BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re Uniloc USA, Inc., and Uniloc Luxembourg, S.A., HPE Portfolio Patent Litigation	**MDL No.** 2830

DEFENDANTS' JOINT OPPOSITION TO
UNILOC'S MOTION FOR TRANSFER OF ACTIONS TO THE
NORTHERN DISTRICT OF TEXAS PURSUANT TO 28 U.S.C. § 1407
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

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Defendants Apple Inc., Huawei Device USA, Inc., Huawei Device Co. Ltd., LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc., LG Electronics, Inc., HTC America, Inc., Motorola Mobility, LLC, Peel Technologies, Inc., Exclusive Group, LLC d/b/a Binatone North America, and Logitech Inc. (collectively, "Defendants") respectfully oppose Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg S.A.'s (collectively, "Uniloc") Motion For Transfer of Actions to the Northern District of Texas Pursuant to 28 U.S.C. § 1407 (the "Motion").

I. INTRODUCTION

Uniloc's Motion asks the Panel to centralize twenty-five patent cases that assert different patents on different technologies against different products from different defendants.[1] One case asserts that a dehumidifier infringes a remote-control patent, another that a television infringes a graphics patent, and still another that a laptop infringes a battery-charging patent. Centralization would thus not "promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a).

Individual questions of fact predominate over any common issues here. Each of the cases at issue asserts one or two of seven patents against one of nine Defendants. All these cases have in common is that Uniloc is the plaintiff and that it acquired the patents-in-suit from Hewlett-Packard. The seven patents cover unrelated technologies ranging from battery chargers to wireless computer graphics to telephone dialing systems and remote controls. They list eighteen separate inventors who worked for at least two different companies. They have different written descriptions and different claims that use different terms. And their priority dates—the dates of alleged invention—vary by over six years, leading to a wide variety of invalidity issues.

[1] In addition to the Defendants who are filing this opposition, Wink Labs, Inc., is named as a defendant in one of the subject actions, but has not yet entered an appearance. There are thus nine sets of related entities (*i.e.* grouping parents, subsidiaries, or affiliates together) subject to Uniloc's Motion. For convenience, Defendants refer to related entity groups as one "defendant."

Nor is there any common pattern to how Uniloc asserted its seven patents. No patent is asserted against all Defendants; some are asserted against only one. The products at issue vary widely between defendants and between cases for a single defendant, including baby monitors, headphones, computers, motion sensors, ovens, TVs, remote controls, and smartphone apps.

Centralizing this motley collection of cases would benefit no one but Plaintiff, while prejudicing Defendants. There is no overlapping discovery to be provided by Defendants, many of whom are in entirely different industries. Notably, any potential duplication can be addressed by informal coordination—particularly since Uniloc is represented by the same counsel in all cases. In contrast, centralization would prejudice Defendants. It would force four Defendants who face only a single patent into a complex proceeding where most of the issues are irrelevant to them. And it would force other Defendants—who face unrelated lawsuits from Uniloc that are not subject to this Motion—to litigate in two fora rather than just one.

In reality, Uniloc's Motion seems designed to further the interests of Uniloc and its counsel, not the goals of § 1407. Uniloc litigated its cases in their current state for many months without suggesting centralization or raising concerns about duplication. Only after its cases against Apple were transferred from Uniloc's favored East Texas forum, where it had filed hundreds of patent cases, to the Northern District of California did Uniloc develop an interest in an MDL.[2] Uniloc's Motion improperly seeks to undo this transfer order.

In the event that the Panel concludes that centralization is appropriate, transfer to the Northern District of California would best serve the purposes of § 1407. That court is handling the largest number and most-advanced of these cases, and is convenient for the parties and non-party witnesses. In contrast, the only cases Uniloc filed in the Northern District of Texas—

[2] The Huawei and LG Defendants recently filed motions to transfer the actions pending against them to the Northern District of California as well. (*See, e.g.*, Ex. 3, Huawei Transfer Motion.)

Uniloc's new forum of choice—do not allege *any* ties to that venue, and are subject to a motion to transfer venue to the Northern District of California. (Ex. 2, LG Transfer Motion.)

