

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UNILOC USA, INC. and	§	
UNILOC LUXEMBOURG, S.A.,	§	Civil Action No. 2:16-cv-861
	§	
Plaintiffs,	§	
	§	
v.	§	PATENT CASE
	§	
CARBONITE, INC.,	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together “Uniloc”), as and for their complaint against defendant, Carbonite, Inc. (“Carbonite”), allege as follows:

THE PARTIES

1. Uniloc USA, Inc. (“Uniloc USA”) is a Texas corporation having a principal place of business at Legacy Town Center I, Suite 380, 7160 Dallas Parkway, Plano Texas 75024. Uniloc also maintains a place of business at 102 N. College, Suite 603, Tyler, Texas 75702.

2. Uniloc Luxembourg S.A. (“Uniloc Luxembourg”) is a Luxembourg public limited liability company having a principal place of business at 15, Rue Edward Steichen, 4th Floor, L-2540, Luxembourg (R.C.S. Luxembourg B159161).

3. Uniloc Luxembourg owns a number of patents in the field of application management in a computer network.

4. Upon information and belief, Carbonite is a Delaware corporation having a principal place of business in Boston, Massachusetts and offering its products, including those accused herein of infringement, to customers and/or potential customers located in Texas and in

the judicial Eastern District of Texas. Carbonite may be served with process through its registered agent: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

JURISDICTION AND VENUE

5. Uniloc brings this action for patent infringement under the patent laws of the United States, 35 U.S.C. § 271 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, Carbonite is deemed to reside in this judicial district, has committed acts of infringement in this judicial district, and/or has purposely transacted business involving the accused products in this judicial district, including sales to one or more customers in Texas.

7. Carbonite is subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to its substantial business in this State and judicial district, including: (A) at least part of its past infringing activities, (B) regularly doing or soliciting business in Texas and/or (C) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 6,324,578)

8. Uniloc incorporates paragraphs 1-7 above by reference.

9. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,324,578 ("the '578 Patent"), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR MANAGEMENT OF CONFIGURABLE APPLICATION PROGRAMS ON

A NETWORK that issued on November 27, 2001. A true and correct copy of the '578 Patent is attached as Exhibit A hereto.

10. Uniloc USA is the exclusive licensee of the '578 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

11. Upon information and belief, the following describes, at least in part, Carbonite's back-up and recovery products:

Workstations <small>Backup for workstations</small>	Servers <small>Backup for hybrid, local, live applications</small>	Complete Business Protection <small>Combines automatic workstation backup with robust server backup</small>
PRO BASIC \$269.99 \$269.99 <small>per year</small> 250 GB CLOUD STORAGE shared with an unlimited number of: • Computers & laptops • NAS devices & external hard drives	SERVER ESSENTIALS \$899.99 \$799.99 <small>per year</small> 500 GB CLOUD STORAGE shared with an unlimited number of: • Servers (physical and virtual), databases, live applications, Hyper-V environments • NAS devices & external hard drives	ADVANCED PRO BUNDLE \$1299.99 \$999.99 <small>per year</small> 500 GB CLOUD STORAGE shared with an unlimited number of: • Servers (physical and virtual), databases, live applications, Hyper-V environments • NAS devices & external hard drives • Windows file servers • Computers & laptops
PRO PRIME \$599.99 \$599.99 <small>per year</small> 500 GB CLOUD STORAGE shared with an unlimited number of: • Computers & laptops • NAS devices & external hard drives • Windows file servers	SERVER ADVANCED \$1499.99 \$899.99 <small>per year</small> 500 GB CLOUD STORAGE shared with an unlimited number of: • Servers (physical and virtual), databases, live applications, Hyper-V environments • NAS devices & external hard drives • Image backup and Bare Metal Restore	

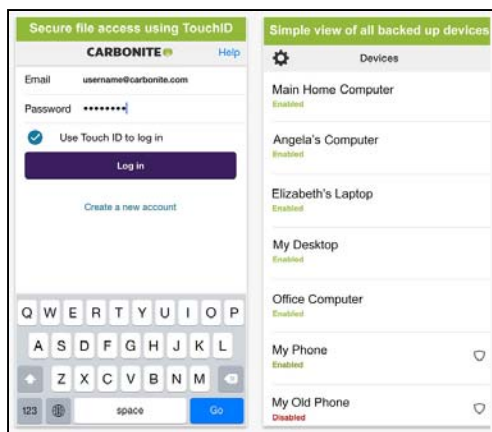
12. Upon information and belief, the following describes, at least in part, Carbonite's back-up and recovery products:

BUSINESS PLAN SAVINGS
 SAVE UP TO **30%** FOR A LIMITED TIME

Disasters come in many forms, but Carbonite helps businesses protect their data wherever and whenever it's at risk.

