

**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. 2:17-cv-0305
	§	
Plaintiffs,	§	
	§	
v.	§	PATENT CASE
	§	
KASPERSKY LAB, 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, Kaspersky, Inc. (“Kaspersky”), 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. Upon information and belief, Kaspersky, Inc. is a Massachusetts corporation having a place of business at 500 Unicorn Park, 3rd Floor, Woburn, Massachusetts 01801 and Kaspersky, Inc. is a wholly owned subsidiary of its parent company is Kaspersky UK Limited.

4. Upon information and belief, Kaspersky, offers its products and/or services, including those accused herein of infringement, for purchase or download to customers and/or

potential customers located in Texas and in the judicial Eastern District of Texas. Kaspersky, Inc. may be served with process through its registered agent: Angelo Gentile, 500 Unicorn Park Dr., Woburn, MA 01801.

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). This Court has personal jurisdiction over Kaspersky, in part, because Kaspersky provides infringing online services to subscribers who reside in this district. Upon information and belief, Kaspersky 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. Kaspersky 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 the paragraphs above by reference.

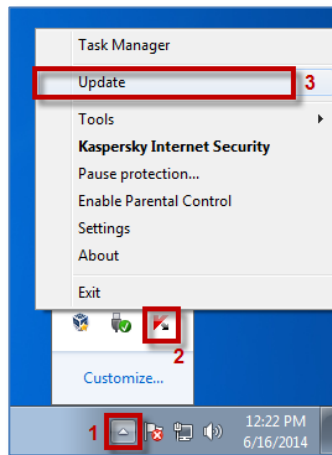
9. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,110,228 (“the ’228 Patent”), entitled METHOD AND APPARATUS FOR SOFTWARE MAINTENANCE AT REMOTE NODES, by inventors Albright et al., that issued on August 29, 2000. A true and correct

copy of the '228 Patent is attached as Exhibit A hereto.

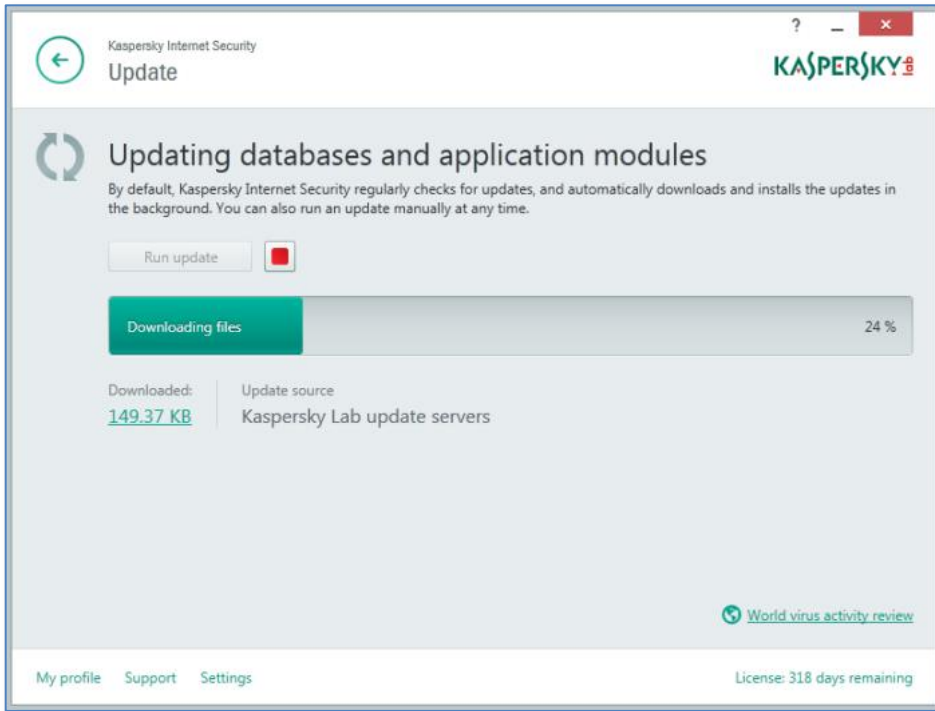
10. Uniloc USA is the exclusive licensee of the '228 Patent with ownership of all substantial rights therein, including the right to grant sublicenses, to exclude others, and to enforce, sue and recover past damages for the infringement thereof.

11. Kaspersky provides a platform for a variety of software titles that are updated through interaction with a remote server.