A. BACKGROUND

The Uniloc plaintiffs are a pair of "non-practicing entities." Over its history, Uniloc has filed over 300 infringement cases, almost all in the Eastern District of Texas. (Ex. 4, Docket Navigator Report.) Uniloc began filing the cases at issue in May 2017 and, over the next six months, filed 25 cases against nine Defendants. (Ex. 1, Case Summary Chart.) Wherever Uniloc asserted multiple patents against a Defendant, it filed multiple separate complaints—even though the cases were in the same district. (*Id.*) Each case asserts infringement of one patent (or, in one instance, two patents). (*Id.*) Of seven total patents, two (shown in red below) are asserted against a single defendant. (*Id.*) And of the Defendants, four (shown in orange) face only a single patent. Altogether, Uniloc has asserted six different combinations of patents against Defendants:

Asserted Patents	**'203**	**'422**	**'671**	**'018**	**'127**	**'134**	**'158**
Apple	X	X	X	X	X	X	X
Binatone							X
HTC	X	X		X			
Huawei	X	X		X			
LG	X	X		X		X	X
Logitech				X			
Motorola	X	X		X		X	
Peel				X			
Wink Labs				X			

As the table below illustrates, the seven patents Uniloc has asserted differ in terms of the claimed technologies, the inventors, and the alleged invention dates (the "priority dates"):

Patent	Subject	Priority Date	Place of Invention	Inventors
6,661,203	Battery charging	November 2001	Near Boise, ID	Eugene Cohen Richard Sevier Dale Wolin
6,580,422	Wireless computer graphics	April 1995	Roseville, CA	Steve Reilly
7,092,671	Telephone auto-dialing	November 2000	San Francisco Bay Area Seattle, WA Near Salt Lake City, UT	David Kammer Michael Lunsford David Moore Steve Parker
6,622,018	"Universal" remote controls	April 2000	Near Salt Lake City, UT	Rich Erekson
6,161,134 6,446,127	Integrating Palm Pilots with telephones	October 1998	San Francisco Bay Area Near Chicago, IL	127 Ismail Dalgic Frederick Dean Peter Wang 134 Ismail Dalgic Jacek Grabiec Jerry Mahler Ikhlaq Sidhu
6,216,158	Remote access to software services	January 1999	San Francisco Bay Area	Wenjun Luo Elaine Lusher

(*See* Exs. 5-11, '203, '422, '671, '018, '134, '127, and '158 Patents.)

Reflecting the differences in patented technologies and Defendants, the products accused of infringement in the cases at issue are unique and involve dramatically different technologies. These include, among others:

- Air conditioners
- Baby monitors
- Battery chargers
- Cooking ovens
- Door and window alarms
- Fitness watches
- Laptop computers
- Headphones
- Home surveillance equipment
- Motion sensors
- Pet tracking devices
- Refrigerators
- Remote controls
- Smartphones running iOS, Android, and Windows operating systems
- Speakers
- Televisions
- Vacuum cleaners
- Washing machines

(*See* Ex. 1.) No two defendants share any of the same accused products or even, in many cases, the same types of products.

Between May 2017, when the first of the cases at issue were filed against Apple, and January 2018, Uniloc did not move to centralize, coordinate, transfer, or otherwise relate any of the subject actions. In December 2017, however, the District Court for the Eastern District of Texas transferred Uniloc's six actions against Apple to the Northern District of California. (Ex. 12.) The last transfer was completed on January 26, 2018. (Ex. 13, -572 Docket Entry.) A little over a week later, on February 2, Uniloc filed the present Motion, seeking to centralize the subject actions in a third court, the Northern District of Texas.

II. ARGUMENT

A. Transfer And Centralization Of These Diverse Actions Would Yield Few, If Any, Efficiency Gains, Inconvenience The Parties And Witnesses, And Disrupt Informal Coordination Efforts Already In Process.

Transfer under 28 U.S.C. § 1407 is appropriate only if it would serve the "convenience of parties and witnesses" and "promote the just and efficient conduct of [the] actions." Neither of

these conditions is met here. Factual issues unique to each of the twenty-five cases will predominate over any common issues. There will thus be little efficiency gained from forcing a single judge to wade through the seven distinct patents and dozens of accused products at issue. Any theoretical benefit would be greatly offset by the complications of dealing with vastly different technologies, products, defendants, and witnesses in a coordinated proceeding. In addition, if there will be any overlapping discovery, such as discovery from Uniloc or third parties, suitable alternatives to § 1407 centralization exist because Defendants are already coordinating informally to mitigate any potential duplication.

1) Because The Twenty-Five Actions At Issue In This Motion Involve Different Patents, Technologies, Products, Defendants, And Witnesses, Centralization Would Be Inefficient.

Because Uniloc's Motion involves a hodgepodge of cases that share little beyond a common plaintiff, centralization would not promote the just and efficient conduct of these actions. Centralization is not appropriate in patent cases that involve "a wide range of technologies and do not descend from a common patent 'family' (*i.e.*, the patents have many different inventors)." *E.g.*, *In re Constellation Techs. LLC Patent Litig.*, 38 F. Supp.3d 1392, 1393 (J.P.M.L. 2014). The cases at issue here fit that description perfectly.

