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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

UNILOC USA, INC., and UNILOC)
LUXEMBOURG, S.A.,)

Plaintiffs,)

VS.)

NO. C 3:18-cv-00358
Related cases: 18-360,
18-363, 18-365, and 18-572

APPLE INC.,)
Defendant.)

San Francisco, California
Thursday, January 10, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

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Reported By: Marla F. Knox, RPR, CRR
Official Reporter

1 Thursday - January 10, 2019

8:00 a.m.

2 P R O C E E D I N G S

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4 **THE CLERK:** Calling Civil action 18-358, Uniloc USA,
5 Inc., et al versus Apple Inc., and related cases 18-360, Uniloc
6 USA, Inc., et al versus Apple, Inc.; 18-363, Uniloc USA, Inc.,
7 et al versus Apple Inc., 18-365, Uniloc USA, Inc., et al versus
8 Apple Inc., and 18-572, Uniloc USA, et al. versus Apple Inc.

9 Counsel, please state your appearance for the record.

10 **MR. FOSTER:** James Foster for the Uniloc Plaintiffs,
11 Your Honor.

12 **MR. WINNARD:** Doug Winnard for Defendant Apple.

13 **THE COURT:** All right. So I think I understand the
14 issue. We don't have -- I'm not going to give you long-winded
15 time, but who is going to argue for Apple?

16 **MR. WINNARD:** I am, Your Honor.

17 **THE COURT:** Go ahead. Make your best point.

18 **MR. WINNARD:** This case presents a serious problem
19 regarding lack of constitutional standing, and that problem was
20 compounded by a pattern of misrepresentation and concealment
21 by the Plaintiffs. This Court should dismiss the case for lack
22 of subject matter jurisdiction and should exercise its
23 discretion to do so with prejudice. A legal injury is the
24 absolute constitutional minimum to come to federal court and
25 seek redress. In a patent case that legal injury stems from

1 the right to exclude. If someone claiming to hold rights to a
2 patent does not have the right to exclude, they do not have any
3 redressable injury in federal court. There is no subject
4 matter jurisdiction in that case. That is the circumstance
5 here at the time the named Uniloc Plaintiffs --

6 **THE COURT:** Why was that? Is that because of that
7 Fortress thing?

8 **MR. WINNARD:** Your Honor, at this point because the
9 briefing was filed under seal, I would direct it to Counsel.

10 **THE COURT:** I'm going to respect that for the moment,
11 but I want everyone here to know there is no way this deserves
12 to be under seal. There are machinations going on here by
13 Uniloc. You may win this yet, Uniloc; but I want you to know
14 these are machinations that in my view are designed to insulate
15 Uniloc and HP from liability for sanctions probably. But
16 whatever it is, they are machinations; and the world deserves
17 to know that and all these other people you are suing
18 deserve -- so none of this is going to be under seal except I'm
19 going to keep it under seal long enough to let you go to the
20 federal circuit to get relief on a very short basis, like two
21 weeks. After that, the public is going to know.

22 Now, but that doesn't mean that Apple wins this motion.
23 The -- since I can't -- I'm not going to say anything more
24 because this is a public courtroom and -- but I think some
25 technical points have been made by the other side that may --

1 mainly that the lender in the case -- I will just say very --
2 if the lender in the case doesn't think there was an event of
3 default, why should the Court find that there was? That is the
4 main problem.

5 **MR. WINNARD:** Sure, Your Honor. I want to be careful
6 here regarding the sealing. I don't know if Counsel has any
7 position --

8 **THE COURT:** I'm not going to exclude people from the
9 courtroom over something this ridiculous.

10 **MR. WINNARD:** Understood, Your Honor. So in this case
11 it doesn't matter what in hindsight the lender says it
12 thought --

13 **THE COURT:** Yes, it does. Yes, it does. Why should
14 I -- listen, I think it makes some difference whether or not --
15 if the lender doesn't think there was an event of default,
16 where do I get off finding that there was one?

17 **MR. WINNARD:** The event -- the lender thought there
18 was an event of default because the evidence that reflects the
19 actual intent is in the written agreements themselves. And
20 before Apple filed its motion, we deposed two 30(b)6 witnesses
21 on behalf of Plaintiffs. Those witnesses testified that the
22 agreements completely and fully reflected the intent of the
23 parties.

24 Only after Apple filed its motion did we get a declaration
25 from another witness of Plaintiffs' claiming now that actually

1 the agreements didn't fully reflect the intent of the parties
2 because the circumstances had changed. There were differences.
3 We forgot to do, you know, X or Y; but none of that was in the
4 original 30(b)6 testimony. This only came out after Apple
5 filed its motion.

6 **THE COURT:** Why shouldn't I just let the jury decide
7 whether or not there is standing? Let all these machinations
8 come to light. Let the jury decide whether or not Uniloc has
9 standing. We will bifurcate that part. If the jury rules for
10 Uniloc, then we will go to part two. The jury gets to decide
11 the rest.