COMPUTER & EXTERNAL STORAGE BACKUP	PHYSICAL AND VIRTUAL SERVER BACKUP	COMPREHENSIVE BUSINESS BACKUP
 Carbonite Pro Automatically and continuously protects business files and data in the cloud, simple to set up and manage on a single machine or across an entire organization. Recommended for: Customers looking for a cloud-based backup solution to protect computer data and allow remote access to files from any location or device.	 Carbonite Server Backup Software-based solution with hybrid backup and optional bare-metal restore (BMR) for rapid recovery from data loss and significantly reduced downtime. Recommended for: Customers looking for a flexible, software-based solution for single environments or those with an array of databases or virtual machines.	 Advanced Pro Bundle Provides cloud backup for an unlimited number of computers, external storage devices and physical or virtual servers. Recommended for: Those who want it all: combine all the great features of Carbonite Pro and Carbonite Server Backup for comprehensive online backup and recovery.

13. Upon information and belief, the following describes, at least in part, Carbonite's mobile back-up and recovery application:



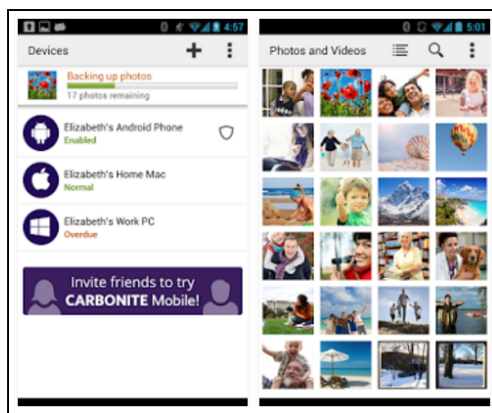
14. Upon information and belief, the following describes, at least in part, how Carbonite’s mobile app works:

The Carbonite Mobile app is available for use on iOS and Android devices free of charge and is intended for use with a Carbonite Personal account. If you are using Carbonite Mobile with a Carbonite Pro account or on your iOS device, you will only have use of the Access feature of Carbonite Mobile to view your backed up Carbonite files.

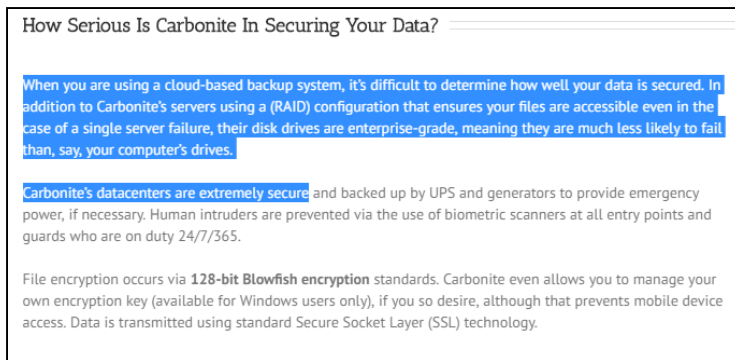
iOS - The Carbonite Mobile Application will allow you to utilize the Anytime Anywhere Access feature of Carbonite in a viewing format that is optimized for your iOS device. Carbonite Mobile for iOS can easily be downloaded through the App Store. We apologize, but currently it is not possible for us to offer a backup feature for the iOS mobile device. Please view [this Knowledge Base article](#) for setting up Carbonite Mobile on your iOS device.