As described above, each of the twenty-five cases at issue here asserts a single patent (or, in one case, two).[3] (Ex. 1.) These patents are not part of the same family.[4] (*Id.*) They do not involve a common invention or technology, but instead span unrelated technical areas including

[3] The sole exception is N.D. Cal. Case No. 3:18-cv-572, which asserts the '134 and '127 Patents against Apple.

[4] The '127 Patent purports to be a continuation of the '134 Patent, although they do not share the same specification. Any relationship between these patents, however, is irrelevant to centralization, because the '127 Patent is asserted only against Apple, and only in the same case in which the '134 Patent is also asserted. (Ex. 1.) Similarly, although Uniloc has suggested that the '671 Patent is in the same general technical area as the '127 and '134 Patents, that too does not support centralization, because the '671 Patent is also asserted only against Apple.

battery-charging hardware, graphics systems, telephony, remote controls, and distributed software servers. (*See supra* at 4.) The patents were not conceived at the same time, in the same place, or by the same people. (*Id.*) To the contrary: seventeen of the eighteen named inventors appear on only one patent, and the remaining inventor appears on only two. (*Id.*) The seven asserted patents allegedly resulted from work conducted for at least two different companies (3Com and Hewlett-Packard) in at least five different facilities over the course of six years. (*Id.*) In fact, the patents at issue have essentially nothing in common beyond the fact that they were once owned by entities related to Hewlett-Packard and then purchased by Uniloc.

The allegedly infringing products also have almost nothing in common. While Uniloc claims that "[t]here is significant overlap of the products at issue, both as to individual defendants . . . and as to individual patents across defendants," the list of accused products, spanning from dehumidifiers to baby monitors to smartwatches, tells the opposite story. (Motion at 10; *see supra* at 5.) In an effort to manufacture similarity, Uniloc tries to lump different Defendants' products into broad categories such as "smartphones." (Motion at 11.) But even within Uniloc's generic buckets, the products differ significantly. For instance, for the '422 Patent, the accused devices use four different software platforms (iOS, Android, WebOS, and Windows) and transmit graphics using multiple different technologies (including HTC Connect, Huawei MirrorShare, LG TV Plus, and Apple's AirPlay). (Ex. 1.) Similarly, Uniloc's statement that "Peel, Wink and Logitech are accused of infringing the '018 patent by way of their software" is beside the point. (Motion at 11.) Uniloc's oversimplified reference to "software" ignores the fact that each of Peel, Wink, and Logitech use unique "software." And Uniloc's allegations for just the '018 Patent against just these defendants involve hardware including networking hubs, remote controls, motion sensors, and home alarms. (Ex. 1.)

Centralization here would require a single judge to craft a unified plan to manage twenty-five unrelated cases, with unrelated patents, technologies, and products.[5] As a result, "the potential for a centralized litigation to become mired in the unique factual and legal issues raised in each action . . . is significant." *Constellation*, 38 F. Supp.3d at 1393. The Panel's decision in *In re Protegrity* is inapposite. That case involved only "two patents" that were asserted in "all actions [to be centralized]." *In re Protegrity Corp. and Protegrity USA, Inc. Patent Litig.*, 84 F. Supp.3d 1380, 1381 (J.P.M.L. 2015). Further, both *Protegrity* patents related to the same technology: "protecting data within databases." *Id.* Nothing in *Protegrity* suggests that cases involving different products and technologies, such as those here, should be centralized.

The fact that Uniloc has asserted its seven patents in widely varying combinations against the nine Defendants, as detailed *supra* at 3, also weighs heavily against transfer. *See In re Pilepro Antitrust and Patent Litig.*, 140 F. Supp.3d 1350, 1351 (J.P.M.L. 2015) ("While both actions involve issues of infringement and validity of patents held by PilePro, they are not the same patents.") Here, none of the seven patents-at-issue are asserted against all Defendants, two patents are asserted against only a single Defendant (Apple), and four defendants—Binatone, Logitech, Peel, and Wink—face only a single patent. (*Supra at* 3.) Uniloc's Motion seeks to force these four defendants into an MDL in which the vast bulk of the issues are irrelevant to them. This is a recipe for burden and unnecessary complexity, not efficiency.

2) There Is No Need To Centralize These Cases To Avoid "Duplicative Discovery."

