BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

IN RE: Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (HPE Portfolio) Patent Litigation

M.D.L. No. _____

BRIEF IN SUPPORT OF
PLAINTIFFS' 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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Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (collectively "Uniloc"), respectfully submit this Brief in support of Uniloc's Motion for Transfer pursuant to 28 U.S.C. § 1407.[1]

I. INTRODUCTION

Between May and November, 2017, Uniloc filed a total of twenty-five actions against nine defendants and defendant-groups alleging infringement of seven patents.[2] Those cases were filed in six different district courts, including (from west to east) the Western District of Washington; Northern District of California; Northern District of Texas; Eastern District of Texas; Southern District of Indiana; and District of Delaware. After several of the cases were transferred from the Eastern District of Texas to the Northern District of California, the cases are now spread across thirteen different judges. Discovery is only open in seven of the twenty-five cases, with some cases not even yet set for a Rule 26(f) conference.

By this Motion, Uniloc seeks to centralize this disbursed set of actions in the Northern District of Texas pursuant to 28 U.S.C. § 1407. Such transfer and centralization is appropriate because these twenty-five actions involve common questions of fact and law, including claim construction, patent validity and infringement. Further, centralization will prevent duplicative

[1] Uniloc herewith submits copies of all of the docket sheets and complaints for all of the actions to be coordinated or consolidated pursuant to Rule 6.1(b)(iv). The docket sheet and complaint for a given case is combined into a *lettered* exhibit, as listed in the Motion.

Uniloc also herewith submits the Declaration of Aaron S. Jacobs and attaches thereto *numbered* exhibits pursuant to Rule 6.1(b)(v), as similarly listed in the Motion.

[2] The Defendants are Apple, Inc. ("Apple"), *see* Ex. A-Ex. F; Huawei Device USA, Inc. and Huawei Device Co. Ltd. (collectively "Huawei"), *see* Ex. G-Ex. I; LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc. and LG Electronics, Inc. (collectively "LG"), *see* Ex. J-Ex. N; HTC America, Inc. ("HTC"), *see* Ex. O-Ex. Q; Motorola Mobility, LLC ("Motorola"), *see* Ex. R-Ex. U; Peel Technologies, Inc. ("Peel"), *see* Ex. V; Wink Labs, Inc. ("Wink"), *see* Ex. W; Exclusive Group LLC d/b/a Binatone North America ("Binatone"), *see* Ex. X; and Logitech, Inc. and Logitech Europe, S.A. ("Logitech"), *see* Ex. Y.

discovery, such as unnecessarily repetitive depositions of the party and third-party witnesses, some of whom otherwise might need to be deposed eight or nine times. Finally, centralization will conserve judicial resources by removing the duplication—and risk of inconsistent findings of fact and rulings of law—inherent in having more than one judge hold *Markman* hearings, construe the claims and rule upon other disputed issues.

The Northern District of Texas is particularly appropriate for the proposed multidistrict litigation. Five of the earliest cases were filed there. Further, it is a participant in the Patent Pilot Program. And, finally, it is centrally located for the convenience of the parties and counsel.

II. BACKGROUND

A. The HPE patents.

Uniloc acquired the seven patents-at-issue from Hewlett Packard Enterprise ("HPE") in 2017.[3]

1. U.S. Patent No. 6,161,134.

The '134 patent[4] is directed to a method for making a telephone call wherein a telephonic mobile device (*e.g.*, a smartphone) provides instructions regarding the operating parameters for a telephone network to a portable computer (*e.g.*, a tablet). Once the data is shared, one may initiate a call using the portable computer, which transmits the call via the mobile device. Ex. 1.

2. U.S. Patent No. 6,216,158.

The '158 patent is directed to a method for controlling a software application (*e.g.*, Microsoft Word) over a network connection using a mobile device (*e.g.*, a smartphone), wherein the software application cannot be executed on the mobile device. Ex. 2.

[3] The patent summaries provided herein are intended to provide only a high-level overview of each patent without diving too far into the weeds.

[4] For ease of reference, each patent will be referred to by its last three digits.

3. U.S. Patent No. 6,446,127.

The '127 patent is directed to providing a network for a mobile phone to make voice calls using voice-over-data packets (*e.g.*, making a call over WiFi instead of the cellular network). Ex. 3.

4. U.S. Patent No. 6,580,422.

The '422 patent is directed to remotely—via a wireless connection—displaying an image on a remote device wherein the image originates from a mobile device. Ex. 4.

5. U.S. Patent No. 6,622,018.

The '018 patent is directed to controlling a remote device (*e.g.*, a WiFi camera or baby monitor) via a wireless connection with a mobile device (*e.g.*, a smartphone or tablet), wherein the remote device is controlled by receiving commands input into the mobile device. Ex. 5.

6. U.S. Patent No. 6,661,203.

The '203 patent is directed to a battery-charging circuit (in, *e.g.*, a smartphone or tablet) that shuts off if the battery temperature exceeds a threshold. Ex. 6.

7. U.S. Patent No. 7,092,671.

The '671 patent is directed to a method for making a telephone call from a non-telephonic computing device (*e.g.*, a tablet or laptop) via a Bluetooth connection to a telephonic mobile device (*e.g.*, a smartphone). Ex. 7.