12. Upon information and belief, the following graphic illustrates, at least in part, how certain aspects of a representative sample of the Kaspersky platform initiate and update software titles through a taskbar associated with those software titles (unless otherwise noted, Kaspersky is the source for each graphic in this complaint):

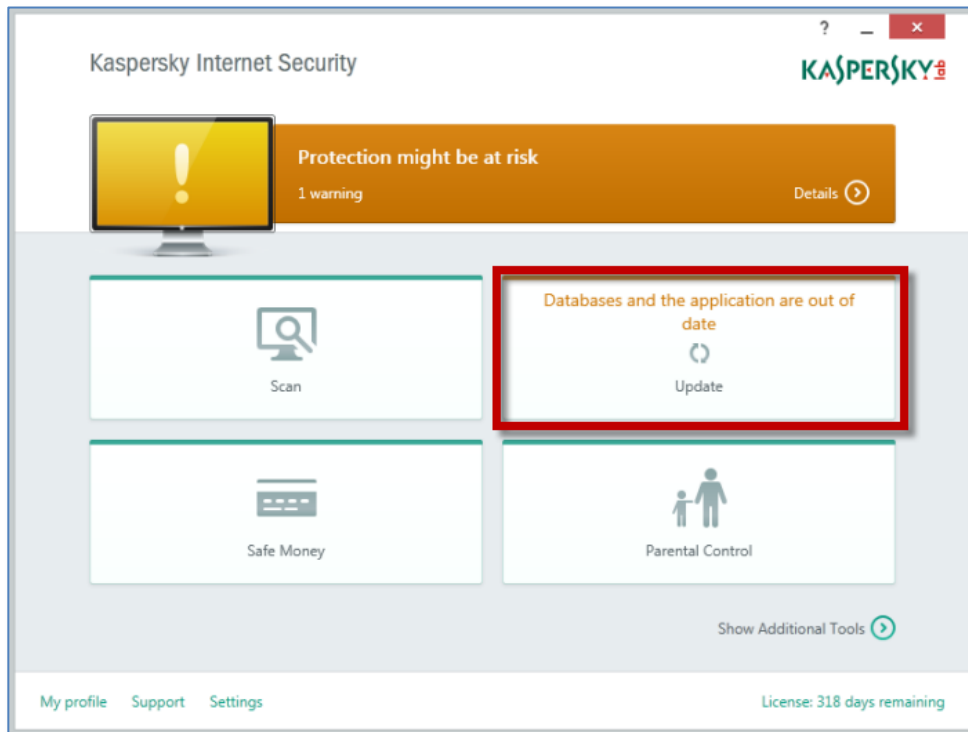


Source: <https://support.kaspersky.com/11162>