Uniloc's Motion never even attempts to identify any actual commonalities between the

[5] Consolidating the cases against a single Defendant in the venue where they are already pending may have some benefits, particularly where Uniloc also filed cases against the same Defendant that are not subject to this Motion. It does not follow that an MDL would yield similar benefits. Centralization would require most Defendants to contend with added complexities caused by additional patents and issues unrelated to their own cases. As set forth *infra* at 16, centralization would also inefficiently divide certain Defendants' litigation with Uniloc across two fora.

asserted patents or the accused products. Instead, Uniloc argues vaguely that "a substantial portion of the discovery sought will be the same in all twenty-five actions" and that there will be "duplicative efforts to obtain the same documents and information." (Motion at 13, 14.) But Uniloc provides no detail about what "documents and information" would supposedly be duplicative. In reality, the unique products accused and the jigsaw puzzle of patents asserted in the various cases make it difficult to imagine any piece of discovery from Defendants that will "be the same in all twenty-five actions." (*Id.*; *see supra* at 4-5.)

Any potential for repetitive discovery from Uniloc or third parties can and will be addressed through informal coordination. This approach is particularly appropriate here because Uniloc is represented by a single set of counsel, and Defendants' counsel have already agreed to and implemented informal coordination. *See In re Chilean Nitrate Prods. Liab. Litig.*, 787 F. Supp.2d 1347 (J.P.M.L. 2011) (denying centralization in part because "plaintiffs in [the] actions are represented by one law firm"). With respect to written discovery, Defendants will, as they informed Uniloc, "allow the cross-use of Uniloc's document production and other discovery responses . . . to minimize repetitive discovery requests." (Ex. 14, 2/14/18 Pieja to Foster at 2.) Defendants will do the same for third-party written discovery. The same is true for depositions, where Defendants agreed (to the extent practical) to:

- Coordinate their depositions of Uniloc's witnesses, including its CEO (Craig Etchegoyen), its General Counsel (Sean Burdick), and its CFO (Drake Turner), and avoid redundant questioning on overlapping subject matter;
- Coordinate their 30(b)(6) depositions of Uniloc and avoid repetitive questioning;
- Coordinate the depositions of the third parties listed in Uniloc's motion and avoid redundant questioning; and
- Propose schedules or other accommodations in the individual actions to allow for coordinated depositions.

(*Id.*) Given this agreement, there is no basis to assume that any Uniloc or third-party witnesses

would "be deposed eight or nine times" or subject to "multiple, repetitive depositions."[6] (Motion at 2, 13-14.) The Panel has found that an agreement to conduct a "joint deposition" and to "coordinate to reduce any other duplicative discovery"—exactly what Defendants propose here—weighs against centralization. *In re Blue Spike, LLC Patent Litig.*, --- F. Supp.3d ---, 2017 WL 4416189 at *2 (J.P.M.L. Oct. 4, 2017).

Uniloc's suggestion that Defendants' proposed informal coordination "would be an incredibly difficult task" is baseless. (Ex. 15, 2/16/18 Jacobs to Pieja at 1.) Defendants' type of proposal is common in non-centralized multi-defendant patent cases. Indeed, Defendants have already shown that it can work here, by jointly formulating a coordination proposal and jointly preparing this brief. Defendants will also coordinate their oral presentation. And there no obstacles to coordination on Uniloc's end: Uniloc is represented by the same national counsel in all cases. (Motion at Exs. A-Y (Dockets and Complaints in Subject Actions).) The only reason informal coordination would be "incredibly difficult" is if Uniloc declines to cooperate.

Uniloc's attempts to manufacture issues fail. Uniloc is wrong that "the uncentralized cases have a wide range of case schedules." (Ex. 15, 2/16/18 Jacobs to Pieja at 1.) As of the filing of this motion, only one of the cases even had a scheduling order. (Ex. 1.)[7] In addition, Defendants have committed to harmonizing the case schedules as much as possible to allow for the discovery coordination discussed above. (Ex. 14, 2/14/18 Pieja to Foster at 2.) Even if the

[6] Defendants recognize that witness schedules and logistics, Court orders, and logistical needs may require deposing certain witnesses on non-consecutive days and for more than seven hours. Coordination will still, however, avoid the possibility of repetitive and excessive questioning.

