

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

UNILOC USA, INC. and	§	
UNILOC LUXEMBOURG, S.A.,	§	
Plaintiffs,	§	Civil Action No. 2:17-cv-00172
	§	
v.	§	PATENT CASE
	§	
BIG FISH GAMES, INC.,	§	
	§	
Defendant.	§	JURY TRIAL DEMANDED
	§	

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together “Uniloc”), for their complaint against defendant, Big Fish Games, Inc. (“Big Fish Games”), 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 USA 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 replicating data from a source file to a target file in a computer system: including by providing upgrades from a server to a remote user’s computer.

4. Upon information and belief, Big Fish Games is a Washington corporation having a principal place of business in Seattle, Washington and offers its products and services, including those accused herein of infringement, to customers and/or potential customers located in Texas and in the judicial Eastern District of Texas. Big Fish Games may be served with process through its registered agent: CT Corporation System, 505 Union Ave. SE, Suite 120, Olympia, Washington 98501.

JURISDICTION AND VENUE

5. Uniloc USA and Uniloc Luxembourg (collectively, “Uniloc”) bring 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, Big Fish Games 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 and/or services in Texas and this judicial district.

7. Big Fish Games is subject to this Court’s jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to its substantial presence and business in this State and judicial district, including: (A) at least part of its past infringing activities, (B) regularly doing and/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. 6,110,228)

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

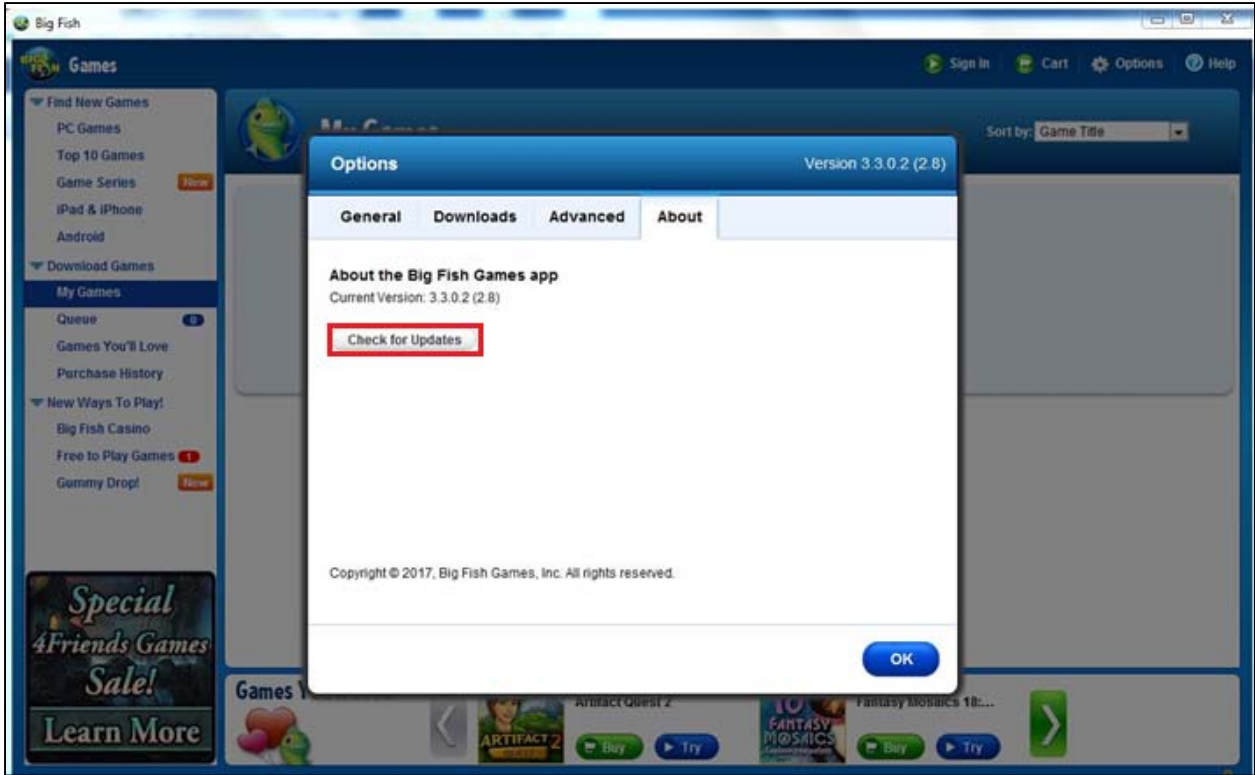
9. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,110,228 (“the ’228 Patent”), entitled METHOD AND APPARATUS FOR SOFTWARE MAINTENANCE AT REMOTE NODES that issued on August 29, 2000. A true and correct copy of the ’228 Patent is attached as Exhibit A hereto.

