

No. 2021-1555

IN THE
United States Court of Appeals
FOR THE FEDERAL CIRCUIT

UNILOC USA, INC., UNILOC LUXEMBOURG S.A.,
Plaintiffs-Appellants,

v.

MOTOROLA MOBILITY LLC,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Delaware
No. 1:17-cv-1658, Hon. Colm F. Connolly

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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF INTEREST

Case Number 21-1555

Short Case Caption Uniloc USA, Inc. v. Motorola Mobility LLC

Filing Party/Entity Uniloc USA, Inc.; Uniloc Luxembourg S.A.

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1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input type="checkbox"/> None/Not Applicable
Uniloc USA, Inc.	Uniloc 2017 LLC	Uniloc Corporation Pty. Ltd.
Uniloc Luxembourg S.A.	Uniloc 2017 LLC	None

Additional pages attached

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

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5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

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ADDENDUM

5. Related Cases

This Court has identified the following pending appeals as companion cases to be assigned to the same merits panel:

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This Court’s precedent is clear: “Establishing ownership of a patent that has been infringed satisfies the requirements of Article III standing.” *Pandrol USA, LP v. Airboss Ry. Prods., Inc.*, 320 F.3d 1354, 1368 (Fed. Cir. 2003). Because Uniloc undisputedly owned the asserted patent when this suit was filed, there should be no question about its constitutional standing to sue.

Motorola insists that Uniloc’s secured lender, Fortress, could sublicense the patent. But Fortress’s sublicensing right could be triggered only if Uniloc breached its loan agreement. Fortress *never asserted* any breach or right to sublicense—and believed any breach was cured regardless. Motorola, a stranger to the contract, cannot invoke breaches or remedial provisions no contracting party has asserted. *Uniloc USA, Inc. v. ADP, LLC*, 772 F. App’x 890, 895 (Fed. Cir. 2019).

Any sublicensing right could not defeat Uniloc’s standing regardless. Under this Court’s precedent, “the owner of the [asserted] patent” has “standing to sue” for infringement—even if someone else has a “virtually unfettered right to sublicense.” *Aspex Eyewear, Inc. v. Miracle Optics, Inc.*, 434 F.3d 1336, 1337-38, 1342 (Fed. Cir. 2006). Motorola insists that *Aspex* involved only *statutory* authority to sue. But the decision under review in *Aspex* specifically held the plaintiff lacked *constitutional* standing. By overturning that decision and allowing the case to proceed, this Court necessarily concluded the patentee had Article III standing.

With precedent firmly against it, Motorola belatedly argues that the district-court decision in *Uniloc USA, Inc. v. Apple Inc.*, No. 18-cv-358, 2020 WL 7122617 (N.D. Cal. Dec. 4, 2020), precludes Uniloc from contesting standing. But Motorola failed to preserve preclusion—indeed, it *waived* preclusion by telling the district court the *Apple* judgment is “not binding.” Appx1076. And the argument fails regardless.

I. FORTRESS’S PUTATIVE SUBLICENSING RIGHT COULD NOT DEFEAT UNILOC’S STANDING

A. Uniloc’s Ownership of the Patent Establishes Constitutional Standing

Motorola never disputes that Uniloc owned the patent-in-suit when this action was filed. *See* Uniloc.Br.17. That is dispositive: “Establishing ownership of a patent that has been infringed satisfies the requirements of Article III standing.” *Pandrol*, 320 F.3d at 1368.

“The essential issue regarding the right to sue on a patent is who owns the patent.” *Aspex*, 434 F.3d at 1341. Because “title in the patent” “confers constitutional standing,” *Intellectual Property Development, Inc. v. TCI Cablevision of Cal., Inc.*, 248 F.3d 1333, 1345 (Fed. Cir. 2001), the “owner of the patent” possesses “the right to sue,” *Alfred E. Mann Found. for Sci. Rsch. v. Cochlear Corp.*, 604 F.3d 1354, 1359 (Fed. Cir. 2010). Where, as here, “the owner by assignment of the [asserted] patent” sues for infringement, “the court has both the statutory and consti-

tutional authority to adjudicate the matter.” *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065, 1071 (Fed. Cir. 2020); Uniloc.Br.16-19.

Motorola cites no decision of this Court holding that *the patent owner* at the time of suit lacks constitutional standing. And for good reason: Ownership or “title” in a patent renders the owner the “patentee” that enjoys “the right to exclude” unlicensed parties from practicing the invention. 35 U.S.C. §§ 100(d), 154(a)(1). Invasion of that interest—whether labeled an “exclusionary,” “‘proprietary,’” or “ownership” interest—constitutes injury under Article III. *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1234-35 (Fed. Cir. 2019); *In re Cirba Inc.*, No. 21-154, 2021 WL 4302979, at *3 (Fed. Cir. Sept. 22, 2021); *Molon Motor & Coil Corp. v. Nidec Motor Corp.*, 946 F.3d 1354, 1361 (Fed. Cir. 2020); Uniloc.Br.17-19, 33.

B. Motorola Improperly Asserts Breaches of a Contract to Which It Is a Stranger

Motorola’s contrary argument rests on the notion that Fortress obtained the right to sublicense the patent-in-suit after Uniloc allegedly breached its loan agreement with Fortress. The argument fails at the outset because it rests on the putative “breach” of a contract to which Motorola is a stranger. Motorola.Br.51. Motorola does not dispute that Fortress *never* asserted a breach or right to sublicense. Motorola.Br.48-49. That is fatal: As this Court explained in *ADP*, strangers to a

contract cannot invoke breaches or remedial provisions that no contracting party has asserted. 772 F. App'x at 895; *see* Uniloc.Br.20-24.

Motorola cannot distinguish *ADP*. It asserts that, unlike Fortress's "automatic" sublicensing right, IBM's sublicensing right in *ADP* "could not be automatically triggered." Motorola.Br.49. That is wrong. IBM's sublicensing right was *also* allegedly "automatically triggered" upon breach. *ADP*, 772 F. App'x at 894. Likewise, while Fortress received a present license that it "agreed not to use" absent breach, Motorola.Br.49, IBM *also* was granted a present license that it could use only "if" Uniloc breached, *see* Appx721(§ 2.1, (e)). Uniloc's opening brief made those points, Uniloc.Br.21-22, but Motorola offers no response.