[7] Two cases (against Logitech and Wink) have seen no activity beyond the complaint. In fifteen more cases (against LG, HTC, Huawei, Motorola, and Peel), defendants have answered or filed a preliminary motion, but no case management conference has occurred and no schedule has been entered. In one case (against Binatone), a schedule was entered setting trial for October 2019. Finally, the six cases against Apple are awaiting status conferences and scheduling orders following their transfer from Texas. (Ex. 1.)

cases did have different schedules, that would weigh against, not in favor of, centralization. *E.g.*, *In re Table Saw Prods. Liab. Litig.*, 641 F.Supp.2d 1384, 1384-85 (J.P.M.L. 2009)

Nor does Uniloc's claim that "all of the cases will have different discovery limits" support centralization. (Ex. 15, 2/16/18 Jacobs to Pieja at 1.) To the extent this issue is relevant, Defendants agreed to share a document production and interrogatory responses from Uniloc on common issues. This will unify the scope of that discovery across all cases.

Finally, even if Uniloc's employees did face more than a single deposition, that is an inconvenience of Uniloc's own making. Uniloc's business is filing patent-infringement cases; it chose whom to sue, when and where. If there is any burden on Uniloc's employees, it is one Uniloc undertook of its own free will, and one that is central to its business and litigation strategy. A desire to ease Uniloc's chosen cost of doing business is not one of the purposes of § 1407.[8]

3) Centralization Of These Twenty-Five Actions Will Have Little, If Any, Effect On Judicial Economy.

Uniloc's arguments regarding judicial economy vastly overstate its case. First, Uniloc argues that centralization will avoid "overlapping, time-intensive claim construction hearings." (Motion at 15.) Not so. First, as described above, except for the '134 and '127 Patents, no two patents are related or claim similar technologies. There will thus be very little, if any, "overlap" in *Markman* terms between the different patents and no efficiency gains to subjecting these patents to *Markman* proceedings before a single judge. Second, two of the patents, the '127 and '671 Patents, are asserted only against Apple. (Ex. 1.) Centralizing *Markman* proceedings for

[8] Tellingly, although Uniloc's Motion seeks to limit the discovery burden on its own employees, Uniloc has never offered reciprocal benefits to Defendants, such as limiting the total number of depositions of Defendants' employees collectively to the same number of depositions Defendants may take of Uniloc. This underscores that Uniloc recognizes that discovery in each case will likely be very different, rather than redundant.

those patents will provide no benefit. Similarly, the '134 and '158 Patents are asserted in only three cases, so centralization will offer minimal benefit. (Ex. 1.)

Third, as the Panel has recognized, the judges presiding over the subject actions are perfectly capable of handling potentially-overlapping *Markman* hearings without centralization. For instance, the judges may "allow a claim construction hearing to proceed in one action in advance of the others" should the need arise. *In re High Quality Printing Inventions, LLC ('070) Patent Litig.*, 176 F. Supp.3d 1381, 1384 (J.P.M.L. 2016). Uniloc's position, if accepted, would lead to an MDL any time a plaintiff asserted the same patent against different defendants in different courts, which would go far afield of § 1407's mandate. Finally, as set forth above, even for cases involving the same patent, the accused products differ significantly. For the '018 Patent, for instance, different cases involve claims against software "apps," washers and driers, phones, and computers. (Ex. 1.) Which claim-construction issues are presented in a given case will likely vary based on the products at issue and the infringement questions they raise. Uniloc makes no effort at all to explain what commonalities it thinks will arise.

None of the authority that Uniloc cites supports centralization here based on the prospect of separate *Markman* hearings. In each of *In re Innovatio*, *In re TLI*, and *In re TR Labs*, centralization was sought by defendants. *In re Innovatio IP Ventures, LLC, Patent Litig.*, 840 F. Supp.2d 1354 (J.P.M.L 2011); *In re TLI Comm's LLC Patent Litig*, 26 F. Supp.3d 1396 (J.P.M.L. 2014); *In re TR Labs Patent Litig.*, 896 F. Supp.2d 1337 (J.P.M.L. 2012). The defendants in those cases had presumably concluded that informal coordination, on their particular facts, was not possible. Those cases provide no guidance here, where the plaintiff is seeking to use separate *Markman* hearings to force centralization on defendants who are already cooperating to avoid duplicative or inconsistent proceedings.

Uniloc's generic statement regarding "common questions of invalidity" also rings hollow. As noted above, each of the cases at issue here involves only one (or, in one case, two) different patents. (Ex. 1.) And Uniloc has asserted six different combinations of patents against the different Defendants. (*Supra* at 3.) The cases Uniloc relies on, in contrast, involve assertion of the same patent or patents against multiple defendants. *See In re Method of Processing Ethanol Byproducts & Related Subsystems ('858) Patent Litig.*, 730 F. Supp.2d 1379 (J.P.M.L. 2010) (all actions involved a single patent); *In re Papst Licensing Digital Camera Patent Litig.*, 528 F. Supp.2d 1357 (J.P.M.L. 2007) (two patents "at issue in all five actions"). Further, Uniloc has resisted efforts to streamline the adjudication of invalidity issues. Apple has filed petitions for *inter partes* review for all but one of the patents-in-suit with the Patent Trial and Appeal Board ("PTAB"). (Ex. 16, Apple IPR Petition Cover Pages.) If the PTAB invalidates any claims, that will resolve the invalidity issue across all cases and avoid any prospect of inconsistent results. Yet Uniloc did not agree to Apple's request for a stay to allow the PTAB to act, underscoring that it is not truly concerned with efficiency.