12 **MR. WINNARD:** There is no dispute as to material fact
13 here. All of the evidence --

14 **THE COURT:** That's what you say, but maybe there
15 isn't. Maybe there is. The other side says there was no event
16 of default.

17 **MR. WINNARD:** But at that point that is all parole
18 evidence.

19 **THE COURT:** That's your side of it. I don't know.
20 You patent lawyers, you think of everything. I mean, you leave
21 no stone -- I can't think of all the machincation -- you are
22 going through machinations yourself to find some event of
23 default.

24 **MR. WINNARD:** Your Honor, I will respond that the
25 event of default is quite clearly defined in the agreements

1 regarding the amount of revenue that needed to be generated.
2 Now maybe Fortress thought, We will just overlook that. We
3 will say, You know what, we will hold it in our back pocket.
4 We are not going to hold Uniloc to it now; but it would be nice
5 to have it in reserve if we need it, and it is only now --
6 after Apple filed its motion -- that they realize the
7 consequences -- the legal consequences of constitutional
8 standing from holding that right. Because a third party,
9 non-exclusive licensee, held an absolute right in its sole
10 discretion to license any entity it wanted to, the Uniloc
11 Plaintiffs had no legal right to exclude those entities.

12 **THE COURT:** I understand your argument; and if that's
13 true, you win.

14 **MR. WINNARD:** And, Your Honor, --

15 **THE COURT:** All right. Just -- okay. But I'm still
16 inclined to let the jury decide this. This will be issue
17 number one in a bifurcated trial. So Uniloc would have to get
18 past this with a jury before they even get to first base.
19 All right. Let me hear from Uniloc on this.

20 **MR. FOSTER:** May I submit the slides to the Court,
21 Your Honor? There is only five of them.

22 **THE COURT:** Are they -- is everything in the record or
23 is this new stuff?

24 **MR. FOSTER:** Well, they are quotations from cases that
25 have been cited.

1 **THE COURT:** No, I don't want slides. Just give me
2 your argument.

3 **MR. FOSTER:** The first sheet is not, Your Honor. It
4 is a blog post from right after the *Morrow* decision was handed
5 down.

6 **THE COURT:** The which?

7 **MR. FOSTER:** The *Morrow V Microsoft* case blog post. I
8 can tell you about it if you want to look at it.

9 **THE COURT:** Go ahead. What do you think -- what is so
10 important about it?

11 **MR. FOSTER:** Sure. Let me get my notebook,
12 Your Honor. Just one evidence point, we have filed a motion,
13 which was off on the calendar today, your Honor, asking you
14 under Rule 62.1 to issue an advisory ruling for the federal
15 circuit. The issues are pretty much overlapped with Apple's
16 motion. I had filed a declaration on the 62.1 motion. I want
17 to formally move that that be part of the record on Apple's
18 motion as well so that the evidence is there for both motions.

19 **THE COURT:** I'm going to rule in detail on Apple's
20 motion, and to the extent that it -- it will illuminate the
21 issue you want, but the idea that I'm going to go -- after all
22 the machinations that your side has gone through, that I'm
23 going to go through and bail you out of the federal circuit is
24 ridiculous. I'm not going to do that. I don't have the time
25 to do that. I have millions of cases.

1 Now, you can look at the ruling I make in the other Apple
2 case to see if you think that answers the question; but you
3 have gone through a lot of machinations, and I think it's for
4 purposes of trying to create shelled companies that can be used
5 to avoid getting hit with sanctions. I'm going to -- I'm going
6 to -- wasn't one of these motions to keep -- to take Luxembourg
7 out? No way. They are going to stay in the case for purposes
8 of sanctions or whatever else. At the end of the case if this
9 case has no merit or it meets the standard for sanctions, every
10 possible Plaintiff is going to get hit. Maybe even the
11 lawyers. So we will see. And by the way, if Apple engages in
12 bad conduct, everybody on your side -- including maybe the
13 lawyers -- are going to get hit with sanctions. But we are not
14 going to have machinations that are -- with shell companies
15 where it is like a shell game with a pea underneath it as to
16 who actually owns these patents and who is going to get hit
17 with the sanctions. So that's what I think is going on. I
18 don't know. I can't prove it, but that's what -- I have seen
19 enough in life to believe that that's the case.

20 So I'm going to make a ruling on their motion. I am going
21 to allow 2017 to come in, but I'm not letting Luxembourg out.
22 And I will keep things under seal long enough for you to go to
23 the federal circuit. You just don't want the other defendants
24 in the world knowing the machinations. That's all that is
25 going on here. That stuff does not deserve to be under seal

1 for one second, and then -- I'm not going to make some
2 indicative ruling because that is the concession of the
3 shortness of life. I have too much to do, and I'm not going to
4 do some advisory opinion beyond the great amount of time and
5 trouble we have gone through to rule on this other motion.

6 All right. That's the way I feel. I don't need anymore
7 argument. That's all -- it's all under submission. Thank you.

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, January 14, 2019.



Marla F. Knox, RPR, CRR
U.S. Court Reporter