C. Uniloc Had Standing Irrespective of Any Fortress Sublicensing Right

1. As explained above, the owner of a patent has constitutional standing. Neither its standing, nor its right to exclude, nor the injury it suffers when that right is invaded, vanishes simply because someone else theoretically could (but does not) license the infringer. Common sense makes that clear: If a homeowner hosts a party and tells a friend she can invite anyone she wants, no one would say the homeowner lacks the right to exclude party-crashers that *neither of them invited*. Nor would anyone say the homeowner suffers no injury when people invade his living room *without anyone's permission*.

Precedent makes that clear too. In *Aspex*, this Court held that “the owner of the [patent-in-suit] when the original complaint was filed” has “standing to sue” *even if* a licensee has a “virtually unfettered right to sublicense.” 434 F.3d at 1337-38, 1342. Motorola does not contend that *Aspex*’s facts are materially distinguishable. Uniloc.Br.24-26; *see* Motorola.Br.52. Nor does Motorola deny that, if the patentee in *Aspex* had constitutional standing, Uniloc does too.

Motorola urges that *Aspex* concerned only *statutory* authority to sue, not *constitutional* standing. Motorola.Br.52. *Aspex* refutes that argument. There, the district court held that the patent owner (Contour) “did not have *constitutional standing*” in light of a licensee’s “unfettered right to sublicense.” *Aspex Eyewear, Inc. v. Miracle Optics, Inc.*, No. 01-cv-10396, Dkt. 301, at 25-26 (C.D. Cal. Feb. 6, 2004) (“*Aspex* D.Ct. Op.”) (emphasis added); *see id.* at 26-27 (dismissing based on “constitutional standing” and observing that a “constitutional defect in standing cannot be cured by joinder”). The briefing on appeal addressed “‘Article III’” and “‘constitutional standing.’” Appellants’ Br. 9, 51-52, *Aspex*, No. 04-1265, 2004 WL 3438719 (Fed. Cir. May 17, 2004). Accordingly, when this Court “vacate[d] the district court’s decision that Contour lacked standing . . . in view of [this Court’s] conclusion that Contour was the owner of the [asserted] patent when the original complaint was filed,” it necessarily held the patent owner had *constitutional* standing. *Aspex*, 434 F.3d at 1343-44.

This Court has an “independent obligation” to ensure Article III standing is satisfied in every case, “even if the issue was not raised.” *Willis v. Gov’t Accountability Off.*, 448 F.3d 1341, 1344 (Fed. Cir. 2006). It beggars belief to suggest, as Motorola does, that the Court disregarded Article III in *Aspex* when the district court and parties *expressly raised* the plaintiff’s “constitutional standing.” *Aspex* D.Ct. Op. 25-26. Uniloc’s reply briefs in the companion *Google* and *Blackboard* appeals—filed before Motorola’s response brief here—made those very points about *Aspex*. Uniloc.Reply.15-16 in No. 21-1498 (ECF #29); Uniloc.Reply.8-9 in No. 21-1795 (ECF #31). Yet Motorola ventures no response. Without the pretense that *Aspex* overlooked constitutional standing, Motorola has no way of distinguishing it.

Uniloc is not “‘confus[ing]’” Article III standing with authority to sue under 35 U.S.C. § 281. Motorola.Br.52. Uniloc’s *constitutional standing* derives from its “right to exclude” unlicensed persons under § 154(a), while § 281 provides Uniloc’s *statutory cause of action*. Uniloc.Br.17-19. The inquiries are distinct. *See Pandrol*, 320 F.3d at 1367-68 (distinguishing § 281 and “standing to sue under Article III”). But both are satisfied where—as here and in *Aspex*—the patentee is the plaintiff. That is because “[e]stablishing ownership of a patent” is *both* sufficient to “satisf[y] the requirements of Article III standing” *and* a “prerequisite to winning a judgment of infringement” under § 281. *Id.*; *see Schwendimann*, 959 F.3d at 1071.

2. Motorola never explains how, under its approach, patent co-owners—each of which may freely license the patent—would *ever* have constitutional standing to sue. Uniloc.Br.26-27. Motorola insists this Court has not addressed “the effect of one co-owner’s licensing authority on another co-owner’s constitutional standing.” Motorola.Br.53. Not so. *AntennaSys Inc. v. AQYR Technologies, Inc.*, 976 F.3d 1374, 1376-78, 1381 (Fed. Cir. 2020), addresses precisely that. The defendant there alleged that a co-owner not only *could* but *did* “authoriz[e] [the defendant] to practice the [asserted] patent as a licensee.” *Id.* at 1378. This Court held that did *not* deprive the co-owner plaintiff of *constitutional standing*, explaining that the objection was “not jurisdictional in nature.” *Id.* Motorola nowhere explains how the result could be different here, where a supposed licensee allegedly could—but undisputedly did *not*—grant anyone a license.

Nor did *Schering Corp. v. Roussel-UCLAF SA*, 104 F.3d 341 (Fed. Cir. 1997), “merely” hold that “one co-owner cannot bar another from licensing a third party.” Motorola.Br.53. It *also* held that a co-owner’s “right to license” is “not incompatible with [another co-owner’s] unilateral right to sue” and “does not render the unilateral right to sue valueless.” 104 F.3d at 345. That holding—and the Court’s decision to let the suit proceed—would make no sense if (as Motorola insists) another person’s

“power to grant a license” deprives a patentee of constitutional standing. *Id.* at 345, 347.¹

3. Unable to find a *single* precedent of this Court denying a patent owner constitutional standing, Motorola invokes cases involving whether *licensees* had standing or received “all substantial rights” in a patent. Motorola.Br.42-46. Those cases say nothing about cases where *the patentee* sues. Uniloc.Br.30-38.