4) Section 1407 Does Not Permit Centralization To Undo A Transfer For Convenience Under Section 1404(a).

As set forth above, Uniloc's Motion is not aimed at achieving meaningful efficiencies. It is, instead, designed to further Uniloc's goals of taking a mulligan on its litigation tactics, forum-shopping, and sidestepping a transfer order. These are not proper objectives for a §1407 motion.

As an initial matter, while Uniloc complains that it has cases pending in "six different district courts," that is a problem of its own making. (Motion at 1.) Uniloc could have brought 20 of these 25 cases, involving seven of the nine defendants—Apple, Logitech, Peel, Wink Labs, Huawei, LG, and HTC—in the Northern District of California. (Exs. 2, 3, 12, 17, 33.) It simply chose not to do so, thus creating the very inefficiencies it now complains about. Worse, Uniloc

is resisting efforts by Defendants to transfer actions to the Northern District of California under 28 U.S.C. § 1404(a), which would reduce the number of jurisdictions handling these cases. Uniloc is opposing motions by Huawei and LG to transfer the only cases pending in the Eastern and Northern Districts of Texas, respectively, to the Northern District of California.[9] And Uniloc is doing so even though it has not alleged any meaningful connection between the LG cases and the Northern District of Texas. (Ex. 2, LG Transfer Motion.) Uniloc has thus made clear that it is interested in consolidation only if it serves its own tactical ends.

Uniloc's actions here are consistent with its litigation history. Prior to May 26, 2017, when it began filing its current lawsuits against Defendants, Uniloc had filed around 290 patent-infringement cases. (Ex. 4) Approximately 90% of those cases were filed in the Eastern District of Texas. (*Id*.) Uniloc opposed dozens of transfer motions in those cases under §1404(a), arguing that its employee-witnesses and relevant documents were in Texas. Consistent with these tactics, here, Uniloc sued Apple first, on all seven patents, in the Eastern District of Texas, to secure its favored venue for the first-moving cases. (Ex. 1.)

Despite Uniloc's efforts to secure its preferred venue, on December 22, 2017, Judge Gilstrap of the Eastern District of Texas granted Apple's motions to transfer a number of cases against it, including the ones at issue here, to the Northern District of California. In one of the transfer orders, Judge Gilstrap found that there were "contradictions" in Uniloc's representations regarding venue, and that "such contradictory representations [were] troubling, particularly because they [were] not isolated exceptions." (Ex. 18, Apple Transfer Order at 16-17.) Judge Gilstrap described Uniloc's statements as "misleading" and found the facts to "fly in the face of

[9] Huawei has sought to transfer all of the actions pending against it, including the three subject to Uniloc's Motion, to the Northern District of California. *See* Ex. 3, Huawei Transfer Motion.

Uniloc's prior representations." (*Id.* at 17, n. 4.) The last of the Apple cases formally transferred to the Northern District of California on January 26, 2018. (Ex. 13, -572 Docket Entry.)

These facts are significant for two reasons. First, before the Apple transfer, Uniloc had shown neither interest in centralization nor concern regarding any supposed inefficiencies. It was only on February 2, eight months after Uniloc filed suit, but a mere month after Judge Gilstrap's order, that Uniloc suddenly showed an interest in MDL proceedings. This timing, combined with Uniloc's proposal for the transferee court, is not coincidence. Uniloc's Motion appears designed to serve its counsel's desire to undo as much of Judge Gilstrap's order sending the Apple cases to California as it can. This weighs against centralization: "where a Section 1407 motion appears intended to further the interests of particular counsel more than those of the statute, we would certainly find less favor with it." *High Quality Printing Inventions*, 176 F. Supp.3d at 1383 n.5.