B. The ongoing litigation.

There are currently twenty-five cases against nine defendants spread across six districts.

1. There are five actions pending in the Northern District of Texas.

Discovery has not yet commenced in any of the five actions in the Northern District of Texas; the court has ordered the parties to file a Rule 26(f) report by February 22, 2018:

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc. and LG Electronics, Inc.*, No. 4:17-cv-00825-O: Uniloc sued LG on October 13, 2017, for infringement of the '018 patent, based upon its SmartThinQ appliances, smartphones, smart TVs and smartwatches. On January 15, 2018, LG filed an *Iqbal*/*Twombly*-based Rule 12(b)(6) motion to dismiss the complaint. *See* Ex. J.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc. and LG Electronics, Inc.*, No. 4:17-cv-00826-O: Uniloc sued LG on October 13, 2017, for infringement of the '134 patent, based upon its smartphones and smartwatches. On January 15, 2018, LG filed an *Iqbal*/*Twombly*-based Rule 12(b)(6) motion to dismiss the complaint. *See* Ex. K.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc. and LG Electronics, Inc.*, No. 4:17-cv-00827-O: Uniloc sued LG on October 13, 2017, for infringement of the '158 patent, based upon its smartphones and smart appliances. On January 15, 2018, LG filed an *Iqbal*/*Twombly*-based Rule 12(b)(6) motion to dismiss the complaint. *See* Ex. L.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc. and LG Electronics, Inc.*, No. 4:17-cv-00828-O: Uniloc sued LG on October 13, 2017, for infringement of the '203 patent, based upon its smartphones and tablets. On January 15, 2018, LG filed an *Iqbal*/*Twombly*-based Rule 12(b)(6) motion to dismiss the complaint. *See* Ex. M.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. LG Electronics U.S.A., Inc., LG Electronics Mobilecomm U.S.A., Inc. and LG Electronics, Inc.*, No. 4:17-cv-00858-O: Uniloc sued LG on October 20, 2017, for infringement of the '422 patent, based upon its smartphones and smart TVs. On January 15, 2018, LG filed an *Iqbal*/*Twombly*-based Rule 12(b)(6) motion to dismiss the complaint. *See* Ex. N.

2. There are three actions pending in the Western District of Washington.

Discovery has not yet commenced in any of the three actions in the Western District of Washington; the court has granted the defendants until February 9, 2018, to answer or otherwise respond to the complaints and has ordered the parties to file a Rule 26(f) report by February 16, 2018:

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. HTC America, Inc.*, No. 2:17-cv-01558-JLR: Uniloc sued HTC on October 20, 2017, for infringement of the '018 patent, based upon its smartphones. *See* Ex. O.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. HTC America, Inc.*, No. 2:17-cv-01561-RAJ: Uniloc sued HTC on October 20, 2017, for infringement of the '203 patent, based upon its smartphones. *See* Ex. P.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. HTC America, Inc.*, No. 2:17-cv-01562-RAJ: Uniloc sued HTC on October 20, 2017, for infringement of the '422 patent, based upon its smartphones and tablets. *See* Ex. Q.

3. There are three actions pending in the Eastern District of Texas.

Discovery has not yet commenced in any of the three actions remaining in the Eastern District of Texas; the court has granted the defendants until February 28, 2018, to answer or otherwise respond to the complaints:

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Huawei Device USA, Inc. and Huawei Device Co. Ltd.,* No. 2:17-cv-00707-JRG-RSP: Uniloc sued Huawei on October 20, 2017, for infringement of the '018 patent, based upon its smartphones, tablets, computers and smartwatches. *See* Ex. G.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Huawei Device USA, Inc. and Huawei Device Co. Ltd.*, No. 2:17-cv-00714-JRG-RSP: Uniloc sued Huawei on October 26, 2017, for infringement of the '422 patent, based upon its smartphones, tablets and computers. *See* Ex. H.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Huawei Device USA, Inc. and Huawei Device Co. Ltd.*, No. 2:17-cv-00722-JRG-RSP: Uniloc sued Huawei on November 1, 2017, for infringement of the '203 patent, based upon its smartphones. *See* Ex. I.

4. There are six actions pending in the District of Delaware

There are six cases pending in the District of Delaware in differing procedural states, although the parties have yet to reach the requirements of Rule 26(f) in any of the cases:

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Motorola Mobility, LLC*, No. 1:17-cv-01526-JFB-SRF: Uniloc sued Motorola on October 27, 2017, for infringement of the '203 patent, based upon its smartphones. Motorola answered the complaint on January 25, 2018. *See* Ex. R.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Motorola Mobility, LLC*, No. 1:17-cv-01527-JFB-SRF: Uniloc sued Motorola on October 27, 2017, for infringement of the '422 patent, based upon its smartphones. On January 25, 2018, Motorola filed an *Iqbal*/*Twombly*-based Rule 12(b)(6) motion to dismiss the complaint. *See* Ex. S.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Motorola Mobility, LLC*, No. 1:17-cv-01657-GMS: Uniloc sued Motorola on November 15, 2017, for infringement of the '018 patent, based upon its smartphones, smartwatches and wearable devices. The parties recently filed a stipulation to extend Motorola's deadline to answer or otherwise respond out to February 12, 2018. *See* Ex. T.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Motorola Mobility, LLC*, No. 1:17-cv-01658-GMS: Uniloc sued Motorola on November 15, 2017, for infringement of the '134 patent, based upon its smartphones, tablets and smartwatches. The parties recently filed a stipulation to extend Motorola's deadline to answer or otherwise respond out to February 12, 2018. *See* Ex. U.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Peel Technologies, Inc.*, No. 1:17-cv-01552-GMS: Uniloc sued Peel on October 31, 2017, for infringement of the '018 patent, based upon its smart remote application. The parties recently filed a stipulation to extend Peel's deadline to answer or otherwise respond out to February 5, 2018. *See* Ex. V.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Wink Labs, Inc.*, No. 1:17-cv-01656-GMS (D. Del.) (filed Oct. 27, 2017): Uniloc sued Wink on November 15, 2017, for infringement of the '018 patent, based upon its smart home products. Wink has yet to make an appearance. *See* Ex. W.

5. There is one action pending in the Southern District of Indiana.

There is one action pending in the Southern District of Indiana:

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Exclusive Group LLC d/b/a Binatone North America*, No. 1:17-cv-03962-SEB-MJD: Uniloc sued Binatone on November 15, 2017, for infringement of the '158 patent, based upon its smart home products. The court recently approved the parties' Patent Case Management Plan, with fact and expert discovery set to close on October 26, 2018. *See* Ex. X.

6. There are seven actions pending in the Northern District of California.

The cases currently pending in the Northern District of California include one case filed there originally and six others that were just recently transferred in:

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Logitech, Inc. and Logitech Europe, S.A.*, No. 3:17-cv-06733-JSC: Uniloc sued Logitech on November 22, 2017, for infringement of the '018 patent, based upon its remote-control software and devices. The Initial Case Management Conference is set for February 22, 2018. *See* Ex. Y.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Apple, Inc.*, No. 3:18-cv-00358-JD: Uniloc originally sued Apple on May 26, 2017, in the Eastern District of Texas, for infringement of the '203 patent, based upon its iPhones, iPads, iPods, Apple Watches and Apple laptops. The case was assigned to Magistrate Judge Cousins upon transfer. Judge Cousins set an Initial Case Management Conference for April 18, 2018, but Apple declined magistrate judge jurisdiction and so the Conference was taken off calendar. The case was reassigned to Judge Donato. *See* Ex. A.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Apple, Inc.*, No. 4:18-cv-00359-JSW: Uniloc originally sued Apple on May 26, 2017, in the Eastern District of Texas, for infringement of the '422 patent, based upon its iOS devices and software. On December 1, 2017, Apple filed an *Iqbal*/*Twombly*-based Rule 12(b)(6) motion to dismiss the complaint. Briefing was completed on December 28, 2017. The case was assigned to Magistrate Judge Cousins upon transfer. Judge Cousins set an Initial Case Management Conference for February 21, 2018, but Apple declined magistrate judge jurisdiction. Judge White was then assigned and he set the Conference for April 20, 2018. *See* Ex. B.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Apple, Inc.*, No. 3:18-cv-00360-WHA: Uniloc originally sued Apple on May 26, 2017, in the Eastern District of Texas, for infringement of the '671 patent, based upon its iPhones and iPads. The case was assigned to Magistrate Judge Kim upon transfer. Judge Kim set an Initial Case Management Conference for April 30, 2018, but Apple declined magistrate judge jurisdiction. The case was reassigned to Judge Alsup. *See* Ex. C.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Apple, Inc.*, No. 3:18-cv-00363-RS Uniloc originally sued Apple on July 12, 2017, in the Eastern District of Texas, for infringement of the '018 patent, based upon its iOS devices (e.g., iPhones, iPads, iPod Touches and Apple Watches) equipped with Apple AirPlay, Apple TV Remote Application and Apple Home Application. The case was assigned to Magistrate Judge Westmore upon transfer. Judge Westmore set an Initial Case Management Conference for April 17, 2018, but Apple declined magistrate judge jurisdiction. Judge Seeborg was then assigned and he set the Conference for April 19, 2018. *See* Ex. D.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Apple, Inc.*, No. 4:18-cv-00365-HSG: Uniloc originally sued Apple on August 2, 2017, in the Eastern District of Texas, for infringement of the '158 patent, based upon its palm-sized iOS devices equipped with the Apple TV Remote Application. The case was assigned to Magistrate Judge Kim upon transfer. Judge Kim set an Initial Case Management Conference for April 30, 2018, but Apple declined magistrate judge jurisdiction. Judge Gilliam was then assigned and he set the Conference for April 24, 2018. *See* Ex. E.

- *Uniloc, USA, Inc. and Uniloc Luxembourg, S.A., v. Apple, Inc.*, No. 3:18-cv-00572-JD: Uniloc originally sued Apple on July 12, 2017, in the Eastern District of Texas, for infringement of the '134 and '127 patents, based upon its iPhones, iPads, iPods

> and Mac devices. The case was assigned to Magistrate Judge Cousins upon transfer. Judge Cousins set an Initial Case Management Conference for February 21, 2018, but Apple declined magistrate judge jurisdiction and so the Conference was taken off calendar. The case was reassigned to Judge Donato and he set the Conference for April 26, 2018. *See* Ex. F.