Motorola’s discussion of *WiAV Solutions LLC v. Motorola, Inc.*, 631 F.3d 1257 (Fed. Cir. 2010), rests on a fundamental misconception. Motorola says the plaintiff there “was the exclusive licensee *and thus a ‘patentee.’*” Motorola.Br.45 (emphasis added). But exclusive licensees are *not* patentees—as case after case makes clear. *See, e.g., WiAV*, 631 F.3d at 1264; *Lone Star*, 925 F.3d at 1228-29, 1234. An exclusive licensee may *become* the patentee where a license agreement “transfer[s] all substantial rights” to the licensee, making the agreement “tantamount to an assignment.” *Mann*, 604 F.3d at 1358. But that was not alleged to have happened in *WiAV* (or here).

¹ Motorola’s invocation of the rule that all co-owners generally must be joined, Motorola.Br.53, is nonsensical. That rule “does not impact [a patent owner’s] Article III standing.” *AntennaSys*, 976 F.3d at 1378. The rule was inapplicable in *Schering*, where each co-owner had a “unilateral right to sue.” 104 F.3d at 345. And if another person’s licensing authority *did* deprive a patent owner of constitutional standing—as Motorola erroneously contends—that defect could not be fixed by joining additional parties (who under Motorola’s theory would *also* lack constitutional standing). *See* Motorola.Br.58.

Motorola repeats the mistake when it describes *WiAV* as holding that “*a plaintiff* ‘lacks standing to sue a party who has the ability to obtain . . . a license [] from another party.’” Motorola.Br.45 (quoting 631 F.3d at 1266) (emphasis added). *WiAV* actually said a “*licensee* lacks standing” in that situation. 631 F.3d at 1266 (emphasis added). *WiAV* distinguishes itself: It concerns *licensee*—not *patentee*—standing.

Motorola’s reliance on *Azure Networks, LLC v. CSR PLC*, 771 F.3d 1336, 1344 (Fed. Cir. 2014), *vacated*, 575 U.S. 959 (2015), likewise fails. As Uniloc explained, the judgment in *Azure* was vacated by the Supreme Court and never reinstated. Uniloc.Br.36. Motorola objects that *Azure* was vacated on other grounds. Motorola.Br.40 n.22. But a “decision vacating [a] judgment of the Court of Appeals *deprives that court’s opinion of precedential effect.*” *O’Connor v. Donaldson*, 422 U.S. 563, 578 n.12 (1975) (emphasis added). “A decision may be *reversed* on other grounds, but a decision that has been *vacated* has no precedential authority whatsoever.” *Durning v. Citibank, N.A.*, 950 F.2d 1419, 1424 n.2 (9th Cir. 1991) (O’Scannlain, J.); *cf. Syntex Ophthalmics, Inc. v. Novicky*, 767 F.2d 901, 902 (Fed. Cir. 1985) (partially reinstating judgment following Supreme Court vacatur).

Regardless, Motorola misunderstands *Azure*. It says Uniloc is “like Tri-County,” the plaintiff found to lack standing there. Motorola.Br.44. But Tri-County was *not* the patent owner at the time the suit in *Azure* was filed; Tri-County had

previously transferred all substantial rights in the patent to its exclusive licensee (Azure), making Azure the new owner. Uniloc.Br.37 & n.10; *see* 771 F.3d at 1347. Here, there is no dispute that Uniloc owned the patent at the time of suit. Motorola ignores that critical difference.

Motorola's other cases, Motorola.Br.43-45, are inapposite. *Luminara Worldwide, LLC v. Liown Electronics Co.*, 814 F.3d 1343 (Fed. Cir. 2016), invoked an exclusive licensee's "sole right to sublicense" as one factor among many supporting the conclusion that the licensee held "all substantial rights" and thus effectively became *the patent owner* with standing to sue. *Id.* at 1350-51. Here, Fortress was *not* an exclusive licensee, and there is *no* contention Uniloc transferred it all substantial rights. *Morrow v. Microsoft Corp.*, 499 F.3d 1332 (Fed. Cir. 2007), meanwhile, held that a contract granting a bare "right to sue infringers" could not "satisfy standing requirements" where the plaintiff was *not* "the patent title holder" and the (non-party) title holder "could grant an exclusive license to any party." *Id.* at 1341-42 & n.8. This case looks nothing like that.

4. Patentee and licensee exclusionary rights rest on different grounds. A licensee's exclusionary rights (if any) depend on its license agreement—specifically, on whether the agreement reflects "the patentee's express or implied promise" to the licensee that alleged infringers "shall be excluded from practicing the invention." *WiAV*, 631 F.3d at 1266; *see Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538,

1552 (Fed. Cir. 1995) (en banc); Uniloc.Br.31-33. Because any exclusionary rights a licensee possesses derive from a promise that alleged infringers will be excluded, the licensee lacks exclusionary rights (and standing to sue) when its license agreement *lacks* such a promise and instead allows the patentee to license the alleged infringer.

A *patentee's* “right to exclude,” by contrast, rests on its ownership (“title”) in the patent. 35 U.S.C. §§ 100(d), 154(a)(1). A license agreement that allows someone else to sublicense the patent does *not* deprive the patentee of title—or its concomitant right to exclude—unless the agreement transfers all substantial rights, making the other party the effective owner. Because the License Agreement here indisputably did *not* transfer all substantial rights to Fortress, it could not defeat Uniloc’s standing.

Motorola’s own cases (at 39, 41) cement the point. *Intellectual Property* explains that “title in the patent” gives the patent owner “constitutional standing” to sue for infringement. 248 F.3d at 1345. *Omni MedSci, Inc. v. Apple Inc.*, 7 F.4th 1148, 1151-52 (Fed. Cir. 2021), likewise holds that “patent ownership” (“legal title”) grants “an exclusionary right in the asserted patents” that gives the plaintiff “standing” to sue. A patentee’s right to exclude—and its standing to sue—is part-and-parcel of its ownership of the patent.