Android - The Carbonite Mobile Application will allow you to utilize the Anytime Anywhere Access feature of Carbonite in a viewing format that is optimized for the mobile device. Additionally, the Android version of Carbonite Mobile allows you to back up photos and videos in the camera roll location of your Android devices. You can also utilize the Protect features of the Application if the device is lost or stolen to remotely reset your device to factory settings. These additional features are discussed in detail below. Carbonite Mobile for Android can easily be downloaded through the Google Play Store, even if you do not already have a Carbonite account. Please view [this Knowledge Base article](#) for setting up Carbonite Mobile on your Android device.

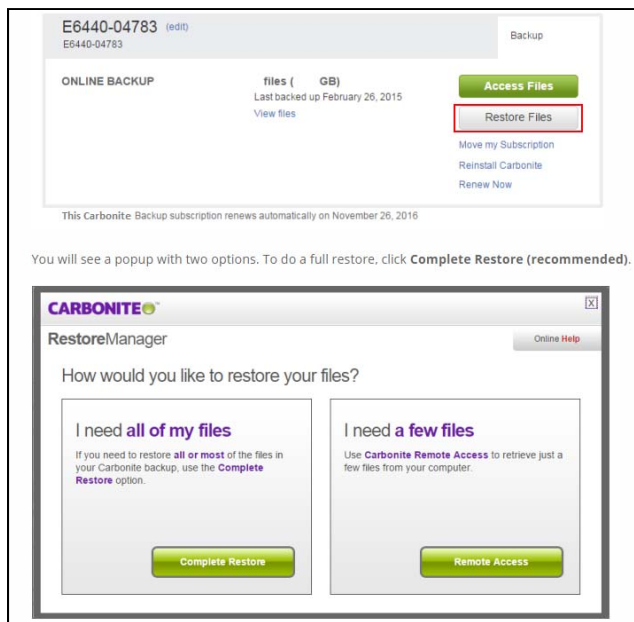
15. Upon information and belief, the following describes, at least in part, how Carbonite’s mobile app works:



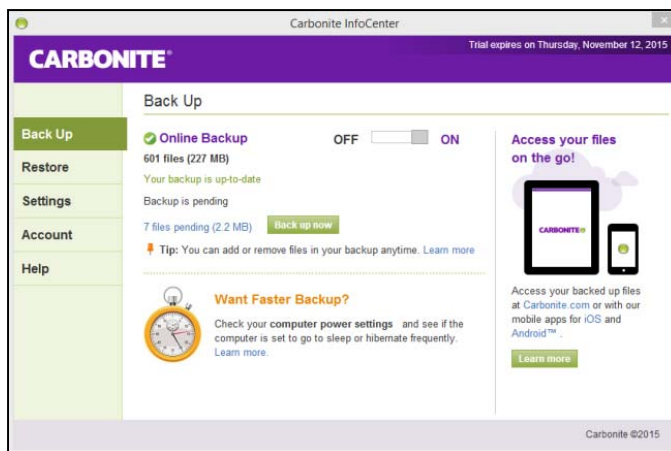
16. Upon information and belief, the following describes, at least in part, how Carbonite’s datacenters work:



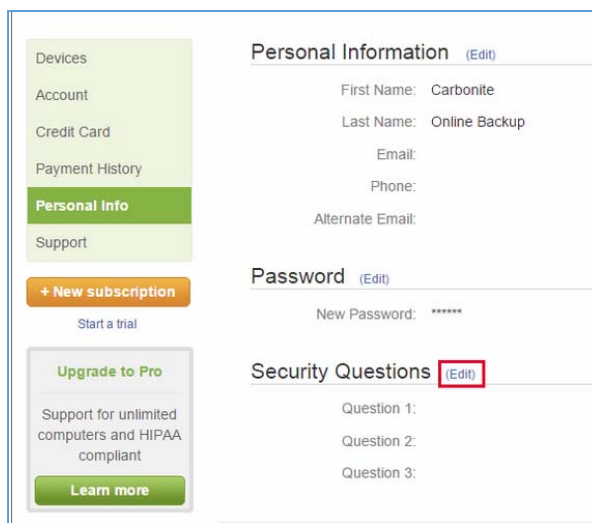
17. Upon information and belief, the following describes, at least in part, how Carbonite's personal product works:



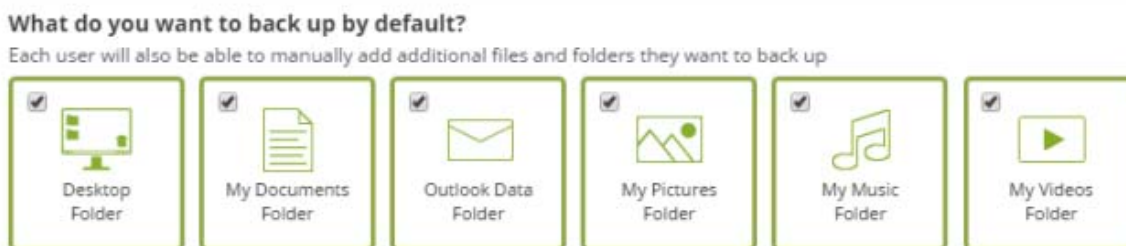
18. Upon information and belief, the following describes, at least in part, how Carbonite's personal product works:



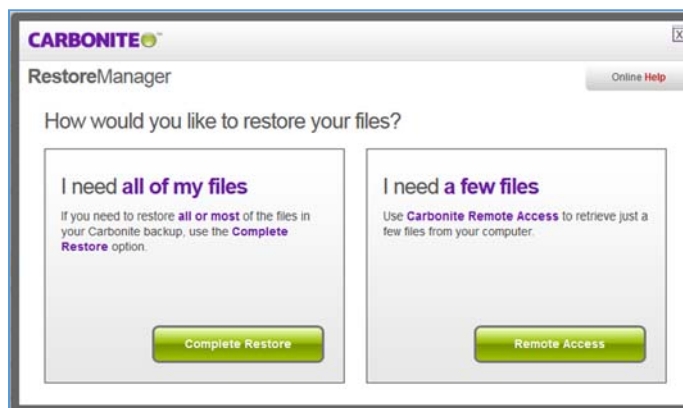
19. Upon information and belief, the following describes, at least in part, how Carbonite’s personal product works:



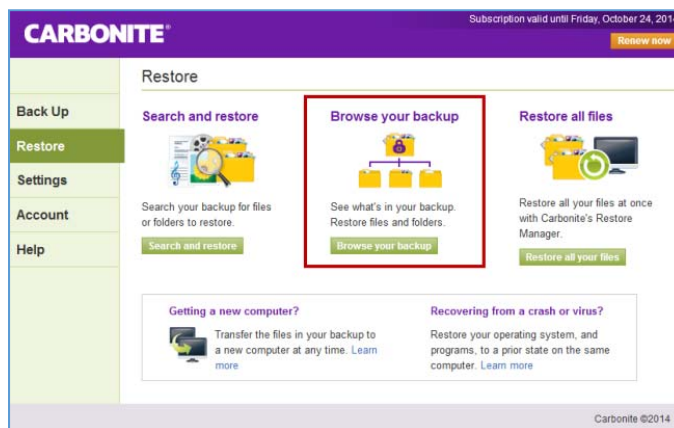
20. Upon information and belief, the following describes, at least in part, how Carbonite’s server product works:



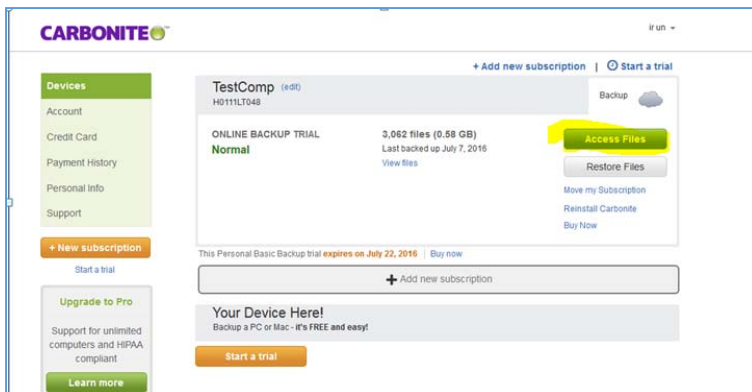
21. Upon information and belief, the following describes, at least in part, how Carbonite's personal product works:



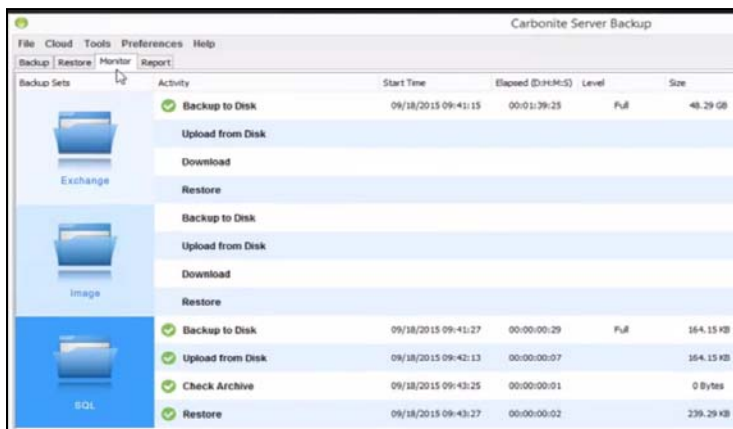
22. Upon information and belief, the following describes, at least in part, how Carbonite's personal product works:



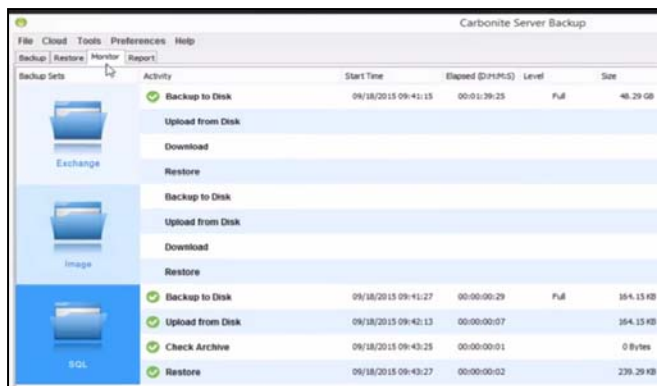
23. Upon information and belief, the following describes, at least in part, how Carbonite's web browser product works:



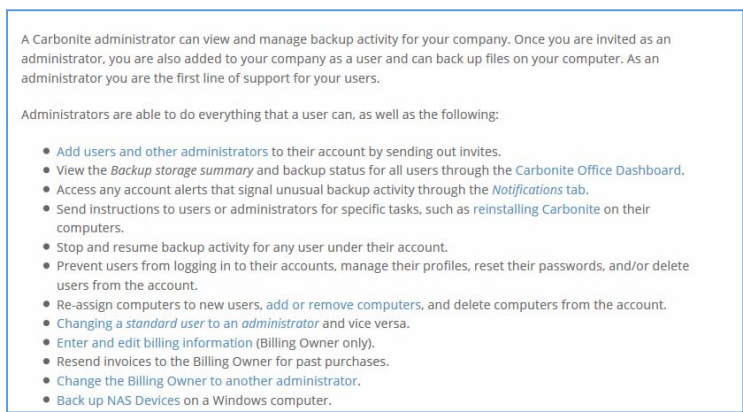
24. Upon information and belief, the following describes, at least in part, how Carbonite’s Pro product works:



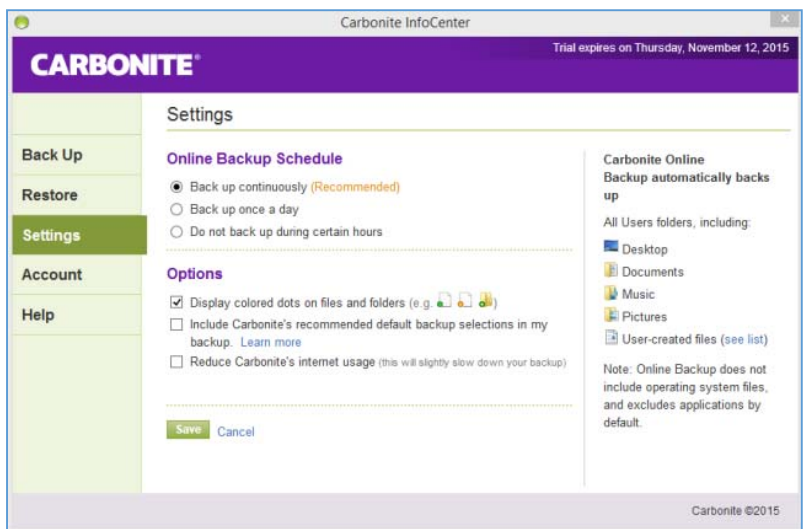
25. Upon information and belief, the following describes, at least in part, how Carbonite’s Pro product works:



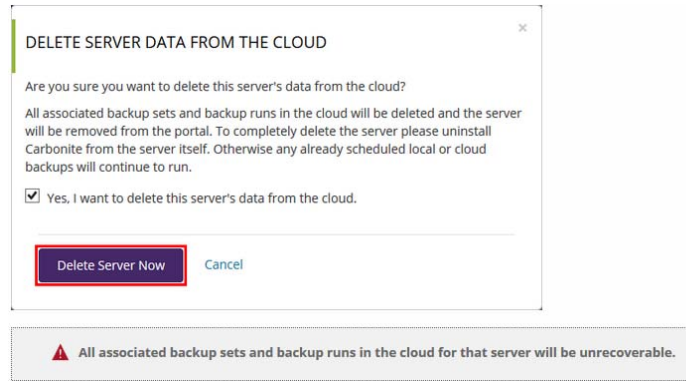
26. Upon information and belief, the following describes, at least in part, Administrator Privileges available in Carbonite’s Pro product:



27. Upon information and belief, the following describes, at least in part, how Carbonite’s products schedule online backup of files:



28. Upon information and belief, the following describes, at least in part, how Carbonite’s products allow for server data to be deleted from the cloud:



29. Carbonite has directly infringed, and continues to directly infringe one or more claims of the '578 Patent in this judicial district and elsewhere in Texas, including at least claims 1-46 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Carbonite web browser and mobile versions of its business continuity solutions during the pendency of the '578 Patent which software and associated backend server architecture *inter alia* allows for installing application programs having a plurality of configurable preferences and authorized users on a network, distributing an application launcher program to a user, the user obtaining a set of configurable preferences, obtaining an administrator set of configurable preferences and executing the application program using the user and administrator sets of configurable preferences responsive to a request from a user.

30. In addition, should the Carbonite web browser and mobile versions of its business continuity solutions be found to not literally infringe the asserted claims of the '578 Patent, the product would nevertheless infringe the asserted claims of the '578 Patent. More specifically, the accused system performs substantially the same function (making computer programs available for digital download/management by an authorized user), in substantially the same way (via a launcher program in a client/server environment), to yield substantially the same result

(distributing application programs in response to a request from one or more users on a network).

Carbonite would thus be liable for direct infringement under the doctrine of equivalents.

31. Carbonite has indirectly infringed and continues to indirectly infringe at least claims 1-46 of the '578 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the Carbonite web browser and mobile versions of its business continuity solutions. Carbonite's customers who use the Carbonite web browser and mobile versions of its business continuity solutions in accordance with Carbonite's instructions directly infringe one or more of the forgoing claims of the '578 Patent in violation of 35 U.S.C. § 271. Carbonite directly and/or indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

- www.carbonite.com
- <https://support.carbonite.com>
- <https://account.carbonite.com>
- www.youtube.com

Carbonite is thereby liable for infringement of the '578 Patent under 35 U.S.C. § 271(b).

32. Carbonite has indirectly infringed and continues to indirectly infringe at least claims 1-46 of the '578 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the Carbonite web browser and mobile versions of its business continuity solutions, by making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to

be especially made or especially adapted for use in infringing the '578 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

33. For example, the Carbonite web browser and mobile versions of its business continuity solutions are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Carbonite web browser and mobile versions of its business continuity solutions are material parts of the claimed inventions and upon information and belief are not staple articles or commodities of commerce suitable for substantial non-infringing use. Carbonite is, therefore, liable for infringement under 35 U.S.C. § 271(c).

34. Carbonite will have been on notice of the '578 Patent since, at the latest, the service of this complaint upon Carbonite. By the time of trial, Carbonite will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more of claims 1-46 of the '578 Patent.