Second, centralizing cases where "defendants have [previously] been transferred to a different forum pursuant to Section 1404" will "especially inconvenience these defendants." *In re Dietgoal Innovations, LLC ('561) Patent Litig.*, 999 F. Supp.2d 1380, 1382 (J.P.M.L. 2014). That concern applies strongly here: in Apple's case, all of its relevant party witnesses reside in California. (Ex. 30, Jaynes Decl.) And, as Judge Gilstrap found, no relevant Uniloc witnesses reside full-time in Texas. (*Id.* at 14, 19, 21.) Despite this, Uniloc's Motion seeks centralization not in California (which is an appropriate forum for at least 7 Defendants), but back in Texas—next door to the district from which Judge Gilstrap ejected it. Uniloc's attempt to use § 1407 to undo a Court-ordered transfer to California would "especially inconvenience" Apple, and any other Defendant that procures a transfer order. *Dietgoal*, 999 F. Supp.2d at 1382.

5) Centralizing These Actions Will Force Certain Defendants to Litigate on Numerous Fronts.

Not only would centralization yield little in the way of efficiency gains, but in some cases it would actually cause additional burdens and inefficiencies for Defendants. The cases at issue here are not the only ones Uniloc has initiated against certain Defendants. Specifically, Uniloc has filed other patent cases against Apple, Huawei, HTC, and LG that are not at issue in this Motion. These additional cases, which involve a set of patents Uniloc acquired from a company called Fullpower Technologies, are currently pending in the same venues as the cases at issue here. (Exs. 19-22, Apple, Huawei, HTC, and LG Dockets Regarding Fullpower Patents). The accused products in those cases include several of the same smartphones and smart watches that are the subject of the actions subject to Uniloc's Motion. (*Id.*)

Apple, Huawei, HTC, and LG are currently each litigating the cases at issue here and the "Fullpower" cases in one forum. But if the Motion is granted, because the Fullpower cases are not subject to this Motion, at least some of these Defendants will be forced to litigate the cases here in one forum, and the Fullpower cases in another. In addition to posing logistical inconveniences, this will unnecessarily complicate existing efforts to coordinate discovery. For instance, Apple and Uniloc currently have discovery rules that limit the parties to a fixed number of common interrogatories across all the California cases between Apple and Uniloc. (Ex. 23, Discovery Order for Apple Cases.) Requiring Apple, Huawei, HTC, and LG to litigate on two fronts at once will disrupt these arrangements and shift, not alleviate, the inconvenience that Uniloc complains of (and which it created for itself).

B. In The Alternative, If The Panel Elects To Centralize These Actions, They Should Be Transferred To The Northern District Of California.

If the Panel concludes that centralization is warranted, the cases should be consolidated in the Northern District of California. ***First***, the Northern District of California is the only court

where all seven of the patents-at-issue are currently being litigated. Of the twenty-five actions subject to Uniloc's Motion, seven (the six first-filed actions against Apple and one against Logitech) are currently pending in the Northern District of California. (Motion at Exs. A-F, Y, Apple Complaints.) This is more than any other District.[10] Further, LG and Huawei have filed (and other Defendants may file) motions to transfer the cases against them to the Northern District of California. (Exs. 2, 3, LG and Huawei Motions to Transfer.) If these motions are granted, the Northern District of California will be home to as many as 15 of the 25 actions at issue. Further, the six cases against Apple in the Northern District of California were originally filed months before any other cases. (Ex. 1.) As a result, they are substantially more advanced. *See In re Air Crash Near Peixoto de Avezada, Brazil*, 493 F. Supp.2d 1374, 1376 (J.P.M.L. 2007) (noting that actions in transferee district were "more procedurally advanced than the actions pending elsewhere"). In particular, these cases have proceeded through the exchange of contention discovery on the issues of infringement and invalidity. (Exs. 24, 25, Parties' Infringement and Invalidity Contentions.) The parties have also begun the claim-construction process, which typically starts many months after discovery opens. (Exs. 26, 27, Exchange of Claim Terms in Apple Cases.) In contrast, none of Uniloc's other cases have begun discovery. Indeed, the cases pending in the Northern District of Texas—Uniloc's proposed venue—have not even progressed to an initial case management conference. (Ex. 1.)

Second, the Northern District of California is highly capable of overseeing these actions, as that Court has substantial patent and MDL experience. The patent-filing statistics that Uniloc relies on do not suggest otherwise. (Motion at 18-20.) These statistics show only the relative

[10] Three cases are currently pending in the Eastern District of Texas, five are pending in the Northern District of Texas, three are pending in the Western District of Washington, six are pending in the District of Delaware and one is pending in the Southern District of Indiana.

rate of patent filings, which make up less than 5.8% of the civil dockets in the Northern District of California. (Ex. 28, Federal Judicial Caseload Statistics, Table C-3 at 6.) If the Panel is inclined to consider caseload statistics, the average per-judge civil dockets in the Northern District of Texas are substantially heavier than those in the Northern District of California. As of March 2017, each Article III judge in the Northern District of California had, on average, approximately 380 pending civil cases; in the Northern District of Texas, each Article III judge had, on average, around 1,090. (Ex. 29, Federal Judicial Caseload Statistics, Table C at 2, 3; Ex. 32, Court Websites.)