D. Uniloc Had Standing Because It Could Forgive Infringement

Motorola concedes that parties with exclusionary rights have constitutional standing. *Motorola.Br.38-42*; *see WiAV*, 631 F.3d at 1266 (standing where party has “any of the exclusionary rights that accompany a patent”). But it overlooks that one exclusionary right is the right “to ‘forgive activities that would normally be prohibited under the patent statutes.’” *Lone Star*, 925 F.3d at 1234. Motorola nowhere contests that Uniloc could forgive past infringement. *See Uniloc.Br.29-30*. For that reason, too, Uniloc had standing. *Id.*

II. ANY SUBLICENSING RIGHT WAS EXTINGUISHED PRE-SUIT AND COULD NOT RELEASE PAST INFRINGEMENT

A. Any Event of Default Was Annulled or Nonexistent Before Suit

Any Fortress sublicensing right was contingent upon an Event of Default, which could be annulled if Uniloc “cured such Event of Default to [Fortress’s] reasonable satisfaction.” Appx165-166(§7.3(y)). It is undisputed that Fortress believes no Event of Default occurred. *See Uniloc.Br.39*; *Motorola.Br.48-49*; pp. 3-4, *supra*. But even if there were a default, “Fortress was reasonably satisfied Uniloc had effected a cure,” as stated in the uncontroverted declaration of James Palmer, the Fortress director responsible for Uniloc’s loan. Appx556(¶14); *Uniloc.Br.7-8, 38-43*.

Motorola nowhere contends otherwise. Instead, it parrots the district court’s assertion that “‘cure’” requires “some affirmative action.” *Motorola.Br.50* (citing

Appx22). Motorola cites no authority imposing such a requirement. It cannot reconcile that purported requirement with the RSA, under which *anything* meeting Fortress’s “reasonable satisfaction” qualified as cure. Appx165-166(§7.3(y)). And it ignores that Uniloc’s efforts “to diligently pursue monetization” constituted affirmative action regardless. Appx555(¶8); *see* Uniloc.Br.41-42.

Motorola’s dismissal of Palmer’s testimony as “irrelevant” and “inadmissible,” Motorola.Br.51, makes no sense. The RSA made Fortress’s “reasonable satisfaction” the touchstone for cure. Appx165-166(§7.3(y)). And “materiality” and “potential opportunities to cure” are “consummate contract issues to be resolved between the parties.” *ADP*, 772 F. App’x at 895. Uncontroverted testimony that “Fortress was reasonably satisfied Uniloc had effected a cure,” Appx556(¶14), was not merely relevant and admissible—it should have been dispositive.²

B. Uniloc Had Standing To Sue for Past Infringement

At minimum, Uniloc could sue for infringement *predating* Fortress’s supposed ability to sublicense the patent-in-suit. Uniloc.Br.43-47. The RSA granted Fortress a contingent “right to grant sublicenses.” Appx152(§2.8). A “license to a third party,” however, presumptively “only operates *prospectively*.” *Ethicon, Inc. v. U.S. Surgical Corp.*, 135 F.3d 1456, 1467 (Fed. Cir. 1998). Forgiving *past* infringe-

² Palmer also explained that any omission regarding patent validity was not “material,” as required for an Event of Default. Appx162(§7.1.3); Appx557-558(¶¶17, 20). Motorola overlooks that requirement. *See* Motorola.Br.48; Uniloc.Br.40 n.12.

ment “would require a *release*, not a *license*.” *Schering*, 104 F.3d at 345 (emphasis added). Fortress’s right to grant “ sublicenses,” without the right to grant releases, thus must be presumed to operate only prospectively.³

The agreements here lack the clear language needed to overcome that presumption. Motorola points to language allowing Fortress to “exploit the Licensed Patents in any lawful manner.” Appx174(§2.1). But—as Uniloc pointed out—this Court has held that “freedom to exploit [a] patent” does *not* include the ability to “release” third parties for past infringement. *Ethicon*, 135 F.3d at 1467-68; *see* Uniloc.Br.45. Motorola offers no response.

Motorola invokes a provision stating that the License Agreement would remain effective until “all statutes of limitations have fully run for bringing infringement claims,” including after patent expiration. Appx175(§5.2(y)); *see* Appx23-24; Motorola.Br.56. Motorola says there would be “no reason” for that provision unless Fortress could grant retroactive releases. Motorola.Br.56. But Uniloc identified just such a reason: The provision ensured that Fortress’s obligation to “reasonably cooperate” with infringement litigation would extend until the time for such litigation had “fully run.” Appx175(§§4, 5.2(y)); Uniloc.Br.45-46. Motorola again has no answer.

³ Motorola protests that *Schering* and *Ethicon* involved co-owners, Motorola.Br.55, but cannot explain why the distinction between “licenses” and “releases” would depend on that.

Motorola nowhere defends the district court’s unsupported assertion that “prospective only” licensing terms are “‘readily found in other, similar contracts.’” Appx23; *see* Uniloc.Br.46. Motorola cites cases involving *explicitly retroactive* licenses. Motorola.Br.54-55.⁴ Those examples confirm that licenses operate prospectively absent clear contrary indication.

III. MOTOROLA’S ISSUE-PRECLUSION ARGUMENT IS UNPRESERVED AND UNPERSUASIVE

On appeal, Motorola argues for the first time that the district-court judgment in *Apple*, 2020 WL 7122617 (N.D. Cal. Dec. 4, 2020)—issued nearly four weeks before the judgment in this case—is preclusive. That argument is not merely unpreserved. It is waived. Motorola raised *Apple* below, but expressly told the district court it is “not binding” in this case. Appx1076. Even if Motorola merely forfeited the argument, it identifies no exceptional circumstances excusing forfeiture. And the argument fails regardless.⁵

⁴ In *Studiengesellschaft Kohle, M.B.H. v. Hercules, Inc.*, 105 F.3d 629, 631, 634 (Fed. Cir. 1997), a most-favored-licensee clause “expressly” entitled a party to a retroactive license “‘effective, as of and after the date’” another licensee received better terms. In *High Point SARL v. T-Mobile USA, Inc.*, 53 F. Supp. 3d 797, 801, 805 (D.N.J. 2014), *aff’d on other grounds*, 640 F. App’x 917 (Fed. Cir. 2016), the relevant agreement stated that “‘sublicense[s] may be made effective retroactively.’” In *Canon Inc. v. Tesseron Ltd.*, 146 F. Supp. 3d 568, 578 (S.D.N.Y. 2015), an expressly “retroactive license” expressly “extinguishe[d] any liability for past infringement.”

⁵ Motorola first raised preclusion in its August 6, 2021 motion for summary affirmance in this Court, ECF #33, which the Court denied while allowing Motorola to raise the argument in its response brief, ECF #39.

