STC.UNM v. Apple Inc. 6-19-cv-00428 (WDTX)	N.D.Ca. Austin Division in the alternative	Denied Granted (case to remain on Judge Albright's docket)	4/1/2020
Synkloud Technologies, LLC v. Dropbox, Inc. 6-19-cv-00525 (WDTX) 6-19-cv-00526 (WDTX)	N.D.Ca.	Denied	5/14/2020 5/18/2020
Synkloud Technologies, LLC v. Adobe, Inc. 6:19-cv-00527 (WDTX)	N.D.Ca.	Denied without order on 3/27/2020	N/A

Exhibit 2

search.docketnavigator.com/patent/court_comparison/0/9

FILE

Court & Judge Comparison Report

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Binder Information

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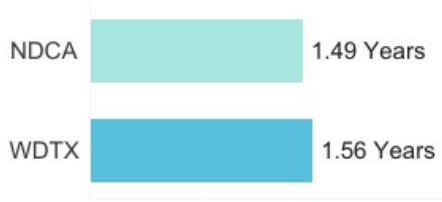
Time to Milestones

Median Time to Trial

NDCA	WDTX
2.39 Years	2.62 Years

Median Time to Claim Construction

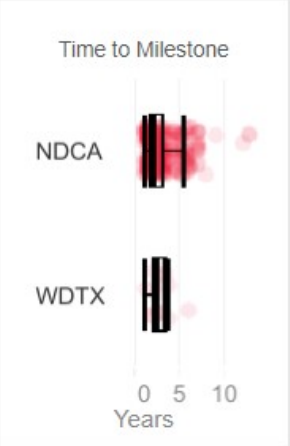


Milestone Selector

Select a Milestone group and subcategory below to see how quickly cases reach the selected Milestones.

1. Choose a Milestone: Trials

2. Milestone Subcategories
   - [x] (All)
   - [x] Bench Trial
   - [x] Jury Trial



Year of Document Filing: 2008 – 2020

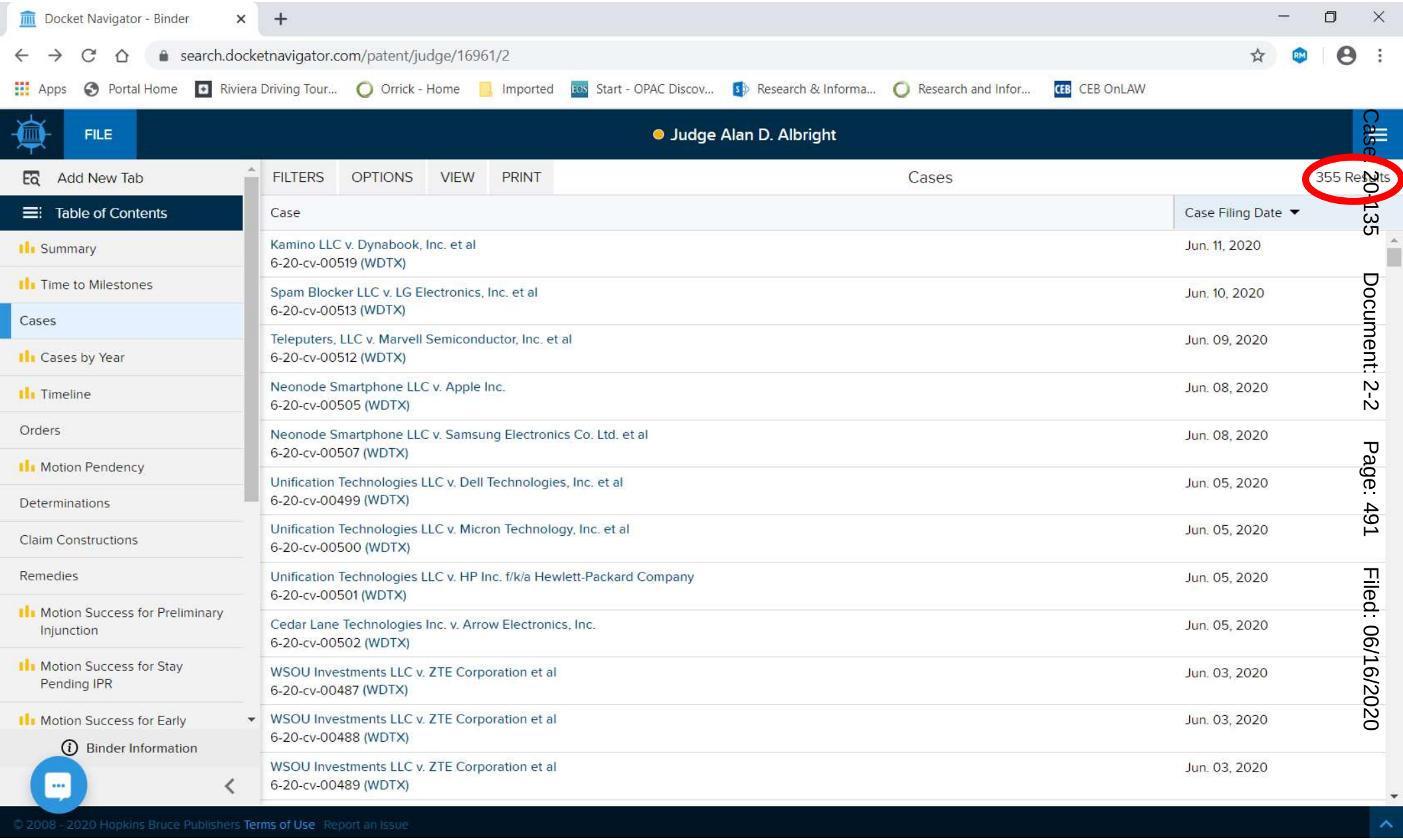
Patent Technology Centers: (All)

