Miscellaneous Docket No. 20-135

IN THE

United States Court of Appeals for the Federal Circuit

IN RE APPLE INC.,

Petitioner.

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

APPLE INC.'S OPPOSITION TO RESPONDENT'S MOTION FOR LEAVE TO FILE A SUR-REPLY

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Petitioner Apple Inc. opposes the Motion for Leave to File Sur-Reply Brief filed by Respondent Uniloc 2017, LLC.

A surreply is not authorized or even contemplated by the Federal Rules of Appellate Procedure or this Court's Rules. Nothing Uniloc has said in its proposed surreply undermines the merits of Apple's mandamus petition. But neither has Uniloc offered any reason why it should be granted this extraordinary relief.

Uniloc argues a surreply is warranted because Apple purportedly raised "new" arguments on reply. Dkt. 39-2 at 1-2. (Uniloc similarly asserts throughout its proposed surreply that Apple's arguments are "waived."). Apple disputes that these arguments are "new," as they relate directly to issues briefed and argued both in the district court and to this Court. Indeed, the "new" arguments in question are Apple's responses to specific statements in (1) the district court's Order, which issued after the petition was filed,[1] and (2) Uniloc's opposition brief,

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[1] Uniloc protests that Apple filed its mandamus petition before the district court's written order issued. As Apple explained, it did so after waiting more than a month from the district court's announcement of its decision—and after repeatedly inquiring about the status of a written order. *See* Dkt. 2 at 9-10 ("Given the rapid progression of this case, Apple cannot wait any longer for a written order before seeking

which was also filed after the Order issued, and which not only defended that Order but also purported to introduce new evidence. *See* Dkt. 37 at 7, 12. It is entirely appropriate for a party to use its reply brief to address arguments made in a response brief. *See, e.g., Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 706 (Fed. Cir. 2020). That is particularly true where, as here, Apple bears the burden of proof (both before this Court and on the underlying question of transfer).

Notably, Uniloc did not express any concern about the briefing structure when it sought and received a 7-day extension to file its opposition—an extension specifically requested to "allow [Uniloc] to incorporate and address the District Court's Order in its Response brief." Dkt. 12 at 2. It cannot seriously claim that a surreply is now required because Apple responded to the district court's Order, too. On the contrary, every unconventional aspect of this briefing structure worked entirely to Uniloc's benefit: Uniloc, unlike Apple, had the chance to address the district court's reasoning in a full-length brief,

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mandamus to prevent the case from moving forward in an inconvenient venue."). This Court has previously denied Apple relief based on delay that was largely attributable to the district court's actions. *See In re Apple Inc.*, 456 F. App'x 907, 908-09 (Fed. Cir. 2012). Apple seeks to avoid that result here.

and it was given an extra week to do so. Apple was afforded 3 days to address both the Order and Uniloc's Response in a shorter, reply-length filing. The proposed surreply, which stretches 3,851 words and was filed 7 days after Apple's reply, would push the balance of time and words even further in Uniloc's favor.

Finally, while Uniloc attempts to justify its extraordinary filing based on a need to address purportedly "new" arguments, its proposed filing is a complete brief that goes well beyond those arguments and instead comprehensively addresses Apple's reply. *See, e.g.*, Dkt. 39-2 at 13-14.

Apple respectfully requests that the Court deny Uniloc's motion.

Respectfully submitted,

/s/ Melanie L. Bostwick

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