A. Motorola Waived Issue Preclusion

On Sunday, December 6, 2020, two days after the *Apple* decision issued, Motorola notified the district court of that decision. Appx1076; *see* Appx33-36. Rather than argue that *Apple* is preclusive, however, Motorola said the opposite: It told the district court the *Apple* judgment is “not binding.” Appx1076. Taking Motorola at its word, the district court issued a 23-page opinion addressing the merits of Uniloc’s standing. Appx2-24. While the opinion cited *Apple*, it did not discuss preclusion. Appx8, Appx20-21 n.4.

1. Waiver is the “‘intentional relinquishment or abandonment of a known right.’” *In re Google Tech. Holdings LLC*, 980 F.3d 858, 862 (Fed. Cir. 2020). Motorola was keenly aware of the *Apple* judgment, notifying the district court immediately after it issued. Appx1076. And Motorola doubtless knew it could argue that *Apple* had immediate preclusive effect: As Motorola’s own authority recognizes, “[t]he law is well settled that the pendency of an appeal *has no effect* on the finality or binding effect of a trial court’s holding.” *Pharmacia & Upjohn Co. v. Mylan Pharms., Inc.*, 170 F.3d 1373, 1381 (Fed. Cir. 1999) (emphasis added) (cited Motorola.Br.24); *see also Kokinda v. Pa. Dep’t of Corrs.*, 803 F. App’x 574, 577 (3d Cir. 2020) (“[A] pending appeal does not vitiate the preclusive effect of a trial court judgment.”).

Motorola nonetheless urged that *Apple* was “not binding” in this case. Appx1076 (emphasis added). By “deliberately steer[ing] the District Court away from” preclusion and “toward the merits,” Motorola waived its preclusion argument. *Wood v. Milyard*, 566 U.S. 463, 474 (2012). Courts have no authority to “resurrect” waived arguments. *Id.* at 471 n.5.

2. Motorola urges that reading the phrase “not binding” to include preclusion would be “impermissibly broad.” Motorola.Br.31. But Motorola’s own authority makes clear that a decision’s “binding effect” is understood to include its “collateral estoppel effect” (*i.e.*, issue-preclusive effect). *Pharmacia*, 170 F.3d at 1381 (cited Motorola.Br.24); *see also Teva Pharms. USA Inc. v. Sandoz, Inc.*, 574 U.S. 318, 329 (2015) (noting “binding” effect of issue preclusion). Saying a decision is “not binding” means it is not preclusive.

Motorola asserts that it meant that *Apple* was “not binding” *only* in the sense that it was “not legal precedent.” Motorola.Br.29, 31. But it would have been wholly unnecessary to say that. It goes without saying that a district-court decision (especially out-of-circuit) is not precedential. Regardless, a judgment’s “binding” effect includes *both* precedential *and* preclusive effect. Motorola did not carve out one or the other.

Motorola also says its representation was insufficiently clear. Motorola.Br.30-31. Waiver has no “magic words” requirement. What matters is that

Motorola successfully “steered” the district court *away* from preclusion and *toward* deciding the merits—the opposite of what it seeks on appeal. *Wood*, 566 U.S. at 474; *see Geier v. Omniglow Corp.*, 357 F. App’x 377, 380 (2d Cir. 2009) (waiver where party made “opposite” argument in district court); *Marlin v. Moody Nat’l Bank, N.A.*, 248 F. App’x 534, 540 (5th Cir. 2007) (same).

B. At a Minimum, Motorola Forfeited Issue Preclusion

Regardless, Motorola forfeited issue preclusion. Preclusion arguments are “ordinarily lost if not timely raised.” *Arizona v. California*, 530 U.S. 392, 410 (2000). As this Court has explained—and Motorola recognizes, Motorola.Br.28—issue preclusion must be “‘raised at the *first reasonable opportunity after the rendering of the decision having the preclusive effect.*’” *Mendenhall v. Barber-Greene Co.*, 26 F.3d 1573, 1579-80 n.8 (Fed. Cir. 1994) (emphasis added) (quoting *Aetna Cas. & Sur. Co. v. Gen. Dynamics Corp.*, 968 F.2d 707, 711 (8th Cir. 1992)). Absent timely assertion below, Motorola cannot urge preclusion as an alternative ground for affirmance. Affirmance on alternative grounds is available only if those grounds are “properly preserved.” *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1582 (Fed. Cir. 1996); *see Holk v. Snapple Beverage Corp.*, 575 F.3d 329, 335-36 (3d Cir. 2009) (“‘[A]n appellee can present in this court all arguments supported by the record *and advanced in the trial court.*’” (quoting *Bailey v. Dart Container Corp. of Mich.*, 292 F.3d 1360, 1362 (Fed. Cir. 2002))). Appellate

courts accordingly have refused to consider issue-preclusion arguments where the appellee “did not raise issue preclusion before the district court.” *SimpleAir, Inc. v. Google LLC*, 884 F.3d 1160, 1170 (Fed. Cir. 2018); *see Iseley v. Beard*, 200 F. App’x 137, 141 n.5 (3d Cir. 2006).⁶

Motorola indisputably did not assert issue preclusion “‘at the first reasonable opportunity after the rendering of the decision having the [alleged] preclusive effect.’” *Mendenhall*, 26 F.3d at 1579-80 n.8. The *Apple* judgment issued on December 4, 2020, when Motorola’s motion to dismiss was still pending. Appx1361-1374. While Motorola promptly notified the district court of the *Apple* decision, it never argued that *Apple* had preclusive effect. Appx1076; *see pp.* 16-17, *supra*. Motorola therefore (at least) forfeited its preclusion argument. *See SimpleAir*, 884 F.3d at 1170-71 (declining to consider issue-preclusion argument not raised before district court); *Stearn v. Dep’t of Navy*, 280 F.3d 1376, 1378 (Fed. Cir. 2002) (reversing application of preclusion where party “failed to timely raise” it).