35. Carbonite may have infringed the '578 Patent through other software utilizing the same or reasonably similar functionality, including other versions of its web browser and mobile business continuity solutions. Uniloc reserves the right to discover and pursue all such additional infringing software.

36. Uniloc has been damaged, reparably and irreparably, by Carbonite's infringement of the '578 Patent and such damage will continue unless and until Carbonite is enjoined.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 7,069,293)

37. Uniloc incorporates paragraphs 1-36 above by reference.

38. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,069,293 ("the '293 Patent"), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM

PRODUCTS FOR DISTRIBUTION OF APPLICATION PROGRAMS TO A TARGET STATION ON A NETWORK that issued on June 27, 2006. A true and correct copy of the '293 Patent is attached as Exhibit B hereto.

39. Uniloc USA is the exclusive licensee of the '293 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

40. Carbonite has directly infringed, and continues to directly infringe one or more claims of the '293 Patent in this judicial district and elsewhere in Texas, including at least claims 1, 12 and 17 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Carbonite web browser and mobile versions of its business continuity solutions during the pendency of the '293 Patent which software and associated backend server architecture *inter alia* allows for installing application programs having a plurality of configurable preferences and authorized users on a network, distributing an application launcher program to a user, the user obtaining a set of configurable preferences, obtaining an administrator set of configurable preferences and executing the application program using the user and administrator sets of configurable preferences responsive to a request from a user.

41. In addition, should the Carbonite web browser and mobile versions of its business continuity solutions be found to not literally infringe the asserted claims of the '293 Patent, the product would nevertheless infringe the asserted claims of the '293 Patent. More specifically, the accused system performs substantially the same function (distributing application programs to a target on-demand server on a network), in substantially the same way (via a client/server environment to target on-demand users), to yield substantially the same result (making

application programs available for use by target on-demand users). Carbonite would thus be liable for direct infringement under the doctrine of equivalents.

42. Carbonite has indirectly infringed and continues to indirectly infringe at least claims 1, 12 and 17 of the '293 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the Carbonite web browser and mobile versions of its business continuity solutions. Carbonite's customers who use the Carbonite web browser and mobile versions of its business continuity solutions in accordance with Carbonite's instructions directly infringe one or more of the forgoing claims of the '293 Patent in violation of 35 U.S.C. § 271. Carbonite directly and/or indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

- www.carbonite.com
- <https://support.carbonite.com>
- <https://account.carbonite.com>
- www.youtube.com

Carbonite is thereby liable for infringement of the '293 Patent under 35 U.S.C. § 271(b).

43. Carbonite has indirectly infringed and continues to indirectly infringe at least claims 1, 12 and 17 of the '293 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the Carbonite web browser and mobile versions of its business continuity solutions, by making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to

be especially made or especially adapted for use in infringing the '293 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

44. For example, the Carbonite web browser and mobile versions of its business continuity solutions are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Carbonite web browser and mobile versions of its business continuity solutions are material parts of the claimed inventions and upon information and belief are not staple articles or commodities of commerce suitable for substantial non-infringing use. Carbonite is, therefore, liable for infringement under 35 U.S.C. § 271(c).

45. Carbonite will have been on notice of the '293 Patent since, at the latest, the service of this complaint upon Carbonite. By the time of trial, Carbonite will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more of claims 1, 12 and 17 1-46 of the '293 Patent.

46. Carbonite may have infringed the '293 Patent through other software utilizing the same or reasonably similar functionality, including other versions of its web browser and mobile business continuity solutions. Uniloc reserves the right to discover and pursue all such additional infringing software.

47. Uniloc has been damaged, reparably and irreparably, by Carbonite's infringement of the '293 Patent and such damage will continue unless and until Carbonite is enjoined.

COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 6,510,466)

48. Uniloc incorporates paragraphs 1-47 above by reference.

49. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,510,466 ("the '466 Patent"), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM

PRODUCTS FOR CENTRALIZED MANAGEMENT OF APPLICATION PROGRAMS ON A NETWORK that issued on January 21, 2003. A true and correct copy of the '466 Patent is attached as Exhibit C hereto.