Third, convenience favors transfer to the Northern District of California over the Northern District of Texas. With respect to likely third-party witnesses, five named inventors of Uniloc's patents reside in the Northern District or neighboring areas of California. (*See* Ex. 31, Locations of Inventor-Witnesses.) In contrast, no named inventors live in Texas. (*See id;* Motion at Exs. 1-7.) *In re General Motors Corp. Air Conditioning Marketing And Sales Practices Litigation*, -- F. Supp.3d --, 2018 WL 671861 at *2 (J.P.M.L. Feb. 1, 2018) (transferring to district "where relevant documents and witnesses may be found.")

In addition, a California venue would be logistically convenient. Apple, LG, Logitech, Huawei, Peel,[11] and Wink Labs each have offices within the Northern District of California. (Exs. 2, 3, 12, 17.) This would ease travel burdens on witnesses and counsel required to attend hearings, mediations, or other proceedings within the district. The Northern District of California would be markedly more convenient than the Northern District of Texas for Defendants. Specifically:

[11] Peel's only relevant place of business is in the Northern District of California, where all of its witnesses and documents are likely to be located. (Ex. 34, Reddy Decl.)

Huawei: Huawei has no ties to the Northern District of Texas, particularly relating to the issues relevant in this case. (*See* Ex. 3, Huawei Transfer Motion at Motion Ex. 1 Decl. of Zhu Liu.) As set forth in its recent Motion to Transfer, although Defendant Huawei Device USA, Inc. has an office in Plano, Texas (in the Eastern District of Texas), where it houses some financial records, the relevant Huawei witnesses as well as its technical documents are all located within the Northern District of California or in China—no one is located in the Northern District of Texas. (*Id.* at ¶¶ 8, 14.)

Apple: For Apple, too, none of its relevant witnesses or documents are located in Texas. (Ex. 30, Jaynes Decl.) Rather, all of the Apple engineers who worked on the accused functionalities are located in or near Cupertino, in the Northern District of California. (*Id.*)

LG: As explained in LG's recent motion to transfer venue from the Northern District of Texas to the Northern District of California, LG lacks any meaningful ties to the Northern District of Texas (especially as relating to this case), whereas LG's Santa Clara office is home to engineers that worked to develop many of the functionalities accused of infringement. In addition to California, LG anticipates relevant evidence to come from New Jersey and South Korea. (*See* Ex. 2, LG Transfer Motion.)

Exclusive Group, LLL, d/b/a/ Binatone North America ("Binatone"): Binatone agrees that, should the Panel elect to centralize these actions, the Northern District of California is the appropriate transferee court. As stated above, Uniloc asserts that Binatone infringes a single patent, the '158 Patent, and Uniloc asserts the '158 Patent against just two other defendants: Apple and LG. Binatone acknowledges that the '158 action against Apple is already progressing in the Northern District of California, and that LG seeks transfer of its actions to that district. Binatone has no ties to Texas, and Uniloc asserts none, instead, Binatone technical

witnesses and documents are located in Hong Kong, while sales and financial witnesses and documents are in Indiana. Consistent with Apple and LG, Binatone believes the Northern District of California would be the most convenient location if centralization is warranted.

HTC: For HTC, too, none of its relevant witnesses or documents are located in the Northern District of Texas. (Ex. 1 to HTC's Supp. Opposition, Berndt Decl.) Some of HTC's employees work from a facility in the Northern District of California. (*Id.*)

Centralization in California would not inconvenience Uniloc. Of the three Uniloc witnesses listed in the Motion, one lives full-time in California, another owns a residence in southern California, and the third spends as much time in California as in Texas. (Ex. 18, Apple Transfer Order at 4-5, 16-17.) In addition, Uniloc has an office in southern California, where it conducts its "executive-level" and financial meetings. (*Id.* at 17.) As Judge Gilstrap found, given these facts, the "Uniloc witnesses [who] 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 District of California." (*Id.* at 17-18.)

III. CONCLUSION

The cases that are subject to Uniloc's Motion involve different patents, asserted against different Defendants who make different products. Defendants have committed to addressing any potential overlapping issues or discovery informally, and have already proven capable of accomplishing that. Uniloc's Motion should therefore be denied.

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Respectfully submitted,

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