



Christian Hurt

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July 30, 2020

Via CM/ECF

Peter R. Marksteiner
Circuit Executive & Clerk of the Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

Re: In re Apple Inc., No. 20-135

Dear Colonel Marksteiner:

Uniloc responds to Apple's letter regarding *In re Adobe Inc.*, No. 20-126 (Fed. Cir. July 28, 2020). *Adobe* does not require issuing a writ in this case.

The two private-interest-factor errors in *Adobe* did not happen here. *Adobe* had no meaningful connection to Texas—the defendant, the inventor, and the inventor's company all were in the Northern District of California ("NDCA"). *Adobe*, at 5–6. In contrast, the Court here credited significant proof located in the Western District of Texas ("WDTX")—including Apple's proof:

- **Infringement:** Apple engineers work on the content delivery network, which provides the accused downloading functionality (*e.g.*, downloading apps), SAppx20;¹
- **Infringement:** Flextronics manufactures an accused product (including loading the accused software) for Apple, SAppx21–22; SAppx24; and
- **Damages:** Apple handles all revenue reporting, including royalties to third-party app developers for downloaded apps. SAppx20.²

¹ Apple's later-produced source code identified a former Apple engineer that appears located in Austin.

² Additional proof is within the Court's subpoena power. Huawei has its U.S. headquarters in Plano, Texas. SAppx24. Uniloc identified proof in Northeast

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And, unlike *Adobe*, the inventors are not located in the NDCA. They (and prosecution counsel) are located over 1,200 miles closer to the WDTX, which carries weight under the Fifth Circuit’s 100-mile rule. SAppx37. This case is not *Adobe*.

The Court also did not give the trial date dispositive weight under the court-congestion factor, the third error in *Adobe*. The Court cited district-wide case statistics to find that “WDTX is simply a less congested venue than NDCA.” SAppx29–30. The transfer decision also did not hinge on congestion or the Court’s trial date. The Texas and New York evidence weighed in favor of retention, and the California evidence pushed the other way. SAppx15–27. On that predominantly neutral record (congestion aside), the Court was within its broad discretion to find that Apple did not show that the NDCA was a *clearly more convenient* forum.

Respectfully submitted,

/s/Christian J. Hurt
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Counsel for Respondent
Uniloc 2017 LLC

cc: Counsel of record (via CM/ECF)

Texas. SAppx19; SAppx26. Apple recently identified two third-party prior art witnesses with a Plano presence (and there is at least one other prior art witness in the Austin area, SAppx26).