10. Uniloc USA is the exclusive licensee of the ’228 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.

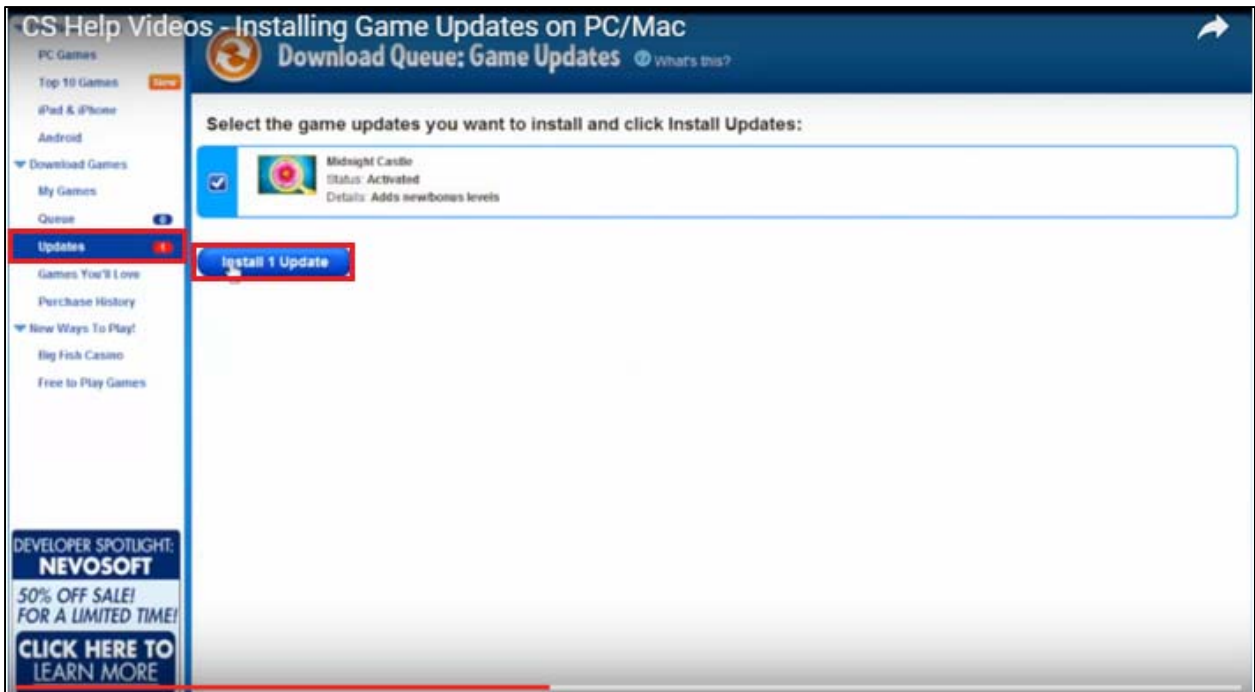
11. The following image shows that Big Fish Games portal allows a remote user to request updates from the Big Fish Games servers:



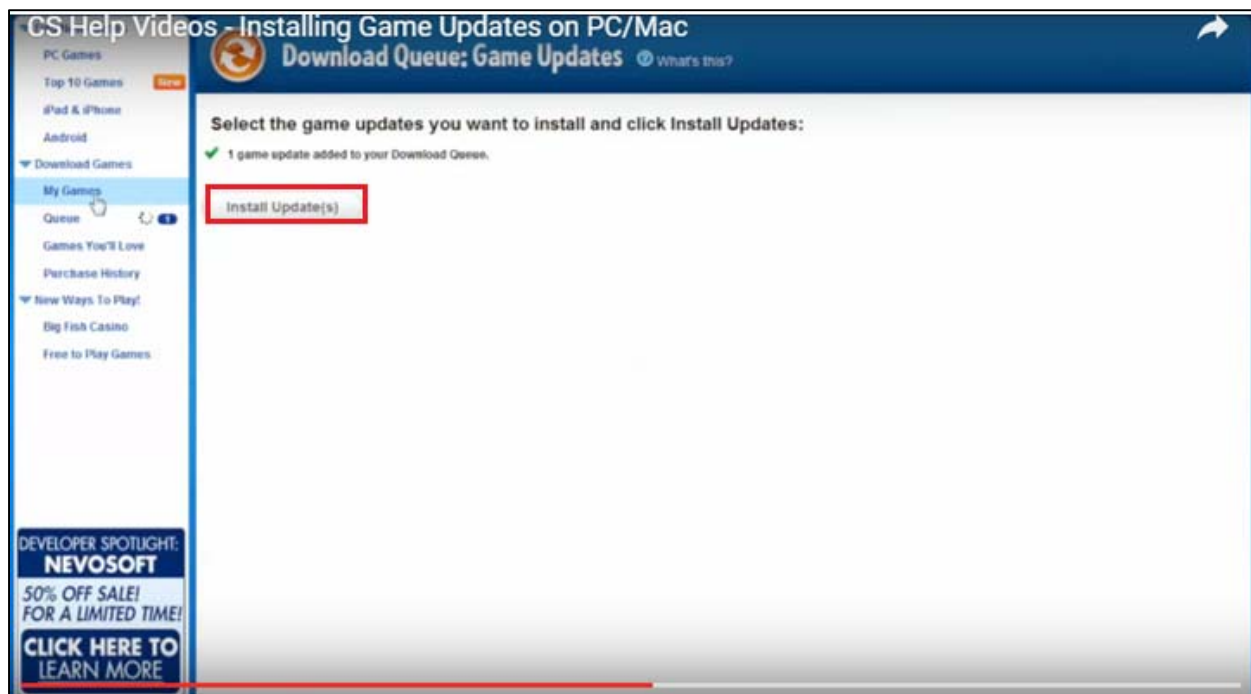
12. The following image shows that Big Fish Games allows a user to “Check for Updates”:



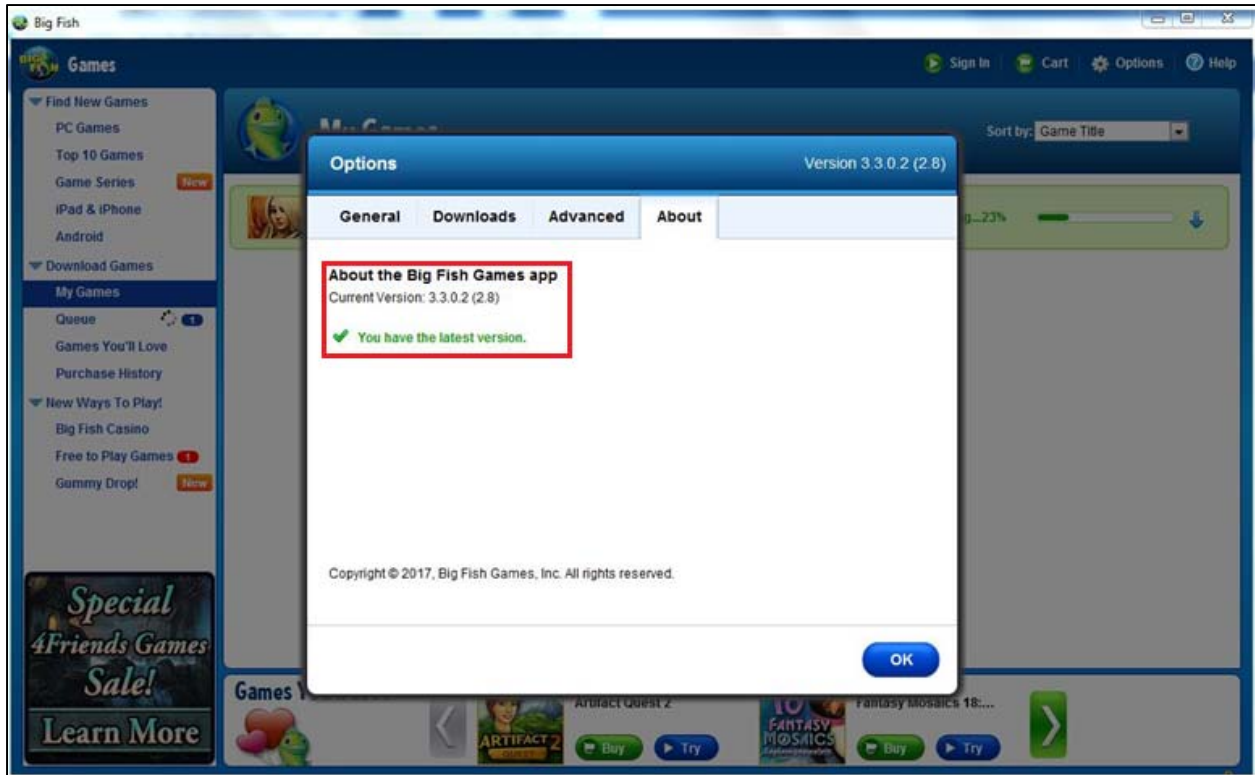
13. The following image shows that Big Fish Games provides an upgrade service by which the user may install upgrades on the user's remote computer:



14. The following image shows that a user can download and install updates on the user's remote computer:



15. The following image shows that Big Fish Games informs users when the user has the latest version of a game:



16. Big Fish Games has directly infringed, and continues to directly infringe one or more claims of the '228 Patent in the United States during the pendency of the '228 Patent, including at least claims 1, 6-7, 10, 18, 26, 29, and 67 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Big Fish Games portal during the pendency of the '228 Patent which software and associated backend server architecture *inter alia* allow for receiving users' requests for service (for example, upgrades), determining the service requested (for example, provide an upgrade), and providing the upgrade to the user in response to the request received by Big Fish Games from the remote user location.

17. In addition, should the Big Fish Games portal be found to not literally infringe the asserted claims of the '228 Patent, the Big Fish Games portal would nevertheless infringe the asserted claims of the '228 Patent. More specifically, the Big Fish Games portal performs

substantially the same function (providing a service to a remote user location), in substantially the same way (via a request for service from the user's remote device), to yield substantially the same result (allowing a user to receive a service, such as an upgrade to an installed Big Fish Games application). Big Fish Games would thus be liable for direct infringement under the doctrine of equivalents.

18. Big Fish Games has indirectly infringed and continues to indirectly infringe at least claims 1, 6-7, 10, 18, 26, 29, and 67 of the '228 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 Big Fish Games portal. Big Fish Games's customers who use the Big Fish Games portal in accordance with Big Fish Games's instructions directly infringe one or more of the foregoing claims of the '228 Patent in violation of 35 U.S.C. § 271. Big Fish Games directly and/or indirectly intentionally instructs its customers to infringe through training videos, demonstrations, brochures, installation and/or user guides such as those located at one or more of the following:

- www.bigfishgames.com
- www.bigfishgames.com
- <https://facebook.com/bigfishgames/>
- <https://itunes.com/us/app/game-finder-best-hidden-object/>
- <https://play.google.com/store/apps>
- <https://playbigfish.custhelp.com>
- <https://bigfishgames.custhelp.com>
- www.youtube.com, including:
www.youtube.com/watch?v=Ci7ju0tWbUE

www.youtube.com/watch?v=iEbMYJ2OCs

www.youtube.com/watch?v=fAIDu0HD4ts

Big Fish Games is thereby liable for infringement of the '228 Patent under 35 U.S.C. § 271(b).