ANDA Cases
- [x] ANDA Cases
- [x] Non-ANDA Cases

Measure
- ( ) Average
- (•) Median

Calculate Time In:
- ( ) Days
- (•) Years

Exhibit 3



DocketNavigator

Judge Alan D. Albright

VIEW IN BROWSER

Cases

Judges
Alan D. Albright

Case Status
Active

Exported results are limited to 300. To view more data, open this search tab in a browser.

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Exhibit 4

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Judge William H. Alsup

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Judge Edward J. Davila

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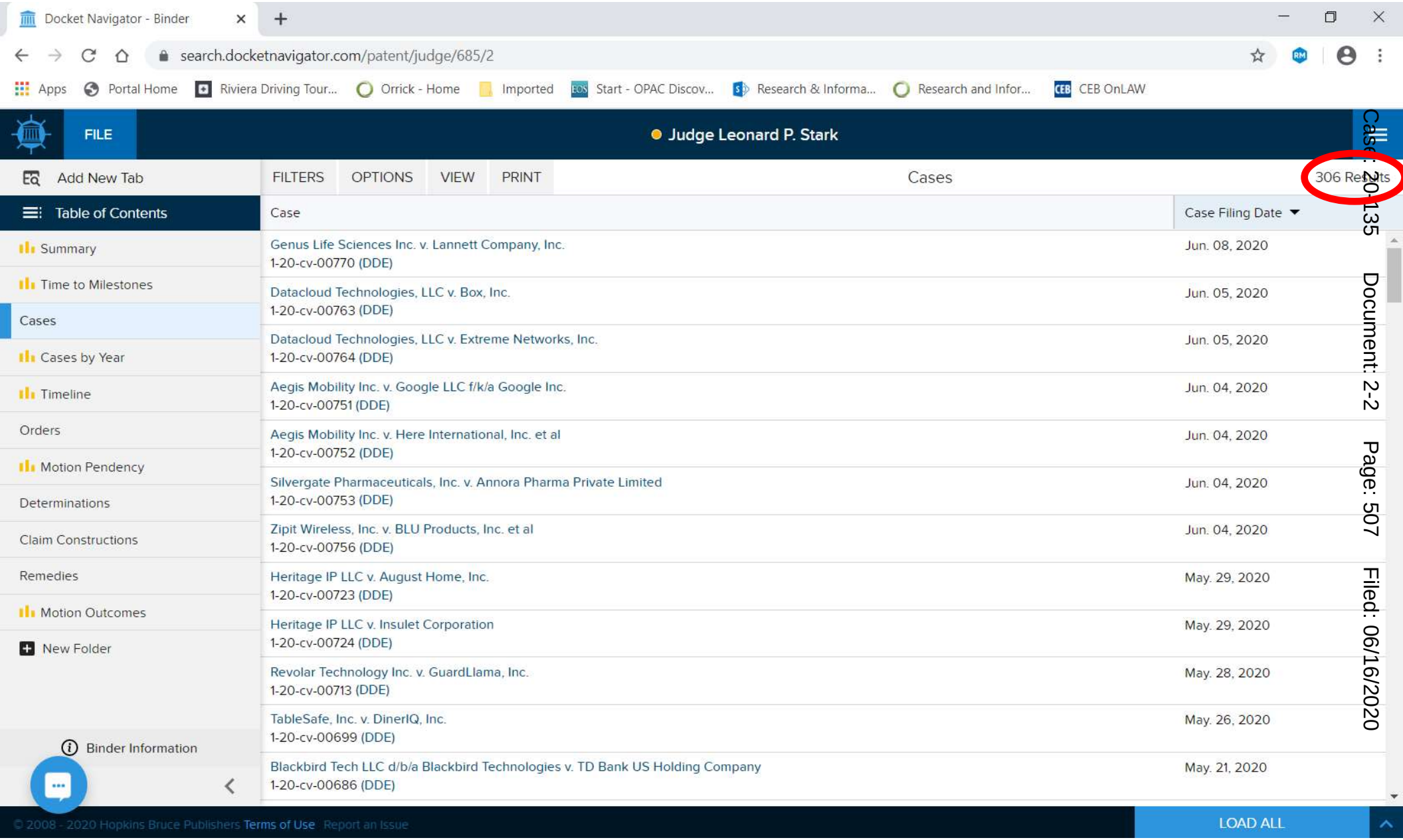
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on June 15, 2020.

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