

Exhibit 12

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

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

MEMORANDUM ORDER AND OPINION

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

I. BACKGROUND

A. The Parties

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

B. Procedural History

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

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

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

C. Uniloc’s Representations and Contradictions

1. Uniloc’s Representations

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

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

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

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

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

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

2. Facts Revealed After Venue Discovery

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

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

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