As noted above, the six cases against Apple were originally filed in the Eastern District of Texas. On August 22, 2017, these six cases were consolidated with four other, unrelated cases between the parties involving other patents. *See* Ex. 8, Dkt. No. 24. On September 22, 2017, Apple moved to transfer all of the cases to the Northern District of California. *Id.*, Dkt. No. 38. The motion to transfer was granted on December 22, 2017. *Id.*, Dkt. No. 71. The transfers took effect in mid-to-late January, 2018. Ex. A-Ex. F. The cases were assigned to different judges, including several magistrate judges. Apple thereafter declined assignment to magistrate judges, which caused those cases to be reassigned yet again. For those that were set so far, the Initial Case Management Conferences are scheduled for late April through early May. *See id.*

Prior to transfer, the court adopted the parties' proposed Docket Control Order on October 5, 2017. *Id.*, Dkt. No. 42. Since the transfer, none of the assigned judges has, as of yet, issued a new Scheduling Order. Thus, discovery is open, but there are no case deadlines.[5]

III. LAW

Section 1407(a) of Title 28 of the United States Code provides:

> When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.

[5] Apple's counsel stated that "the schedule previously issued by [Eastern District of Texas] Judge Gilstrap no longer governs," Ex. 12 at 1, and that the parties are required to fashion an entirely new schedule, *id.* at 2.

28 U.S.C. § 1407(a). Congress specifically identified patent cases as among the types of cases where substantial economy and efficiency gains could be expected through consolidation for pretrial proceedings. *See* H.R. No. 90-1130, at 3 (1968).

IV. DISCUSSION

Section 1407 lists three requirements for transfer and consolidation. The "civil actions" must be (1) "pending in different districts;" (2) involve "one or more common questions of fact;" and transfer must be (3) "for the convenience of parties and witnesses" and "promote the just and efficient conduct of such actions." 28 U.S.C. § 1407(a); H.R. No. 90-1130, at 3 (1968); *In re: Phoenix Licensing, L.L.C., Patent Litig.*, 536 F. Supp. 2d 1373, 1374 (J.P.M.L. 2008). These factors are each met here.

A. The twenty-five civil actions are pending in different districts.

As is readily apparent, the twenty-five civil actions are spread across six different districts; this is far more than sufficient for centralization. *See, e.g.*, *In re: Automated Transactions LLC Patent Litig.*, 938 F. Supp. 2d 1353, 1354 (J.P.M.L. 2013).

B. The pending actions involve multiple common questions of fact and law.

The actions involve numerous identical issues of fact and law. As Uniloc alleges that all Defendants infringe overlapping patents by engaging in substantially similar behavior, all of the actions will involve several identical factual and legal questions relating to the asserted patents. For example, common issues that will be decided include claim construction, patent validity and infringement. *See, e.g.*, *In re: Innovatio IP Ventures, LLC, Patent Litig.*, 840 F. Supp. 2d 1354, 1355 (J.P.M.L. 2011) ("Centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings (particularly on claim construction issues), and conserve the resources of the parties, their counsel and the judiciary.").

1. The cases involve common factual questions of claim construction.

Although claim construction is a question of law, there are also subsidiary factual questions, *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 837 (Jan. 20, 2015), and so, without centralization, claim construction might lead to inconsistent findings of fact across the thirteen judges in six districts. When the actions are in the initial stages of litigation, as they all are here, centralization will "prevent inconsistent pretrial rulings (*particularly on the complex and time-consuming matter of claim construction*), and conserve the resources of the parties, their counsel, and the judiciary." *In re: TLK Comm's LLC Patent Litig.*, 26 F. Supp. 3d 1396 (J.P.M.L. 2014) (emphasis added); *see, e.g.*, *In re: TR Labs Patent Litig.*, 896 F. Supp. 2d 1337 (J.P.M.L. 2012). This is especially the case when the patents involve relatively complex technology such as those here at issue. *In re: BRCA1- and BRCA2-Based Hereditary Cancer Test Patent Litig.*, 999 F. Supp. 2d 1377, 1338 (J.P.M.L. 2014).

2. The cases involve common questions of invalidity.

The defendants have asserted (or undoubtedly will assert) invalidity as a defense in each case. The Panel has "consistently held that the issue of patent validity presents common questions of fact which satisfy the statutory requirements of § 1407." *In re: Embryo Patent Infringement Litig.*, 328 F. Supp. 507, 508 (J.P.M.L. 1971) (collecting cases); *see, e.g.*, *In re: Method of Processing Ethanol Byproducts & Related Subsystems ('858) Patent Litig.*, 730 F. Supp. 2d 1379, 1380 (J.P.M.L. 2010) (noting that validity would be at issue in all of the actions); *In re: Papst Licensing Digital Camera Patent Litig.*, 528 F. Supp. 2d 1357, 1357 (J.P.M.L. 2007) ("[T]he validity and enforceability of these patents is at issue in all five actions.").