Motorola offers no “exceptional circumstances” warranting deviation from the “normal rules” of forfeiture. *Google*, 980 F.3d at 863; *SimpleAir*, 884 F.3d at 1170-71; *see Simko v. U.S. Steel Corp.*, 992 F.3d 198, 205-06 (3d Cir. 2021) (refus-

⁶ Unlike Blackboard, Motorola nowhere argues that Third Circuit law applies different standards. This Court has applied its own law when deciding whether parties properly raised preclusion for this Court’s review. Uniloc.Reply.21 & n.6 in No. 21-1795 (ECF #31). Regardless, as Uniloc has explained—and the citations above make clear—the Third Circuit follows the same standards as this Court. *See id.*

ing to consider forfeited argument absent “truly ‘exceptional circumstances’”). It does not assert any intervening legislation or “‘change in . . . jurisprudence.’” *Golden Bridge Tech., Inc. v. Nokia, Inc.*, 527 F.3d 1318, 1323 (Fed. Cir. 2008). It does not face potentially conflicting obligations under judgments of different courts. And it nowhere contends that “‘the public interest requires’” this Court to entertain its forfeited preclusion argument. *Simko*, 992 F.3d at 206. If anything, the public interest favors resolving the standing question on the merits. It is “too important to leave unaddressed.” Amicus.Br.30.⁷

C. Motorola’s Excuses Are Unavailing

1. Motorola insists this Court may affirm based on issue preclusion *despite* its waiver or forfeiture. Motorola.Br.30. But courts *cannot* consider waived arguments. *See* p. 17, *supra*. And courts consider forfeited arguments only in “exceptional circumstances,” which Motorola has not identified. *Google*, 980 F.3d at 863; *see* pp. 19-20, *supra*.

Motorola quotes *Ethicon*’s observation that this Court may affirm “‘on an additional ground not relied on by the district court.’” Motorola.Br.30 (quoting 93 F.3d at 1582). But Motorola omits a critical qualification: *Ethicon* says the Court may affirm only on alternative grounds that are “*properly preserved on appeal.*” 93

⁷ The standing issue has broad importance because secured lenders generally can “license” patents used as collateral upon default. U.C.C. § 9-610(a). Whether such a right destroys the patentee’s standing may thus affect numerous cases.

F.3d at 1582 (emphasis added); *see Holk*, 575 F.3d at 335-36; pp. 18-19, *supra*. *Ethicon* does not aid Motorola’s position—it refutes it.

2. Motorola contends it was *impossible* to timely assert preclusion under District of Delaware Local Rule 7.1.2(b). Motorola.Br.28-29. But Motorola concedes the rule *allowed* it to tell the district court why “the [*Apple*] decision was ‘relevant’ to Motorola’s motion [to dismiss for lack of standing].” Motorola.Br.29 (quoting Appx1076). Motorola thus could have said *Apple* was “relevant” because it precluded Uniloc from asserting standing. (Instead, Motorola said *Apple* was “not binding.”) Nothing in Local Rule 7.1.2(b)—or common sense—prevents parties from offering the district court such basic information.⁸

The rule, moreover, *expressly permits* parties to make additional filings and arguments with “Court approval.” D. Del. L.R. 7.1.2(b). Motorola sought such approval less than a month earlier to make *other* arguments outside the normal briefing cycle. Appx1065. Other times, Motorola submitted additional arguments *without* court approval. Appx715-718. The notion that Local Rule 7.1.2(b) prevented Motorola from timely asserting preclusion is frivolous.

3. Motorola alternatively complains that the 26 days between the *Apple* judgment and the district court’s ruling below were insufficient to raise preclusion.

⁸ *Cf.* Fed. R. App. P. 28(j), 2002 advisory committee note (rule “permits parties to decide for themselves what they wish to say about supplemental authorities”).

Motorola.Br.32-34. But it took Motorola only two days (over a weekend) to say *Apple* was “not binding.” Motorola’s notice of subsequent authority showed it was aware of *Apple* and believed it involved “roughly the same set of facts as Motorola’s pending Motion to Dismiss.” Appx1076. Motorola had everything it needed to assert preclusion before the district court. Instead, it waited until August 6, 2021—*eight months* after the *Apple* judgment—to assert issue preclusion for the first time, and then only in this Court. ECF #33.

4. Motorola contends there was no need to raise preclusion while *Apple* was still subject to appeal. Motorola.Br.33-34. But the *Apple* judgment was preclusive, if at all, from its issuance. It is “well settled” that an appeal has “‘no effect’” on a judgment’s finality for preclusion purposes. *Pharmacia*, 170 F.3d at 1381; *see* p. 16, *supra*; Motorola.Br.24. This Court has affirmed the application of issue preclusion even where the preclusive judgment remained pending on appeal *at the time of affirmance*. *Pharmacia*, 170 F.3d at 1380-81.

Seeking to exempt itself from those settled principles, Motorola urges that the district-court judge here (Judge Connolly) had supposedly “called the general rule into question.” Motorola.Br.32. Motorola cites Judge Connolly’s adoption of a report and recommendation to which *no party objected*. *See Sound View Innovations LLC v. Walmart, Inc.*, No. 19-cv-660, 2019 WL 7067056 (D. Del. Dec. 23, 2019), *adopted*, 2020 WL 136864 (D. Del. Jan. 13, 2020). The report and recommendation,

moreover, simply concluded that the “equities” supported a stay, rather than immediate dismissal, pending appeal of a putatively preclusive decision. *Id.* at *3-4. That hardly suggests Judge Connolly challenged the settled rule that appeals do not defeat preclusion.⁹ And even if he had questioned settled law, that would not excuse Motorola from “properly preserv[ing]” any “ground not relied on by the district court” that Motorola wished to raise on appeal. *Ethicon*, 93 F.3d at 1582.

5. That Uniloc entities have acknowledged issue preclusion in *other* cases and contexts, Motorola.Br.36-37, does not excuse Motorola from timely asserting preclusion *here*. While Uniloc observed that the judgment in *this case* “appear[ed] to create issue preclusion” in *Blackboard*, Appx1412-1413, Uniloc said nothing about *Apple*. Unlike this case, moreover, the district court in *Blackboard* raised issue preclusion *sua sponte*. See Uniloc.Reply.20-21 in No. 21-1795. Similarly, when Uniloc sought to stay its case against Netflix pending its appeal in *Google*, No. 21-1498, see Motorola.Br.36-37, issue preclusion had been raised in the district court, see Appx1403-1404. Not so here.