50. Uniloc USA is the exclusive licensee of the '466 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

51. Carbonite has directly infringed, and continues to directly infringe one or more claims of the '466 Patent in this judicial district and elsewhere in Texas, including at least claims 1-5, 20, 22-33 and 35-42 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Carbonite web browser and mobile versions of its business continuity solutions during the pendency of the '466 Patent which software and associated backend server architecture *inter alia* allows for installing application programs having a plurality of configurable preferences and authorized users on a network, distributing an application launcher program to a user, the user obtaining a set of configurable preferences, obtaining an administrator set of configurable preferences and executing the application program using the user and administrator sets of configurable preferences responsive to a request from a user.

52. In addition, should the Carbonite web browser and mobile versions of its business continuity solutions be found to not literally infringe the asserted claims of the '466 Patent, the product would nevertheless infringe the asserted claims of the '466 Patent. More specifically, the accused system performs substantially the same function (making computer games/software available for digital download/management), in substantially the same way (via a client/server environment), to yield substantially the same result (providing authorized games/software to a

client for execution). Carbonite would thus be liable for direct infringement under the doctrine of equivalents.

53. Carbonite has indirectly infringed and continues to indirectly infringe at least claims 1-46 of the '466 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the Carbonite web browser and mobile versions of its business continuity solutions. Carbonite's customers who use the Carbonite web browser and mobile versions of its business continuity solutions in accordance with Carbonite's instructions directly infringe one or more of the forgoing claims of the '466 Patent in violation of 35 U.S.C. § 271. Carbonite directly and/or indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

- www.carbonite.com
- <https://support.carbonite.com>
- <https://account.carbonite.com>
- www.youtube.com

Carbonite is thereby liable for infringement of the '466 Patent under 35 U.S.C. § 271(b).

54. Carbonite has indirectly infringed and continues to indirectly infringe at least claims 1-5, 20, 22-33 and 35-42 of the '466 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the Carbonite web browser and mobile versions of its business continuity solutions, by making, offering to sell, selling and/or importing into the United States, a component of a patented machine, manufacture or combination, or an apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the

same to be especially made or especially adapted for use in infringing the '466 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

55. For example, the Carbonite web browser and mobile versions of its business continuity solutions are components of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Carbonite web browser and mobile versions of its business continuity solutions are material parts of the claimed inventions and upon information and belief are not staple articles or commodities of commerce suitable for substantial non-infringing use. Carbonite is, therefore, liable for infringement under 35 U.S.C. § 271(c).

56. Carbonite will have been on notice of the '466 Patent since, at the latest, the service of this complaint upon Carbonite. By the time of trial, Carbonite will have known and intended (since receiving such notice) that its continued actions would actively induce, and contribute to, the infringement of one or more of claims 1-5, 20, 22-33 and 35-42 of the '466 Patent.

57. Carbonite may have infringed the '466 Patent through other software utilizing the same or reasonably similar functionality, including other versions of its web browser and mobile business continuity solutions. Uniloc reserves the right to discover and pursue all such additional infringing software.

58. Uniloc has been damaged, reparably and irreparably, by Carbonite's infringement of the '466 Patent and such damage will continue unless and until Carbonite is enjoined.

PRAYER FOR RELIEF

Uniloc requests that the Court enter judgment against Carbonite as follows:

(A) that Carbonite has infringed the '578 Patent, the '293 Patent and the '466 Patent;

(B) awarding Uniloc its damages suffered as a result of Carbonite's infringement of the '578 Patent, the '293 Patent and the '466 Patent;

(C) enjoining Carbonite, its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries and parents, and all others acting in concert or privity with it from infringing the '578 Patent, the '293 Patent and the '466 Patent;

(D) awarding Uniloc its costs, attorneys' fees, expenses and interest, and

(E) granting Uniloc such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Uniloc hereby demands trial by jury on all issues so triable pursuant to Fed. R. Civ. P. 38.

Dated: August 2, 2016

Respectfully submitted,

/s/ Craig Tadlock

Craig Tadlock

Texas State Bar No. 00791766

Keith Smiley

Texas State Bar No. 24067869

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Boston, MA 02110

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Facsimile: (617) 951-3927

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Email: kgannon@c-m.com

ATTORNEYS FOR THE PLAINTIFFS