3. The cases involve similar products across all defendants.

There is significant overlap of the products at issue, both as to individual defendants across patents and as to individual patents across defendants. For example, Defendant Apple's

iOS devices—such as the iPhone and iPad—are accused of infringing the all of the asserted patents. So too, Defendant Motorola's smartphones are accused of infringing the '134, '422, '018 and '203 patents. Concomitantly, Defendants Apple, LG, HTC, Huawei and Motorola are all accused of infringing the '018 patent by way of, *inter alia*, their smartphones;[6] while Defendants Peel, Wink and Logitech are accused of infringing the '018 patent by way of their software which may be run on the other Defendants' hardware. *See, e.g.*, *In re: Protegrity Corp. and Protegrity USA, Inc., Patent Litig*., 84 F. Supp. 3d 1380, 1381 (J.P.M.L. 2015) ("That the actions involve differing accused infringing products has not been an impediment to centralization in past litigation involving common patents.").

The vast majority of the legal and factual questions dealt with in pretrial proceedings will thus include substantial cross-over in the twenty-five actions. It is not necessary that all cases involve precisely the same issues; so, the fact that some defendants have differing combinations of the patents asserted against them is not a significant issue. *See e.g.*, *In re: Tribune Co. Fraudulent Conveyance Litig.*, 831 F. Supp. 2d 1371, 1371 (J.P.M.L 2011) ("Section 1407 does not require a complete identity or even a majority of common factual issues as a prerequisite to centralization.") (citing *In re: Denture Cream Prods. Liab. Litig.,* 624 F. Supp. 2d 1379 (J.P.M.L. 2009), and *In re: Phenylpropanolamine (PPA) Prods. Liab. Litig.,* 173 F. Supp. 2d 1377 (J.P.M.L. 2001)). Rather, to the extent they must be addressed, the "[t]ransferee judges can accommodate common and individual discovery tracks, gaining the benefits of centralization without delaying or compromising consideration of claims on their individual merits." *Id.* at 1371-72.

[6] The Defendants' smartphones, other than Apple's, mostly run on the same Android operating system.

"The argument that centralization is inappropriate because of the presence of differing facts concerning infringement has been advanced—and rejected—in recent Panel patent MDL decisions." *In re: Automated Transactions*, 938 F. Supp. 2d at 1354. As the Panel explained in *In re: Bear Creek Techs., Inc.* ('722) *Patent Litig.*, 858 F. Supp. 2d 1375, 1379 (J.P.M.L. 2012):

> The Panel has often centralized litigation involving different products which allegedly infringe a common patent or patents. *See, e.g., In re: Rembrandt Technologies, LP, Patent Litigation,* 493 F.Supp.2d 1367 (J.P.M.L.2007) (centralizing fifteen actions involving one or more of nine patents relating to the provision of high speed internet and digital broadcasting using cable modems) and *In re: Method of Processing Ethanol Byproducts and Related Subsystems ('858) Pat. Litigation,* 730 F.Supp.2d 1379 (J.P.M.L.2010) (centralizing eleven actions alleging infringement of common patent related to the processing of byproducts of ethanol production).

So too, the fact that some Defendants have filed motions to dismiss is not a point of concern. Indeed, the Panel addressed the exact situation at Bar in *In re: Protegrity*, where several defendants filed Rule 12(b)(6) motions based upon *Iqbal*/*Twombly* and 35 U.S.C. § 101. The Panel explained that "centralization will eliminate the potential for inconsistent rulings on several pending motions to dismiss willful or indirect infringement allegations and the two pending motions to dismiss based on unpatentable subject matter." 84 F. Supp. 2d at 1381. Otherwise, there will be significant judicial inefficiencies—and potential inconsistencies—as up to thirteen judges across six jurisdictions might be called to rule upon the exact same motion.

C. Centralization will promote the just and efficient resolution of the actions.

Finally, centralization is appropriate here "for the convenience of parties and witnesses" and to "promote the just and efficient conduct" of the actions. 28 U.S.C. § 1407.

1. Centralization will prevent duplicative discovery.

"[T]he crucial issue in determining whether to grant pretrial consolidation is . . . whether 'the economies of transfer outweigh the resulting inconvenience to the parties.'" 15 Wright & Miller, *Federal Practice and Procedure* § 3863 (3d ed. 2013) (citations omitted).

To date, no substantive discovery has taken place, even in the earliest-filed cases. Thus, centralization of the actions at this time will be minimally—if at all—disruptive and maximally beneficial. As all the actions pertain to overlapping patents, a substantial portion of the discovery sought will be the same in all twenty-five actions; many of the same documents will be sought and many of the same witnesses will need to be deposed in each case.[7] If the actions proceed separately, many witnesses will need to be deposed repeatedly regarding identical issues. For example, even if assuming that all of the cases between Uniloc and a given defendant in a given district are consolidated, the following witnesses would be subject to multiple, repetitive depositions:

Witness	Affiliation	Location	Number of Depositions
Craig Etchegoyen	Uniloc Luxembourg	Plano, TX Kona, Hawaii Newport Beach, CA	9: One by each Defendant.
Sean Burdick	Uniloc USA	Plano, TX Boise, ID Newport Beach, CA Irvine, CA	9: One by each Defendant.
Drake Turner	Uniloc Luxembourg	Los Angeles, CA	9: One by each Defendant.
Rich Erekson	Third-party inventor of the ’018 patent	Kwajalein Atoll, Marshall Islands	8: Defendants Apple, LG, Huawei, HTC, Peel, Wink Labs, Motorola and Logitech
Dale Wolin	Third-party inventor of the ’203 patent	Boise, ID	5: Defendants Apple, LG, HTC, Huawei and Motorola
Eugene Cohen	Third-party inventor of the ’203 patent	Eagle, ID	5: Defendants Apple, LG, HTC, Huawei and Motorola
Richard G. Sevier	Third-party inventor of the ’203 patent	Boise, ID	5: Defendants Apple, LG, HTC, Huawei and Motorola
John R. Reilly	Third-party inventor of the ’422 patent	Roseville, CA	5: Defendants Apple, LG, HTC, Huawei and Motorola
Peter Si-Sheng Wang	Third-party inventor of the ’134 patent	Cupertino, CA	3: Defendants Apple, LG and Motorola.
Ismail Dalgic	Third-party inventor of the ’134 and ’127 patents	San Carlos, CA	3: Defendants Apple, LG and Motorola.

[7] For example, Defendant Apple produced a single set of documents across all of the cases against it under a single Protective Order and single Discovery Order. Jacobs Decl. ¶¶ 14-15.

Witness	Affiliation	Location	Number of Depositions
Wenjun Luo	Third-party inventor of the ’158 patent	Cupertino, CA	3: Defendants Apple, LG and Exclusive Group
Elaine P. Lush	Third-party inventor of the ’158 patent	Pleasanton, CA	3: Defendants Apple, LG and Exclusive Group
E. Michael Lunsford	Third-party inventor of the ’671 patent	San Carlos, CA	2: Defendants Apple and Samsung
Steve Parker	Third-party inventor of the ’671 patent	Centerville, UT	2: Defendants Apple and Samsung
David Kammer	Third-party inventor of the ’671 patent	Raleigh, NC	2: Defendants Apple and Samsung
David Moore	Third-party inventor of the ’671 patent	Riverton, UT	2: Defendants Apple and Samsung
16 Witnesses			**75 Depositions**

See Schedule of Inventors; Jacobs Decl. ¶¶ 17-32.

Section 1407 was enacted to prevent just this sort of waste of time and resources. *See* H.R. No. 90-1130, at 2 (1968) (“The committee believes that the possibility for conflict and duplication in discovery and other pretrial procedures in related cases can be avoided or minimized by such centralized management.”). Towards this end, “transfer under Section 1407 has the benefit of placing all actions . . . before a single transferee judge who can structure pretrial proceedings to consider all parties’ legitimate discovery needs while ensuring that common parties and witnesses are not subjected to discovery demands which duplicate activity that has already occurred or is occurring in other actions.” *In re: MLR*, 269 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003). Centralizing the actions will serve the convenience of the witnesses, who will otherwise need to give testimony on identical issues in many cases; and will be more convenient for parties, who will avoid duplicative efforts to obtain the same documents and information. *See, e.g.*, *In re: Rembrandt Techs.*, 493 F. Supp. 2d at 1367 (centralizing fifteen actions involving one or more of nine patents).

2. Centralization will conserve judicial resources.

As this Panel noted more than forty years ago, "it is not an insubstantial burden which patent litigation imposes on a district judge." *In re: Molinaro/Catanzaro Patent Litig.*, 380 F. Supp. 794, 795 (J.P.M.L. 1974). Such sentiment is even more true today, given the increasing complexity of patent cases.

a. Centralization will avoid the need for multiple, duplicative *Markman* hearings.

As noted *supra*, claim construction involves subsidiary questions of fact, and so consolidation will avoid potential conflicts of fact between the districts. It will also avoid the need for up to thirteen judges in six districts to prepare for and conduct overlapping, time-intensive claim-construction hearings. *See, e.g.*, *In re: Rivastigmine Patent Litig.*, 360 F. Supp. 2d 1361, 1362 (J.P.M.L 2005) ("Centralization under Section 1407 is necessary in order to . . . prevent inconsistent pretrial rulings, especially with respect to time-consuming and complex matters of claim construction.").

There is no doubt that the process of conducting *Markman* hearings is time-consuming and expensive—both for the parties and for the court.

> During . . . *Markman* hearings, which are often longer than jury trials, parties battle over experts offering conflicting evidence regarding who qualifies as one of ordinary skill in the art; the meaning of patent terms to that person; the state of the art at the time of the invention; contradictory dictionary definitions and which would be consulted by the skilled artisan; the scope of specialized terms . . . and on and on.

Phillips v. AWH Corp., 415 F.2d 1303, 1332 (Fed. Cir. 2005). Thus, a great deal of resources will be conserved by allowing one judge to construe the terms just once, and avoid the potential for conflicting conclusions of fact and rulings of law.

b. Centralization will prevent inconsistent pretrial rulings.