19. Big Fish Games has indirectly infringed and continues to indirectly infringe at least claims 1, 6-7, 10, 18, 26, 29, and 67 of the '228 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 Big Fish Games portal, 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 '228 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

20. For example, the Big Fish Games portal software is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Big Fish Games portal software is a material part of the claimed inventions and upon information and belief is not a staple article or commodity of commerce suitable for substantial non-infringing use. Big Fish Games is, therefore, liable for infringement under 35 U.S.C. § 271(c).

21. Big Fish Games will have been on notice of the '228 Patent since, at the latest, the service of this complaint upon Big Fish Games. By the time of trial, Big Fish Games 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, 6-7, 10, 18, 26, 29, and 67 of the '228 Patent.

22. Big Fish Games may have infringed the '228 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Big Fish Games portal. Uniloc reserves the right to discover and pursue all such additional infringing software.

23. Uniloc has been damaged, reparably and irreparably, by Big Fish Games's infringement of the '228 Patent and such damage will continue unless and until Big Fish Games is enjoined.

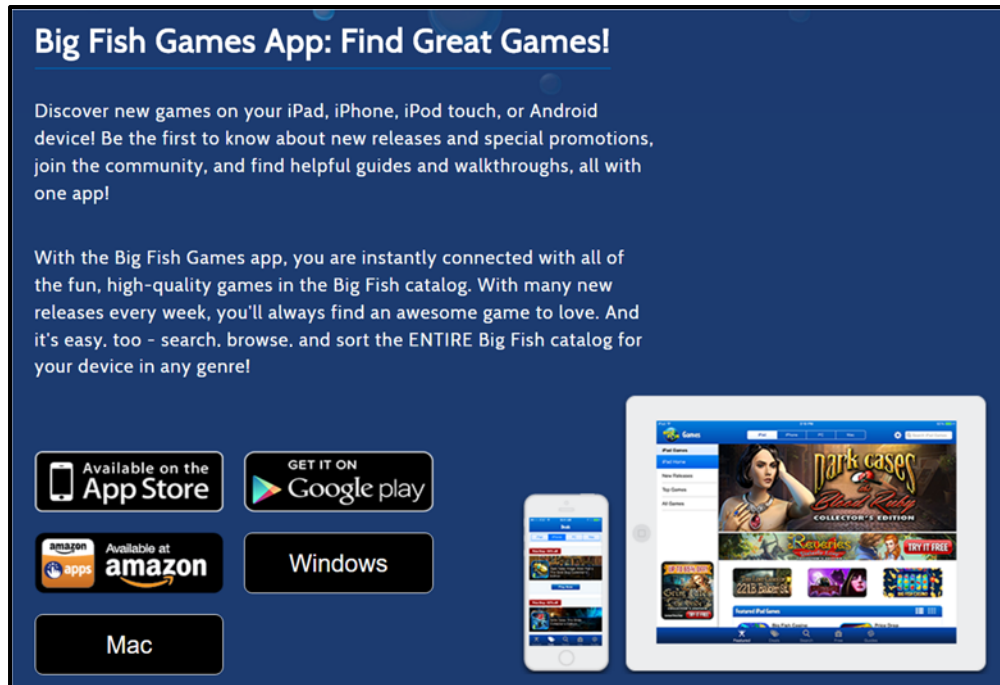
COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 6,564,229)

