

Third-Party Licensing Information May Be Exception to General Right of Public Access to Court Records

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In a second appeal relating to sealing third-party licensing information, the US Court of Appeals for the Federal Circuit vacated and remanded a district court's order denying a motion to seal because the district court failed to follow the Federal Circuit's previous instruction to make particularized determinations regarding the information. *Uniloc USA, Inc. v. Apple Inc.*, Case No. 21-1568 (Fed. Cir. Feb. 9, 2022) (**Lourie**, Cunningham, JJ.) (Mayer, J., dissenting).

In a [previous decision](#), the Federal Circuit affirmed the denial of a motion to seal with regard to information pertaining to Uniloc but vacated and remanded the denial of the motion to seal with regard to certain third-party licensing information. The Court instructed the district court to "make particularized determinations as to whether and, if so, to what extent, the materials of each of these [third] parties should be made public."

On remand, the district court again denied the motion to seal the third-party licensing information. The district court made findings regarding the relative weight of the public's interest in accessing judicial records, including patent licensing information. It also found that the particular licensing information at issue was relevant to a dispute over Uniloc's standing to sue. With regard to one particular third party, Uniloc's financier Fortress Credit Co. LLC, the district court denied the motion to seal because Fortress had not complied with Local Rule 79-5(e)(1) of the Northern District of California, which requires that a supporting declaration be filed. Uniloc appealed a second time.

The Federal Circuit found that the district court failed to follow its instructions to make particularized determinations regarding whether the third-party licensing information sought to be sealed should be made public. Accordingly, the Court remanded for the district court to carry out the inquiry it had previously ordered.

The Federal Circuit also noted its disagreement with certain statements the district court had made in its order denying the motion to seal. The district court had stated that "[t]he public has an interest in inspecting the valuation of patent rights . . . particularly given secrecy so often plays into the patentee's advantage in forcing bloated royalties." The Federal Circuit stated that the district court committed "an error of law in making a blanket ruling that the public has a broad right to licensing information relating to patents." While the district court had stated that the public has a strong interest in knowing the full extent of the terms and conditions involved in the exercise of its patent rights and

in seeing the extent to which the patentee's exercise of the government grant affects commerce, the Federal Circuit wrote that "[a]bsent an issue raised by the parties concerning license rights and provisions, there is no public interest or entitlement to information concerning consideration for the grant of licenses." And while the amount Uniloc received in royalties was relevant to the dispute regarding standing, the Court wrote that "that fact can be proved without opening up all the licenses that the court granted access to." Finally, as to Fortress, the Court wrote that "any procedural failings of Uniloc and Fortress cannot justify unsealing the information of third parties," and that "[t]he district court should have considered whether the interests of the implicated third parties outweigh the public's interest in seeing individual licensing details that are not necessary for resolving this case."

Judge Mayer dissented, stating that he would have affirmed the district court's denial of the motion to seal. In his view, the district court's findings regarding the weight of the public interest and the third parties' interests were sufficient to meet the instructions in the earlier remand. Judge Mayer further expressed that the Federal Circuit need not have found that the public has an interest in accessing licensing information in general because:

- The licensing information at issue had been submitted as part of a judicial proceeding.
- The general right of public access to judicial records applied to the licensing information.
- The burden was on Uniloc or the third parties to establish compelling reasons why the information should be sealed.

Judge Mayer emphasized that the district court was best placed to evaluate what constitutes compelling reasons for sealing. He also noted that when Uniloc solicited the view of all 109 licensees whose information was implicated, only 31 requested that all or part of this information be sealed and only 13 filed declarations in support of that request, and those declarations "by and large, are vague and conclusory and fail to provide concrete evidence that the dissemination of licensing information would cause the licensees significant competitive injury in future licensing negotiations or that the licensing information in question otherwise qualifies as a trade secret."

Practice Note: The Federal Circuit continues to protect third parties from disclosure of potentially sealable information. Unclear from the Court's order, however, is whether the Court intends to carve out an exception for third-party licensing information from the general rule that a request to seal information submitted to a court must be supported by compelling reasons, or whether the Court understands the Ninth Circuit's "compelling reasons" test to only apply to information that is strictly necessary for proving disputed points. Also unclear is the extent to which the Court will stand by its statement that neither a litigant's nor a third party's failure to follow the local rules regarding sealing can be grounds to deny a motion to seal the third party's information. The Court's willingness to address a district courts' application of its own local rules shows the Court's great interest in protecting third parties.

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