Finally, centralization will prevent inconsistent pretrial rulings on many issues besides claim construction. Because the actions present multiple common questions of fact and law, the judges presiding over these actions will likely face the same or similar motions on the same issues, wasting the time of both the courts and the parties. Bringing the cases together will eliminate this waste of resources, just as Section 1407 was intended to do. *See e.g.*, *In re: Mirtazapine Patent Litig.*, 199 F. Supp. 2d 1380, 1381 (J.P.M.L. 2002).

D. The cases should be centralized in the Northern District of Texas.

The Northern District of Texas is the appropriate transferee venue for coordinated or consolidated pretrial proceedings of the current actions.

First, five of the earliest-filed actions are pending in this district. *See, e.g.*, *In re: Compression Labs, Inc., Patent Litig.*, 360 F. Supp. 2d 1367, 1369 (J.P.M.L. 2005) (noting that some actions were already pending in the selected jurisdiction).[8] Indeed, the Panel has regularly centralized patent litigation in the district with the most experience and knowledge of the issues and patented technology. *See, e.g.*, *In re: Automated Transactions*, 938 F. Supp. 2d at 1354.

Second, the Northern District of Texas is a "geographically central forum for this nationwide litigation and has the resources available to efficiently adjudicate this multidistrict litigation." *In re: H&R Block IRS Form 8863 Litig.*, 977 F. Supp. 2d 1364, 1365 (J.P.M.L. 2013). Plaintiff Uniloc USA is a Texas corporation located nearby in Plano, Texas. *See, e.g.*, Ex. G. So too, Defendant Huawei Device USA is a Texas corporation with its principal place of

[8] Although the actions against Apple were filed earlier, they were filed in the Eastern District of Texas and then recently transferred to the Northern District of California. That transfer effectively reset the schedules of those cases. *See* Ex. 12 at 1-2. Other than the transfer, little of substance has taken place in these cases.

business in Plano. *Id.* Defendant LG Electronics U.S.A. has a significant office in Fort Worth, Texas. Ex. J. Defendant Apple has a massive office in nearby Austin, Texas; indeed, this campus is the biggest Apple office anywhere, including Apple's Cupertino, California headquarters, with more than 6,000 employees. *See* Ex. 9. Uniloc had to sue Defendant HTC on the West Coast, in Washington State; while Uniloc had to sue Motorola, Peel and Wink on the East Coast, in Delaware. And Defendant Binatone was sued in the Southern District of Indiana. As such, there are many parties at home in Texas, while the others are geographically dispersed. Asking the parties and counsel to travel to a mid-point of the country is fair.[9]

Third, the Northern District of Texas participates in the Patent Pilot program, and so is well versed in handling patent cases. *See, e.g.*, *In re: Indus. Print Techs., LLC, Patent Litig.*, 98 F. Supp. 3d 1378, 1381 (J.P.ML. 2015) (recognizing the value that "[t]he Northern District of Texas also is participating in the national Patent Pilot Program"). Indeed, the just-cited case of *In re: Industrial Print Technologies* is an excellent parallel to the matter at Bar. Therein, the defendants were sued for infringement of seven patents in ten actions pending in six different districts. The Panel concluded that a few of the actions were not appropriate for centralization, as they had already progressed past claim construction and had the close of discovery fast approaching. *Id.* at 1380. But, centralization of the remaining actions would "eliminate duplicative discovery, prevent inconsistent pretrial rulings (particularly on claim construction

[9] It is worth noting that Defendants' counsel are also geographically dispersed, although the majority of them are in the middle of the country. For example, Apple's counsel are located in Chicago, IL, even though those cases are in the Northern District of California. Huawei's counsel are located in Dallas, TX, for cases in the Eastern District of Texas. LG's counsel are located in Dallas, TX, New York, NY and Reston, VA, for cases in the Northern District of Texas. HTC's counsel are located in Seattle, WA, Washington, D.C., and Dallas, TX, for cases located in the Western District of Washington. And Motorola's counsel are located in Wilmington, DE, Madison, WI and Chicago, IL, for cases in the District of Delaware. *See* Proof of Service.

issues), and conserve the resources of the parties, their counsel and the judiciary." *Id.* at 1381. The panel then had little difficulty in selecting the Northern District of Texas, where one of the actions was already pending, as the appropriate venue:

> We conclude that the Northern District of Texas is an appropriate transferee district for this litigation. Although there is no single location that will be convenient for all parties to all underlying actions, several accused infringers have operations in or near this district, and Dallas provides an easily accessible location. The Northern District of Texas also is participating in the national Patent Pilot Program, and Judge Barbara M.G. Lynn, to whom we assign this action, is one of the judges participating in that program. She is an experienced jurist who has presided over complex patent litigation, and we are confident that she will steer this matter on a prudent course.