24. Uniloc incorporates paragraphs 1-7 above, by reference.

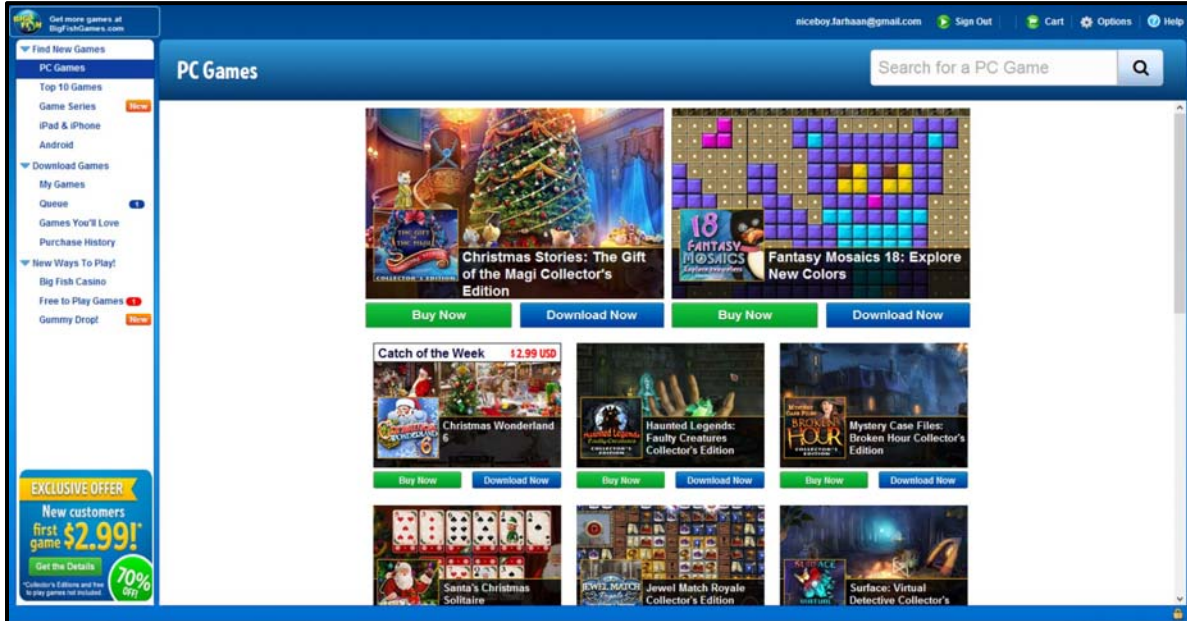
25. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,564,229 ("the '229 Patent"), entitled SYSTEM AND METHOD FOR PAUSING AND RESUMING MOVE/COPY OPERATIONS, issued on May 13, 2003. A copy of the '229 Patent is attached as Exhibit B.

26. Uniloc USA is the exclusive licensee of the '229 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.

27. The following image shows the Big Fish Games app as offering a plurality of games in various formats such as Android and Mac that can be downloaded from a server to a user's computer:



28. The following image from the Big Fish Games portal identifies numerous games offered for download by Big Fish Games:



29. The following image shows the Big Fish Games user interface identifying a user's choice to read and download "Christmas Stories: The Gift of the Magi Collector's Edition" from a Big Fish Games server and write such software to the user's computer:



30. The following image shows that download operation may be paused by the user clicking on the pause button that is available on the user interface:



31. The following image shows that the user has paused the download, thereby allowing the user's computer to be available for other use:



32. The following image also shows that the user can continue the download by clicking on the resume button:



33. The following image shows that the game continues to download once the resume button has been clicked:



34. Big Fish Games has infringed, and continues to infringe one or more claims of the '229 Patent in the United States during the pendency of the '229 Patent, including at least claims 1-7, 10-13, and 16 by making, using, importing, offering for sale and/or selling the Big Fish Games portal which software and associated backend server architecture, *inter alia*, allow for downloading a first portion of a data file, such as a game, to a file on the user's computer; pausing the download using a "Pause" button during which pause the user's computer is available for other processing operations; and resuming the download by using a "resume" button, thereby allowing a second portion of the game to be downloaded and written to a file on the user's computer.

35. In addition, should the Big Fish Games portal be found to not literally infringe the asserted claims of the '229 Patent, it product would nevertheless infringe the asserted claims of the '229 Patent. More specifically, the accused software system performs substantially the same function (copying data from a source file to a target file on a user's computer), in substantially the same way (via a pause and resume operation), to yield substantially the same result (copying

data while allowing a user to perform other computer operations during the pause). Big Fish Games would thus be liable for direct infringement under the doctrine of equivalents.