6. Entertaining Motorola’s untimely preclusion argument threatens unfair prejudice. If Uniloc had notice that Motorola would assert preclusion, it could have pursued different options, such as declining to settle its appeal of the *Apple* judg-

⁹ Indeed, Judge Connolly *sua sponte* gave *the judgment in this case* preclusive effect in *Blackboard*, despite Uniloc’s pending appeal.

ment; insisting on a “high-low” settlement or similar arrangement that allowed the *Apple* appeal to proceed, *see Avid Identification Sys., Inc. v. Crystal Import Corp.*, 603 F.3d 967, 971-72 (Fed. Cir. 2010); or seeking vacatur of the *Apple* judgment, *see American Games, Inc. v. Trade Prods., Inc.*, 142 F.3d 1164, 1168 (9th Cir. 1998). But those steps were unnecessary because Motorola had failed to preserve preclusion based on *Apple*. Motorola should not unfairly profit from “sandbagging” tactics. *Google*, 980 F.3d at 864.

Motorola dismisses those alternatives as “implausible.” Motorola.Br.35. But “[h]igh-low” settlements that allow appeals to proceed following settlement are “common.” 15B Am. Jur. 2d *Compromise & Settlement* §31 (Nov. 2021 update); *see Avid*, 603 F.3d at 971-72; *Linde v. Arab Bank, PLC*, 882 F.3d 314, 318, 322, 324 (2d Cir. 2018). Nor would seeking vacatur be implausible. While Motorola cites the “exceptional circumstances” standard for *appellate* vacatur of a judgment following settlement, Motorola.Br.35, that standard is inapplicable when *district courts* consider vacatur of their own judgments, *American Games*, 142 F.3d at 1168-70. More to the point, Motorola’s belated invocation of preclusion denied Uniloc the opportunity even to consider available alternatives.

D. Nonmutual Issue Preclusion Is Unwarranted Here

1. “Nonmutual issue preclusion is not available as a matter of right,” 18A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* §4465 (3d

ed. rev. 2021) (“Wright & Miller”), but is instead committed to “courts’ sense of justice and equity,” *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 334 (1971). “Even when the requirements of the general rule of collateral estoppel are satisfied, the Court must consider whether there are special circumstances present which make it inequitable or inappropriate” *National Railroad Passenger Corp. v. Pa. Pub. Util. Comm’n*, 288 F.3d 519, 528 (3d Cir. 2002).

Where a party seeks nonmutual preclusion, courts give “greater weight” to “considerations [that] may indicate the inappropriateness of imposing preclusion.” *Restatement (Second) of Judgments* §29 cmt. b (1982) (“*Restatement*”). Those considerations include whether the party against which preclusion is sought had sufficient “incentive to litigate” the prior action “‘to the finish,’” including through “full exercise of appellate rights.” *Kaiser Indus. Corp. v. Jones & Laughlin Steel Corp.*, 515 F.2d 964, 977 (3d Cir.), *amended*, 524 F.2d 1154 (3d Cir. 1975). There is no “definitive” list of considerations; courts may refuse preclusion wherever “compelling circumstances make it appropriate that the party be permitted to relitigate the issue.” *Restatement* §29(8) & cmt. j. Courts must “assure that the doctrine is applied in a manner that will serve the twin goals of fairness and efficient use of private and public litigation resources.” *National Railroad*, 288 F.3d at 525.

Here, preclusion would *not* promote judicial economy, conserve resources, or avoid unfairness. Because Motorola failed to raise preclusion below, the district

court expended significant resources addressing the merits of standing in a 23-page opinion. Appx2-24. Uniloc devoted significant resources preparing an opening brief tailored to that decision, with no inkling preclusion was on the table. Only after all that did Motorola bother raising preclusion. Even then, it did so in an especially wasteful manner. Motorola forced needless briefing by filing its motion for summary affirmance—*after* Uniloc filed its opening brief—only to have the Court direct Motorola to raise preclusion in its response brief. ECF #39; *cf.* Fed. Cir. R. 27(f). That detour delayed resolution of this appeal (and companion cases) for months. *Compare* ECF #24 (Motorola response brief due Aug. 27, 2021) *with* ECF #42 (Motorola corrected response brief filed Dec. 22, 2021). Allowing “belated assertion of collateral estoppel arguments would ‘do[] nothing to vindicate two primary policies behind the doctrine, conserving judicial resources and protecting parties from “the expense and vexation” of relitigating issues.’” *Seneca-Cayuga Tribe of Okla. v. Nat’l Indian Gaming Comm’n*, 327 F.3d 1019, 1030 (10th Cir. 2003). Far from *minimizing* litigation burdens, Motorola’s conduct *multiplied* them.

Issue preclusion, moreover, “is premised upon an underlying confidence that the result achieved in the initial litigation was substantially correct.” *Standefer v. United States*, 447 U.S. 10, 23 n.18 (1980). “In the absence of appellate review,” however, “such confidence is often unwarranted.” *Id.* “Settlement of a prior action pending appeal” thus “may defeat preclusion.” 18A Wright & Miller § 4465.2.

“Whenever settlement seems to have sacrificed meaningful opportunities to test the judgment further, a later court should be free to deny nonmutual preclusion.” *Id.* §4465.1; *see Aqua Marine Supply v. AIM Machining, Inc.*, 247 F.3d 1216, 1221 (Fed. Cir. 2001).

That is the case here. Uniloc did not simply throw in the towel on appeal from the *Apple* judgment. Uniloc and Apple reached a “settlement” that “resol[ved] the parties’ respective claims against each other” after Uniloc filed its opening brief. Appx1398-1399. They also moved to dismiss other infringement actions (where Uniloc had *not* received adverse standing rulings); Apple withdrew IPR-related challenges to Uniloc patents; and Apple dismissed antitrust claims against Uniloc. *See* Appx1423-1545. Given the opportunity to resolve litigation and reduce numerous dockets, Uniloc lacked the “incentive to litigate” the *Apple* judgment “to the finish’”—including through “full exercise of appellate rights”—that might warrant affording the judgment preclusive effect. *Kaiser*, 515 F.2d at 977; *see* 18A Wright & Miller §4465.1. That is particularly true given that, when Uniloc settled with Apple, Motorola had *already waived and forfeited* any argument that the *Apple* judgment was preclusive.