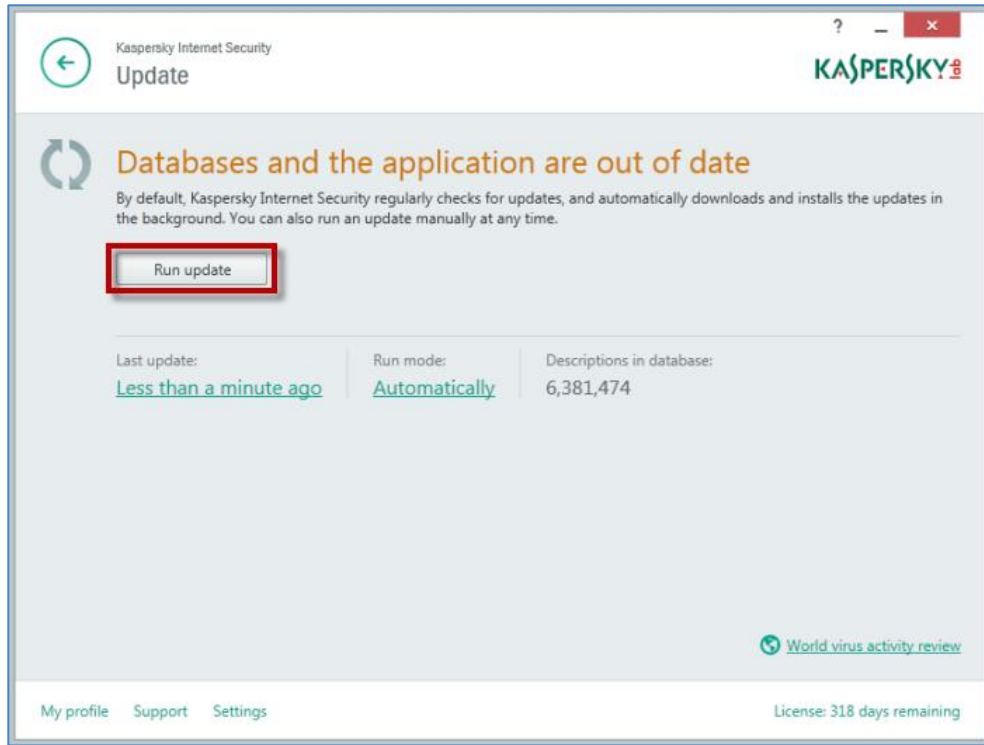


Source: <https://support.kaspersky.com/11162>

13. The following is an example update through one of the software titles, itself.

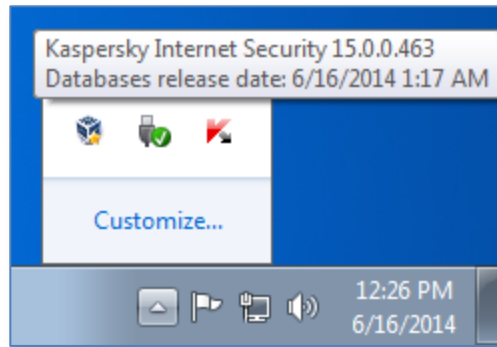


Source: <https://support.kaspersky.com/11162>



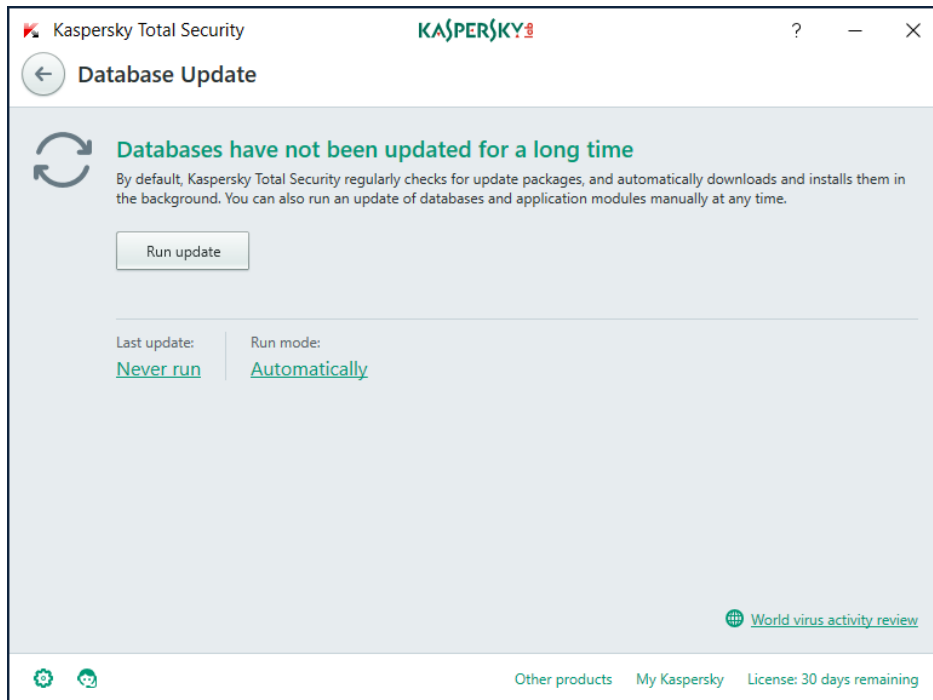
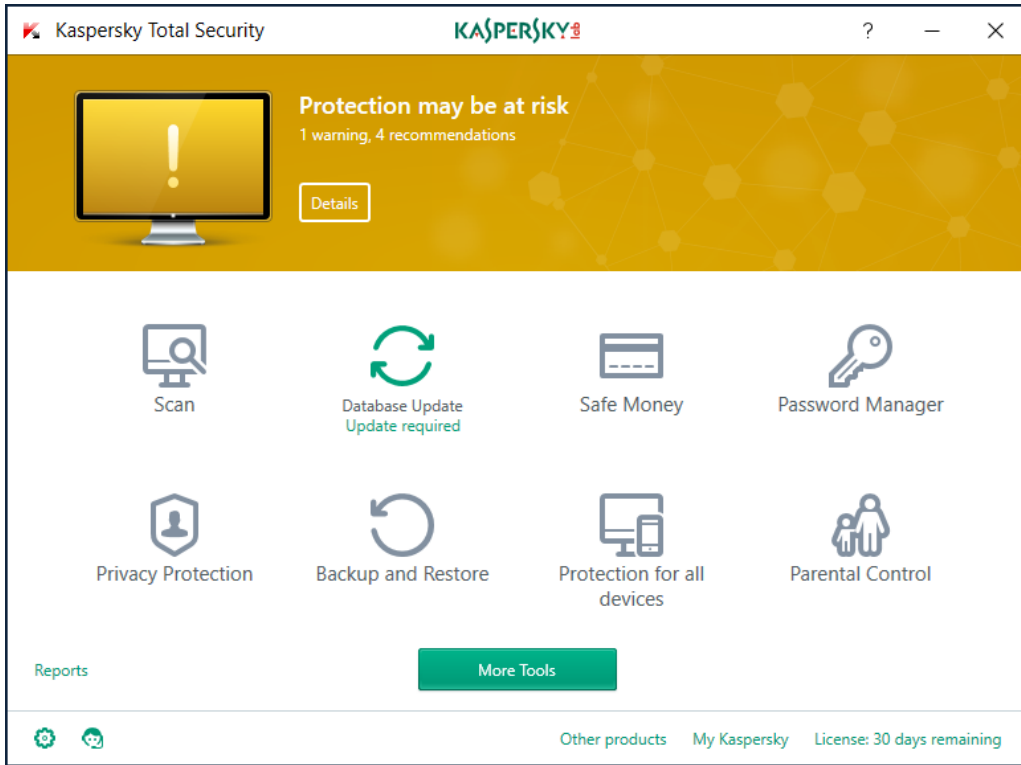
Source: <https://support.kaspersky.com/11162#block2>