36. Big Fish Games has indirectly infringed and continues to indirectly infringe at least claims 1-7, 10-13, and 16 of the '229 Patent by, among other things, actively inducing the using, offering for sale, selling, or importing the Big Fish Games portal. Big Fish Games' customers who use the Big Fish Games portal in accordance with Big Fish Games' instructions directly infringe one or more of the foregoing claims of the '229 Patent in violation of 35 U.S.C. § 271. As set forth, *inter alia*, above, Big Fish Games directly and/or indirectly intentionally instructs its customers to infringe through training videos, demonstrations, brochures, installation and/or user guides for the Big Fish Games portal, such as those located at one or more of the following:

- www.bigfishgames.com
- www.bigfishgames.com
- <https://facebook.com/bigfishgames/>
- <https://itunes.com/us/app/game-finder-best-hidden-object/>
- <https://play.google.com/store/apps>
- <https://playbigfish.custhelp.com>
- <https://bigfishgames.custhelp.com>
- www.youtube.com, including:
 - www.youtube.com/watch?v=Ci7ju0tWbUE
 - www.youtube.com/watch?v=iEbMYJ2OCs
 - www.youtube.com/watch?v=fAIDu0HD4ts

Big Fish Games is thereby liable for infringement of the '229 Patent under 35 U.S.C. § 271(b).

37. Big Fish Games has indirectly infringed and continues to indirectly infringe at least claims 1-7, 10-13, and 16 of the '229 Patent by, among other things, contributing to the direct infringement by others including, without limitation customers using the Big Fish Games portal, 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 '229 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

38. For example, the Big Fish Games portal software is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Big Fish Games software is a material part of the claimed inventions and is not a staple article or commodity of commerce suitable for substantial non-infringing use. Big Fish Games is, therefore, liable for infringement under 35 U.S.C. § 271(c).

39. Big Fish Games will have been on notice of the '229 Patent since, at the latest, the service of this complaint upon Big Fish Games. By the time of trial, Big Fish Games 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 1-7, 10-13, and 16 of the '229 Patent.

40. Big Fish Games may have infringed the '229 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Big Fish Games portal. Uniloc reserves the right to discover and pursue all such additional infringing software.

41. Uniloc has been damaged, reparably and irreparably, by Big Fish Games' infringement of the '229 Patent and such damage will continue unless and until Big Fish Games is enjoined.

PRAYER FOR RELIEF

Uniloc requests that the Court enter judgment against Big Fish Games as follows:

- (A) declaring that Big Fish Games has infringed the '228 Patent and the '229 Patent;
- (B) awarding Uniloc its damages suffered as a result of Big Fish Games' infringement of the '228 Patent and the '229 Patent;
- (C) enjoining Big Fish Games, 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 '228 Patent and the '229 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.

Date: March 6, 2017

Respectfully submitted,

/s/ Paul J. Hayes

Paul J. Hayes (Lead Attorney)
Massachusetts State Bar No. 227000
James J. Foster
Massachusetts State Bar No. 553285
Kevin Gannon
Massachusetts State Bar No. 640931
Dean Bostock
Massachusetts State Bar No. 549747

Robert R. Gilman
Massachusetts State Bar No. 645224
Michael Ercolini
New York State Bar No. 5029905
Aaron Jacobs
Massachusetts State Bar No. 677545
Daniel McGonagle
Massachusetts State Bar No. 690084
PRINCE LOBEL TYE LLP
One International Place, Suite 3700
Boston, MA 02110
Tel: (617) 456-8000
Fax: (617) 456-8100
Email: pjhayes@princelobel.com
Email: jfoster@princelobel.com
Email: kgannon@princelobel.com
Email: dbostock@princelobel.com
Email: rgilman@princelobel.com
Email: mercolini@princelobel.com
Email: ajacobs@princelobel.com
Email: dmcgonagle@princelobel.com

Edward R. Nelson III
ed@nelbum.com
Texas State Bar No. 00797142
Anthony M. Vecchione
anthony@nelbum.com
Texas State Bar No. 24061270
NELSON BUMGARDNER PC
3131 West 7th Street, Suite 300
Fort Worth, Texas 76107
Phone: (817) 377-9111
Fax: (817) 377-3485

ATTORNEYS FOR THE PLAINTIFFS