The law, moreover, “strongly favors the settlement of all litigation, including patent disputes.” *Sanofi-Aventis v. Apotex Inc.*, 659 F.3d 1171, 1180 (Fed. Cir. 2011). If litigants like Motorola could exploit settlements by disclaiming preclusion

before the district court and then belatedly asserting it on appeal, parties would be pressured to forgo settlement, “increas[ing] the work of the courts.” 18A Wright & Miller § 4464. That is especially true where, as here, the defendant *denies* a judgment’s binding effect *before* the appeal from that judgment is settled. Having raised preclusion only *after* settlement, Motorola cannot escape the impact on the equities.

2. Motorola’s response misunderstands preclusion. Motorola repeatedly claims that “voluntary dismissal [of an appeal] carries with it consequences, one of which is collateral estoppel.” Motorola.Br.20; *see* Motorola.Br.3, 24; ECF #38 at 11. But dismissing an appeal carries zero preclusive “consequences,” because any preclusive effect of a district-court judgment attaches upon entry. *See* p. 16, *supra*. That is critically important here. When Motorola asserted that the *Apple* judgment was “not binding” two days after it issued, that judgment was as “binding” as it would ever be.

More fundamentally, Motorola miscasts preclusion as a rigid doctrine that must be mechanically applied. Preclusion—especially nonmutual preclusion—“was borne of equity” and must “ben[d] to satisfy its underlying purpose in light of the nature of the proceedings.” *Duvall v. Attorney General*, 436 F.3d 382, 390 (3d Cir. 2006); *see National Railroad*, 288 F.3d at 528. Motorola has no response to the many equitable reasons militating *against* nonmutual preclusion here. *See* pp. 25-28, *supra*; ECF #37 at 17-20.

3. In all events, preclusion will be inappropriate if this Court holds, in the companion cases, that licensee sublicensing rights do *not* defeat a patentee’s Article III standing. In that event, the *Apple* judgment would be “inconsistent with another determination of the same issue” by a higher court—in effect, repudiated. *Restatement* § 29(4). A “repudiated decision does not retain preclusive force.” *Herrera v. Wyoming*, 139 S. Ct. 1686, 1698 (2019).

IV. UNILOC 2017 SHOULD BE SUBSTITUTED AS PLAINTIFF

While this action was pending, Uniloc Lux assigned the patent-in-suit to Uniloc 2017. Uniloc.Br.9-10, 47-48.¹⁰ As a result, Uniloc 2017 now owns the patent and should be substituted as plaintiff. *See* Fed. R. App. 43(a)-(b); Fed. R. Civ. P. 25(c). This Court may—and should—do so under Appellate Rule 43(b).

Motorola’s objections to that routine request are makeweight. Its implication that the assignment is not “substantiate[d],” Motorola.Br.60, ignores that patent assignments, including this one, are public records. *See* p. 29, n.10, *supra*; 35 U.S.C. § 261. It also ignores that *Motorola itself* submitted the assignment to the district court shortly after Uniloc sought substitution. Appx143(¶23); Appx436-439.

¹⁰ *See* U.S. Patent Off., Patent Assignment Search, <https://assignment.uspto.gov/patent/index.html#/patent/search/resultAbstract?id=6161134&type=patNum> (May 3, 2018 assignment to Uniloc 2017, recorded July 12, 2018); U.S. Patent Off., Patent Assignment Cover Sheet, <https://legacy-assignments.uspto.gov/assignments/assignment-pat-46532-88.pdf> (assignment).

The suggestion that “discovery would be needed” to determine who *currently* owns the patent, Motorola.Br.60, is nonsense. The public record shows that Uniloc 2017 remains the patent owner. *See* p. 29, n.10, *supra*. Against that, Motorola offers only unfounded speculation that someone else *might* have standing to sue. But even that is irrelevant, because *the patent owner* clearly has standing.

Motorola’s supposed “‘good cause’ requirement” for substitution, Motorola.Br.59, is imaginary. Neither Rule 25(c) nor Rule 43 requires any showing of “good cause” beyond a relevant transfer of interest. Nor has this Court imposed such a requirement. *See ADP*, 772 F. App’x at 893-94; *Mojave Desert Holdings, LLC v. Crocs, Inc.*, 987 F.3d 1070, 1075-77 (Fed. Cir. 2021); *L’Oreal USA, Inc. v. Olaplex, Inc.*, 844 F. App’x 308, 316-17 (Fed. Cir. 2021). Motorola cites *Edgewell Personal Care Brands, LLC v. Albaad Massuot Yitzhak, Ltd.*, No. 15-cv-1188, 2017 WL 2463952 (D. Del. June 7, 2017), but *Edgewell* did not involve substitution; it involved a motion under Civil Rules 15 and 16 to file *an amended complaint adding new counts*. As one court has explained in refusing to engraft a good-cause requirement onto Rule 25, substitution is proper “regardless of whether a party has met the Rule 15 or Rule 16 requirements.” *Uniloc USA, Inc. v. Apple Inc.*, No. 5:19-cv-1692, 2020 WL 2734360, at *1 n.1 (N.D. Cal. May 26, 2020). Motorola cites no contrary authority. Nor does it explain why it would make sense to exclude the patent’s current owner from this litigation.

Motorola's claims of prejudice likewise fail. Substitution does "not affect the substantive aspects of the case." *Minnesota Min. & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256, 1263 (Fed. Cir. 1985). Nor is there any "time limit attached to a party moving for substitution on the basis of a transfer of interest." *Mojave*, 987 F.3d at 1076. This Court and others routinely grant substitution requested months after the relevant transfer and reject claims of prejudice. *E.g.*, *ADP*, 772 F. App'x at 893-94; *L'Oreal*, 844 F. App'x at 317; *Apple*, 2020 WL 2734360, at *2-3. The Court should do the same here.

CONCLUSION

The judgment should be reversed. Uniloc 2017 should be substituted as plaintiff.

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Respectfully submitted,

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**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

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