

**United States Court of Appeals
for the Federal Circuit**

UNILOC USA, INC., UNILOC LUXEMBOURG S.A.,
Plaintiffs-Appellants

UNILOC 2017 LLC,
Plaintiff

v.

APPLE INC.,
Defendant-Appellee

ELECTRONIC FRONTIER FOUNDATION,
Intervenor-Appellee

2021-1568, 2021-1569, 2021-1570, 2021-1571, 2021-1573

Appeals from the United States District Court for the Northern District of California in Nos. 3:18-cv-00358-WHA, 3:18-cv-00360-WHA, 3:18-cv-00363-WHA, 3:18-cv-00365-WHA, 3:18-cv-00572-WHA, Judge William H. Alsup.

Decided: February 9, 2022

AARON JACOBS, Prince Lobel Tye LLP, Boston, MA, argued for plaintiffs-appellants. Also represented by JAMES J. FOSTER.

DOUG J. WINNARD, Goldman Ismail Tomaselli Brennan & Baum LLP, Chicago, IL, argued for defendant-appellee. Also represented by ALAN ERNST LITTMANN, MICHAEL T. PIEJA; CATHERINE CARROLL, DAVID P YIN, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC; MARK D. SELWYN, THOMAS GREGORY SPRANKLING, Palo Alto, CA.

ALEXANDRA HELEN MOSS, Electronic Frontier Foundation, San Francisco, CA, argued for intervenor-appellee. Also represented by AARON DAVID MACKEY.

Before LOURIE, MAYER, and CUNNINGHAM, *Circuit Judges*.

Opinion for the court filed by *Circuit Judge* LOURIE.

Dissenting opinion filed by *Circuit Judge* MAYER.

LOURIE, *Circuit Judge*.

Uniloc USA, Inc., and Uniloc Luxembourg, S.A. (collectively, “Uniloc”) appeal from a decision of the United States District Court for the Northern District of California refusing to seal certain documents in several related cases between Uniloc and Apple Inc. (“Apple”). *See Uniloc USA, Inc. v. Apple, Inc.*, 508 F. Supp. 3d 550 (N.D. Cal. 2020) (“*Decision*”). For the reasons provided below, we vacate and remand.

BACKGROUND

This is Uniloc’s second appeal regarding the sealing of documents. In its first appeal, Uniloc attempted to defend requests to seal matters of public record, such as quotations of this court’s opinions and a list of patent cases Uniloc had filed. *See Uniloc 2017 LLC v. Apple, Inc.*, 964 F.3d 1351 (Fed. Cir. 2020). The district court correctly applied its local rules to reject these requests in their entirety and to reject Uniloc’s request for reconsideration. This

court affirmed the district court's rulings in nearly all respects.

We also held, however, that the district court must conduct a more detailed analysis on whether confidential licensing information of certain third-party licensees of Uniloc's patents should be sealed. *Id.* at 1363–64. As for this subset of information, we remanded for the district court to “make particularized determinations as to whether and, if so, to what extent, the materials of each of these parties should be made public.” *Id.* at 1364. The present appeal is narrowly directed to this third-party licensing information.

One threshold issue raised by this court in its remand order was whether Uniloc's financier, Fortress Credit Co. LLC (“Fortress”), should be considered a third party or a Uniloc-related entity for purposes of sealing. Uniloc moved to seal or redact third-party documents that revealed licensing terms, licensees' names, amounts paid, and dates. One document at issue was a Fortress investment memorandum that contained Fortress's investment criteria and other third-party licensing information. Apple did not oppose Uniloc's motion. The Electronic Frontier Foundation (“EFF”) moved to intervene to argue in favor of unsealing, and the district court granted its motion.

The district court denied Uniloc's motion. The court explained that “[t]he public has every right to account for . . . anyone holding even a slice of the public grant.” *Decision* at 554. It added that “patent licenses carry unique considerations” that bolster the public's right of access, including the valuation of patent rights. *Id.* at 555. The court further stated that “[t]he public has an interest in inspecting the valuation of the patent rights” reflected in Uniloc's licenses. *Id.* It then suggested that disclosure of patent licensing terms would facilitate “up-front cost evaluations of potentially infringing conduct,” “driv[e] license values to a more accurate representation of the

technological value of the patent,” and help “inform reasonable royalties in other courts.” *Id.*

The district court also determined that “the dates and dollar amounts involved in Uniloc’s patent licenses go to the heart of the primary dispute, that of Uniloc’s standing (or lack of) to sue.” *Id.* (internal quotation marks omitted). The court then ordered that the licensing information, including the identity of the licensees, be unsealed in full.

With respect to the Fortress investment memorandum, the district court found that Fortress did not comply with Local Rule 79-5(e)(1) of the Northern District of California because Uniloc filed a declaration in support of sealing, instead of Fortress, as required by the rules. *Id.* On this basis alone, the court denied Uniloc’s request to seal this document.

Uniloc filed the present notice of appeal to this court. We have jurisdiction pursuant to the collateral order doctrine. *See Uniloc 2017*, 964 F.3d at 1357–58.

DISCUSSION

This appeal involves the standard for sealing court records, not substantive issues of patent law. Thus, Ninth Circuit law applies. *Uniloc 2017*, 964 F.3d at 1357. “In the Ninth Circuit, a district court’s decision to seal or unseal court records is reviewed for abuse of discretion.” *Id.* “A district court abuses its discretion if it bases its decision on an erroneous legal standard or clearly erroneous findings of fact.” *Apple Inc. v. Samsung Elecs. Co.*, 727 F.3d 1214, 1221 (Fed. Cir. 2013) (internal quotation marks omitted). A district court also abuses its discretion if the reviewing court “has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors.” *Id.*

Sealing may be appropriate to keep records from being used “as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner*

Commc'ns, Inc., 435 U.S. 589, 598 (1978). In the Ninth Circuit, “compelling reasons” are needed to seal judicial records related to a dispositive motion. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Such compelling reasons include preventing the release of trade secrets. *Id.*

Uniloc and Apple both argue that the district court erred in failing to follow this court’s remand instructions to make particularized determinations as to whether third-party licensing information should be sealed. The parties contend that the court erroneously applied heightened scrutiny to requests to seal licensing information. Apple adds that such information can rise to the level of a trade secret, which is the type of information that the Ninth Circuit has deemed sealable. Uniloc cites various cases from the district court and the Ninth Circuit sealing similar types of information. *See, e.g., Uniloc 2017 LLC v. Google LLC*, 508 F. Supp. 3d 556, 575 n.23 (N.D. Cal. 2020); *In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2009).

Intervenor EFF counters that denying Uniloc’s motion was a sound use of the district court’s discretion. EFF adds that the court conscientiously weighed Uniloc’s submissions in support of sealing and concluded that they were insufficient to overcome the public’s strong interest in access.

We conclude that the district court failed to follow our remand instructions to make particularized determinations as to whether the third-party licensing information sought to be sealed should be made public. That failure was an abuse of discretion. The first time this case appeared before us, “the district court failed to make findings sufficient to allow us to adequately assess whether it properly balanced the public’s right of access against the interests of the third parties in shielding their financial and licensing information from public view.” *Uniloc 2017*, 964 F.3d at 1364. We explained that “there is no indication

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