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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 INTEL CORPORATION and APPLE INC.,
10 Plaintiffs,

11 v.

12 FORTRESS INVESTMENT GROUP LLC,
13 FORTRESS CREDIT CO. LLC,
14 UNILOC 2017 LLC,
15 UNILOC USA, INC.,
16 UNILOC LUXEMBOURG S.A.R.L.,
17 VLSI TECHNOLOGY LLC,
18 INVT SPE LLC,
19 INVENTERGY GLOBAL, INC.,
20 DSS TECHNOLOGY MANAGEMENT,
21 INC., IXI IP, LLC, and
22 SEVEN NETWORKS, LLC
23 Defendants.

Case No. 3:19-cv-07651-EMC

**NOTICE OF MOTION AND MOTION
OF UNIFIED PATENTS, LLC,
CABLELABS
PATREON, AND
BITMOVIN, INC.
TO FILE AMICUS CURIAE BRIEF IN
SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

Hon. Edward M. Chen

24 Motion of Unified Patents, LLC, CableLabs, Patreon, and Bitmovin, Inc.

United States District Court
Northern District of California

TO THE HONORABLE COURT AND ATTORNEYS OF RECORD:

Please take notice that amici move for leave to file the accompanying amicus brief in the captioned case in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss. Amici do not seek oral argument on this motion.

I. In the Northern District Leave To File Amicus Briefs Is Freely Given

There is no rule addressing amicus briefs in the Northern District. Whether to grant leave to file is within the court's discretion. *See Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003). But district courts, including this court, "frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *California v. Azar*, No. 19-cv-01184-EMC, 2019 WL 2029066, *1 (N.D. Cal.) (quoting *Sonoma*, 272 F. Supp. 2d at 925).

Here, the court should grant leave. Amici can satisfy both prongs of the guidance provided by *Sonoma*. First, the issues here have ramifications beyond the parties involved. The court is tasked with deciding whether a mass aggregation of patents can be an antitrust violation. The scope of antitrust laws in the context of patent aggregation is of importance beyond the parties. It will determine whether operating companies have an antitrust defense when threatened with multiple litigations by an entity that has accumulated perhaps thousands of patents. It may also shape the continued growth of patent assertion entities ("PAEs").

Second, amici collectively have a broad perspective on these issues and unique information that can assist the court.

Unified Patents LLC is a membership organization dedicated to deterring patent assertion entities from extracting nuisance settlements from operating companies based on patents that are likely invalid before the district courts and unpatentable before the Patent and Trademark Office ("PTO"). Unified's more than 250 members are Fortune 500 companies, start-ups, automakers,

1 industry groups, cable companies, banks, manufacturers, and others dedicated to reducing the
2 drain on the U.S. economy of now-routine baseless litigations asserting infringement of patents of
3 dubious validity.

4 Unified studies the ever-evolving business models, financial backings, and practices of
5 PAEs. *See, e.g.,* Jonathan Stroud, *Pulling Back the Curtain on Complex Funding of Patent*
6 *Assertion Entities*, 12.2 *Landslide* 20 (Nov./Dec. 2019). Unified monitors ownership data,
7 secondary-market patent sales, demand letters, post-grant procedures, and patent litigation to track
8 PAE activity. *See, e.g.,* Unified Patents, *2019 Litigation Annual Report available at*
9 <https://portal.unifiedpatents.com/litigation/annual-report>.

10 Unified also files post-grant petitions challenging PAE patents it believes are unpatentable
11 or invalid. In 2019, Unified was the fifth most frequent petitioner before the PTO's Patent Trial
12 and Appeal Board ("PTAB"), and it was by far the leading third-party filer.

13 CableLabs is a non-profit non-stock company qualified under the National Cooperative
14 Research and Production Act. CableLabs has over 60 member companies worldwide, including
15 members who represent approximately 85% of U.S. cable subscribers. The cable industry supports
16 over 2.9 million jobs and contributes \$421 billion to the U.S. economy.

17 CableLabs' members have faced numerous PAE suits. They understand the scope of PAE
18 litigation, the evolving PAE business model, and the uncertainty caused by the opaque use of
19 third-party funds to establish and invigorate PAE shell companies.

20 Patreon is a membership platform that helps artists and creators get paid by their fans.
21 Since being founded in 2013, Patreon has sent over \$1 billion in payments to over 150,000
22 creators. During that time, Patreon has been sued, or threatened with suit, by PAEs.

23 Bitmovin, Inc. is a private, venture-backed company, which develops best in class video
24 solutions that enable its customers to create memorable digital experiences. Over the past two
25 years, Bitmovin has faced numerous low-quality PAE claims. In response, the company has
26 adopted an aggressive strategy to defend against such meritless suits.

27 Amici are concerned with the role mass patent aggregators like Fortress have taken in
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1 bolstering the PAE model and in driving the widespread assertion of low-quality patents under
2 dubious infringement theories. Amici will detail the evolving business models, capitalization
3 sources, and strategies of PAEs like Defendants and place those practices in the antitrust context.

4 **II. The Proposed Amicus Brief Complies with General Court Standards**

5 While the Northern District does not have specific guidelines for amicus briefs. *Amici*
6 have prepared their brief in compliance with amici rules in other venues. *See, e.g.*, Fed. R. App.
7 Proc. 29(a); Rules of the U.S. District Court for the District of Columbia, Local Civil Rule 7(o)
8 (July 2019) *available at* https://www.dcd.uscourts.gov/sites/dcd/files/LocalRulesJuly_2019.pdf
9 (“D.C. Local R. 31(o)”).

10 This protects the parties by ensuring the brief is timely and of an appropriate length.
11 Compliance further ensures that the court has sufficient time to review all briefing should it grant
12 leave to file.

- 13 1. Consent has been sought, by email, from counsel for Plaintiffs and counsel for each
14 Defendant. Plaintiffs have consented to the filing of this brief. Defendants have
15 not consented.
- 16 2. Amicus counsel authored the brief. No party or party counsel authored the brief in
17 whole or in part. *See* Fed. R. App. Proc. 29(a)(4).
- 18 3. No party or party’s counsel has contributed to the cost of this brief. *Id.*
- 19 4. No person other than amici contributed money to fund this brief. *Id.*
- 20 5. The proposed amicus brief is timely. The FRAP rules allow amici seven days to
21 file after the principal brief of the party they support. *Id.* The rules of the District
22 of Columbia require that the motion be filed “such that it does not unduly delay the
23 court’s ability to rule on any pending matter.” This motion is filed with brief on
24 March 19, 2020. Plaintiffs’ Opposition was filed March 19, 2020. Defendants’
25 Reply is due April 6, 2020. Dkt. No. 75 at 1-2. The hearing on Defendants’
26 motion originally scheduled for Apr. 23, 2020, has been continued. Dkt. No. 135.
27 That affords the Defendants time to respond and the court time to review before the

1 Reply and hearing, respectively.

- 2 6. The amicus brief has the appropriate length. At 16 pages, it does not exceed 25
3 pages. *See* D.C. Local R. 31(o). The amicus brief is likewise less than half the
4 length of the 50-page opening briefs the parties are allowed. *See* FRAP 29(a)(5);
5 Dkt. No. 90 (Jan. 22, 2020).

6 **CONCLUSION**

7 *Amici* collectively bring unique perspectives and experience to the issues before the Court.
8 No party will be prejudiced by the brief, and the Court will not be overburdened. The Court should
9 grant leave to file.

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13 Respectfully submitted,

14 March 19, 2020

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