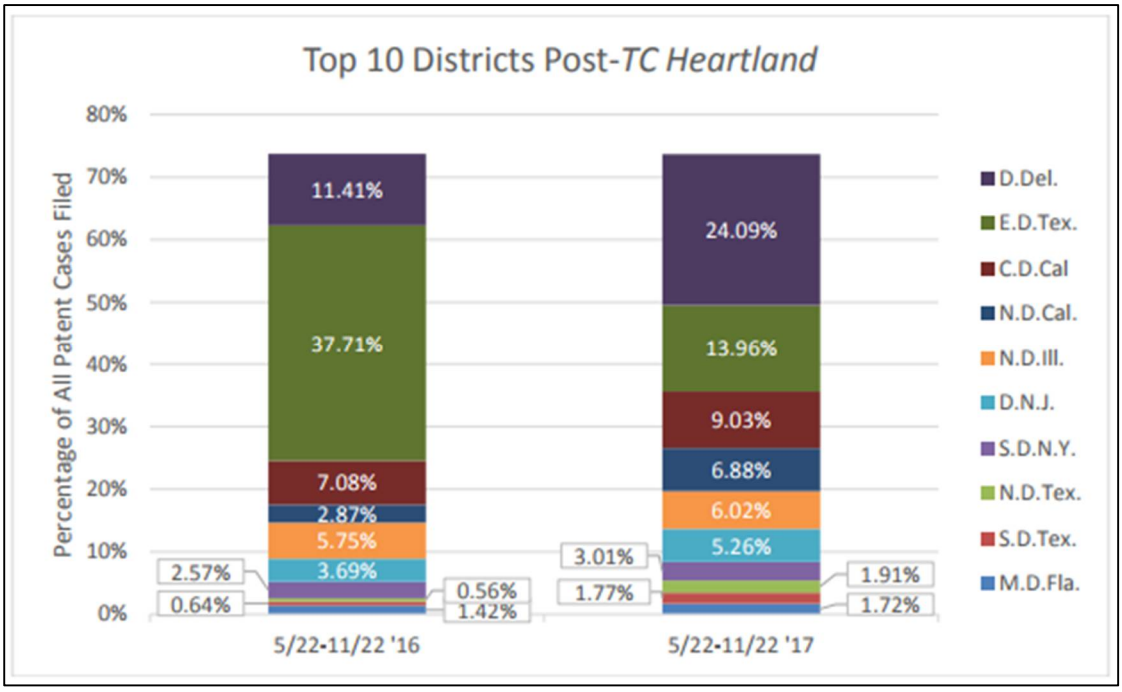
Id. The outcome should be the same here.

Beyond the convenience of a central location for the parties and counsel, the Northern District of Texas has much else to recommend it. For example, the average time to trial for the Northern District of Texas was 20.4 months in the twelve-month period ending September 30, 2017, good for 12th best in the nation. *Federal Court Management Statistics* (Sept. 30, 2017), *available at* http://www.uscourts.gov/file/23320/download.[10] This is significantly better than the national average of 26.3 months; the District of Delaware's 26.1 months (35th best); and the Northern District of California's 24.8 months (25th best). *Id.*

Some of the Defendants may advocate for consolidation in either the District of Delaware or Northern District of California. Either would be a port choice. In the wake of *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017), there has been a diaspora of patent case filings out of the Eastern District of Texas and into Delaware and California. The following chart displays the change in patent case filings by tracking those filings over the six-

[10] The Western District of Texas, which would also be an appropriate venue, has a time to trial of 20.5 months (13th best). The Eastern District of Texas has a time to trial of 23.8 months (20th best). *See Federal Court Management Statistics* (Sept. 30, 2017).

month period from May 22 to November 22, 2016 (prior to *TC Heartland*) and May 22 to November 22, 2017 (after *TC Heartland*):



Ex. 10. As this makes clear, for this period patent case filings in Delaware jumped from 11.41% in 2016 to 24.09% of all patent cases in 2017; while filings in the Northern District of California went from 2.87% to 6.88%. Conversely, filings in the Northern District of Texas were still below 2% even after *TC Heartland*. It is also worth noting that the number of cases transferred into the District of Delaware and Northern District of California has spiked since *TC Heartland*. *See* Ex. 11. As such, those districts would not be appropriate as transferee venues.

Indeed, this Panel previously noted its reticence to transfer patent cases to jurisdictions—including specifically Delaware—with already-large caseloads, even if it means transferring a case to a district without a related case already pending therein. *In re: Webvention LLC ('294) Patent Litig.*, 831 F. Supp. 2d 1366, 1367 (J.P.M.L. 2011) ("We are of the view that the District of Maryland is an appropriate transferee district for pretrial proceedings in this litigation. While we are typically hesitant to centralize litigation in a district in which no constituent action is

pending, the circumstances in this litigation justify doing so. This patent litigation is pending in two federal district courts with large civil caseloads, and many of the actions in the Eastern District of Texas could have been filed elsewhere. The relative docket conditions in the District of Maryland are more favorable than the other proposed transferee forums.").[11]

V. CONCLUSION

For the foregoing reasons, Uniloc respectfully requests that the Panel transfer all pending actions to the Northern District of Texas for coordination or consolidation pursuant to 28 U.S.C. § 1407.

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[11] Notably, the Panel in *In re: Webvention* declined to transfer cases to the Eastern District of Texas because, at that time, that district (like the District of Delaware) was particularly full of patent cases. Although this is still true (and even more so now) in Delaware, the Eastern District of Texas has seen a significant decline the wake of *TC Heartland*.