14. A particular version of a software title is visually perceptible.

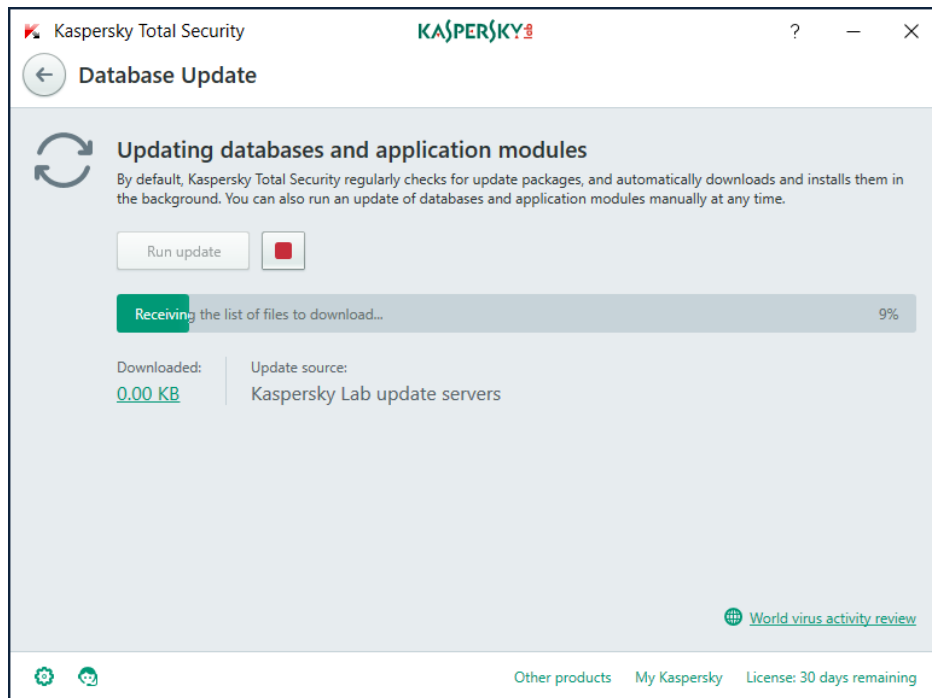


Source: <https://support.kaspersky.com/11162#block2>

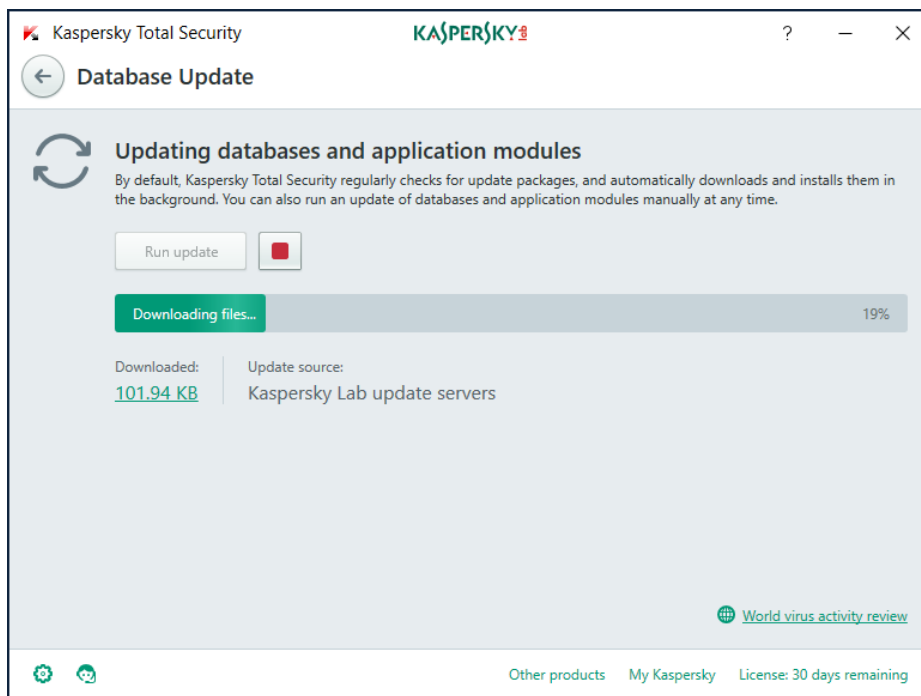
15. The following is an additional example of updating another title:



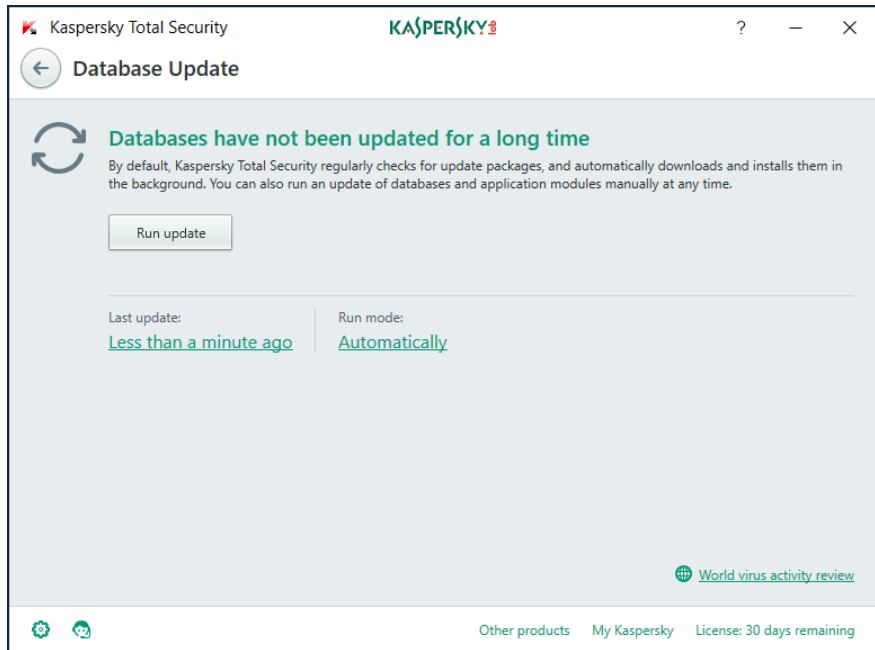
16. Prior to downloading files, Kaspersky determines existing files and files that need to be downloaded:



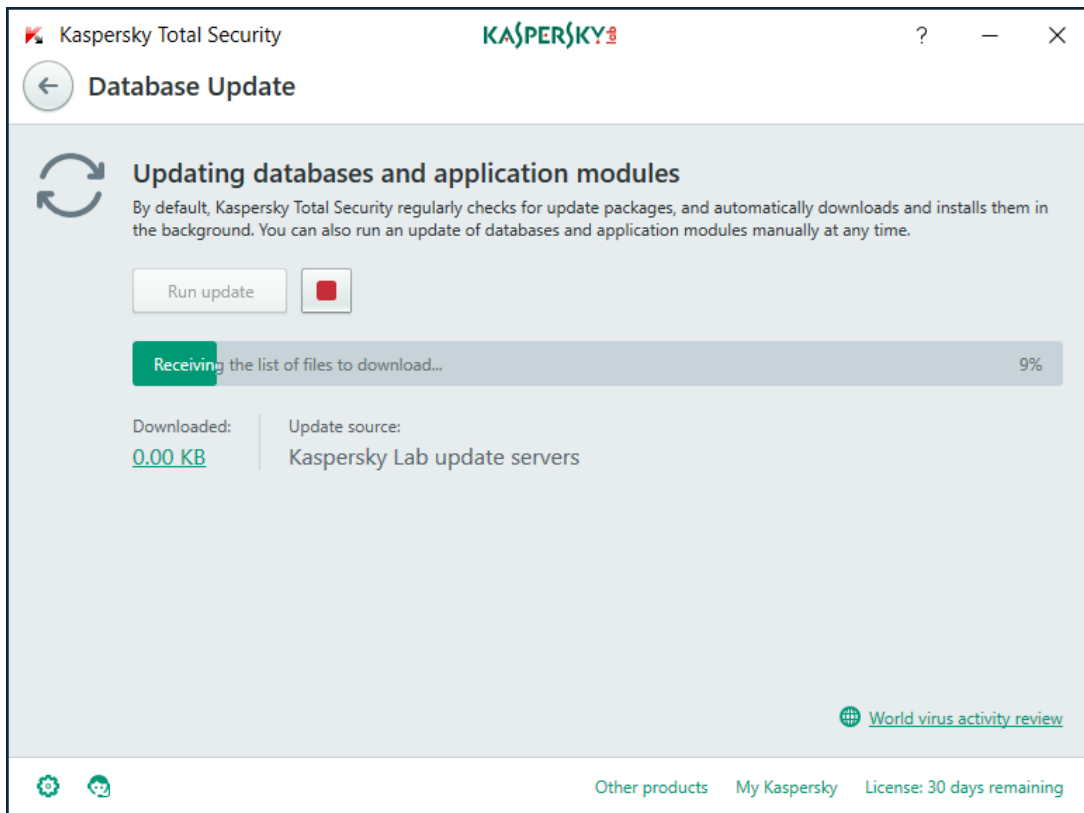
17. After such a calculation, files are downloaded with a listing of the size of the download:



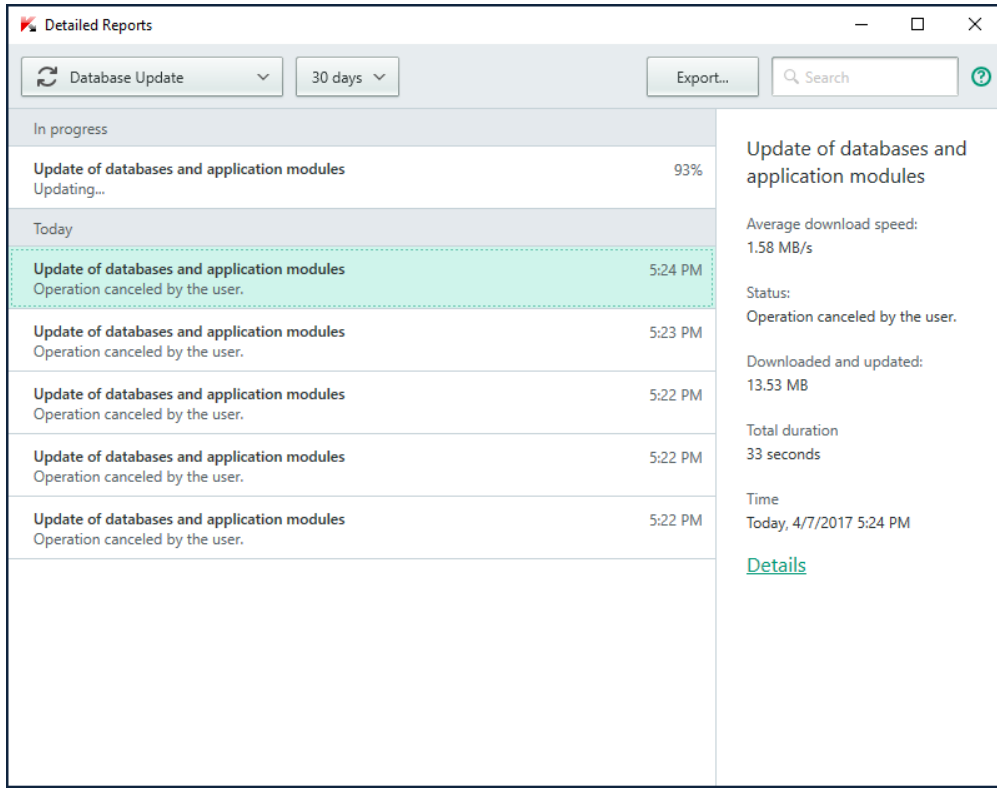
18. A user may pause the download process by hitting the red square:



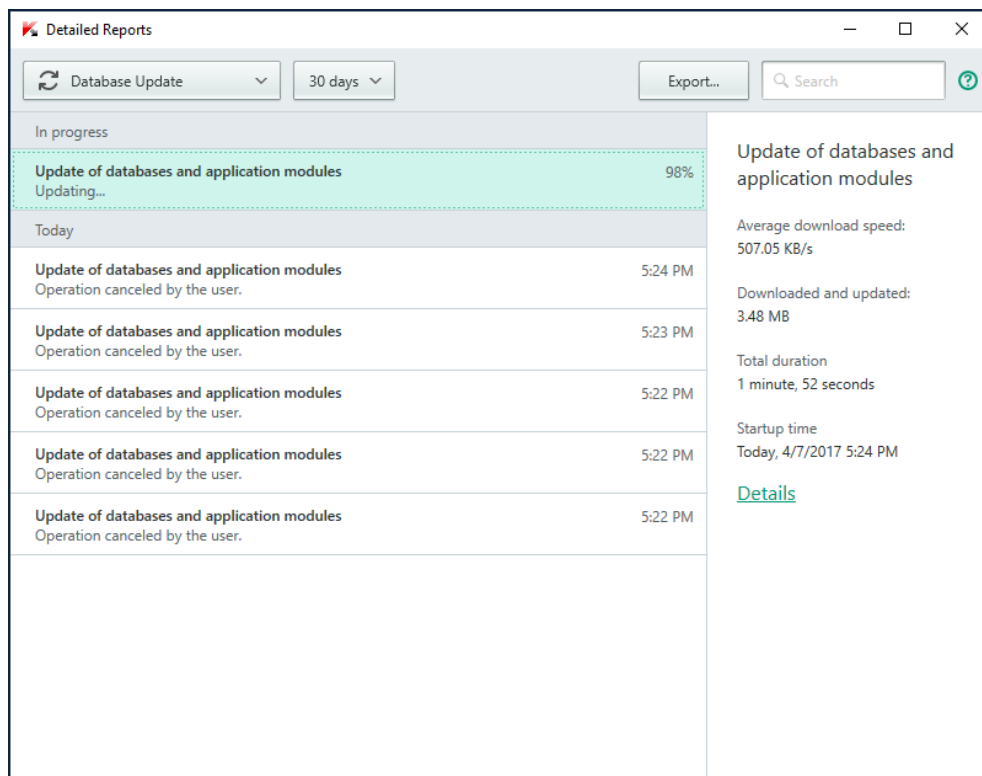
19. In resuming the calculation, Kaspersky considers files just downloaded before the pause:



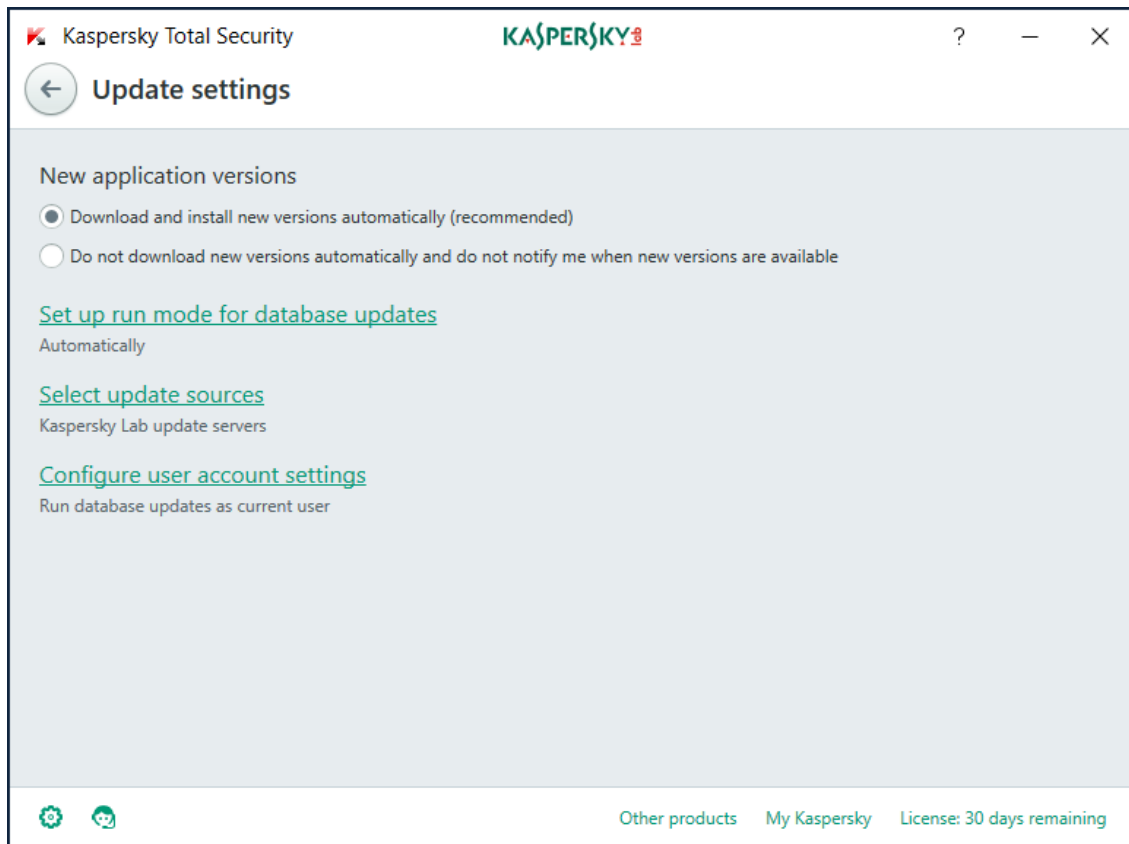
20. The below shows that 13.53 MB were downloaded in a 33 second segment before a pause:



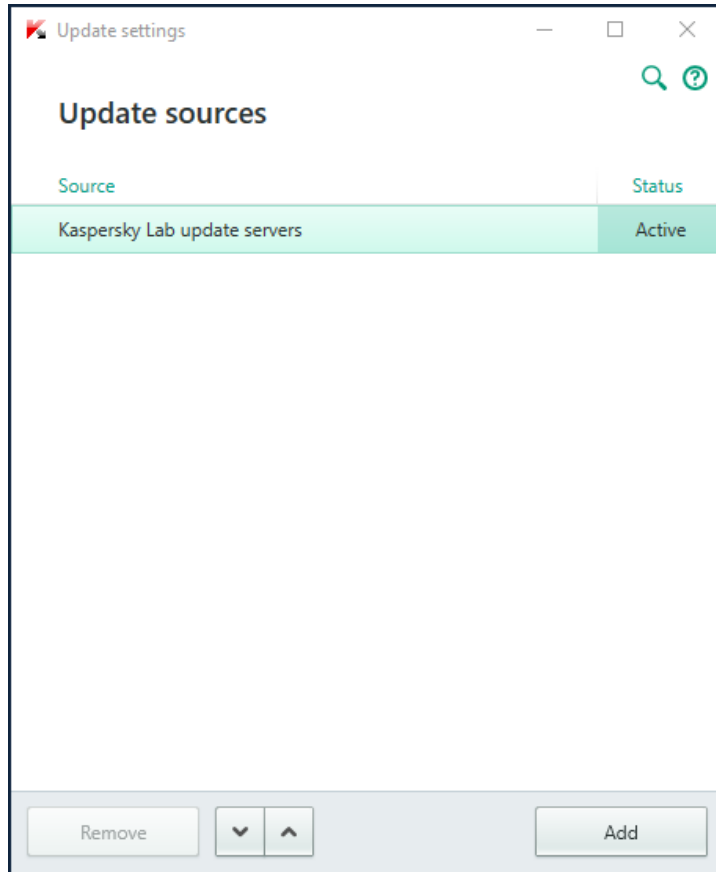
21. The below shows that 3.48 MB were downloaded in a 1 minute 52 second segment:



22. A user is given the option as to whether new versions are downloaded automatically:



23. A user is also allowed to choose the source of an update, shown here as “Kaspersky Update servers.”



24. Kaspersky uses versioning to determine which software components have been loaded.

25. Kaspersky has directly infringed, and continues to directly infringe one or more claims of the '228 Patent, including at least Claim 1, in this judicial district and elsewhere in Texas, literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the Kaspersky system 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 Kaspersky from the remote user location.

26. In addition, should the Kaspersky platform be found to not literally infringe one or

more claims of the '228 Patent, the Kaspersky platform would nevertheless infringe one or more claims of the '228 Patent under the doctrine of equivalents, including at least Claim 1. More specifically, the Kaspersky platform 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 Kaspersky application). Kaspersky would thus be liable for direct infringement under the doctrine of equivalents.

27. Kaspersky has indirectly infringed and continues to indirectly infringe one or more claims of the '228 Patent, including at least Claim 1, in this judicial district and elsewhere in Texas by, among other things, actively inducing the using, offering for sale, selling, or importing the Kaspersky platform. Kaspersky's customers who use the Kaspersky platform in accordance with Kaspersky's instructions directly infringe one or more of the foregoing claims of the '228 Patent in violation of 35 U.S.C. § 271. Kaspersky 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 Kaspersky.com. Kaspersky is thereby liable for infringement of the '228 Patent under 35 U.S.C. § 271(b).

28. Kaspersky has indirectly infringed and continues to indirectly infringe one or more claims of the '228 Patent, including at least claim 1, in this judicial district and elsewhere in the Texas by, among other things, contributing to the direct infringement by others including, without limitation customers using the Kaspersky platform, 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.

29. For example, the Kaspersky software is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Kaspersky portal 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. Kaspersky is, therefore, liable for infringement under 35 U.S.C § 271(c).

30. Kaspersky will have been on notice of the '228 Patent since, at the latest, the service of this complaint upon Kaspersky. By the time of trial, Kaspersky 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 of the '228 Patent.

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

COUNT II

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

32. Uniloc incorporates the paragraphs above by reference.

33. 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, by inventors Baweja, et al., issued May 13, 2003. A copy of the '229 Patent is attached as Exhibit B.

34. The '299 Patent has been referenced by nearly 70 other patents and patent applications including those filed by Microsoft, Samsung, EMC, Hewlett-Packard, Broadcom, Yamaha and Alcatel.

35. 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 infringement.

36. Kaspersky has infringed, and continues to infringe one or more claims of the '229 Patent, including at least Claim 1, in this district and elsewhere in Texas during the pendency of the '229 Patent, including by making, using, importing, offering for sale and/or selling the Kaspersky platform which software and associated backend server architecture, *inter alia*, allow for writing 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.

37. In addition, should the Kaspersky platform be found to not literally infringe one or more claims of the '229 Patent, the Kaspersky platform would nevertheless infringe one or more claims of the '229 Patent under the doctrine of equivalents, including at least Claim 1. More specifically, the accused Kaspersky platform 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 (allowing a user to perform other operations during the pause). Kaspersky would thus be liable for direct infringement under the doctrine of equivalents.

38. Kaspersky has indirectly infringed and continues to indirectly infringe one or more claims of the '229 Patent, including at least claim 1, in this judicial district and elsewhere in Texas by, among other things, actively inducing the using, offering for sale, selling, or importing the Kaspersky portal. Kaspersky's customers who use the Kaspersky platform in accordance with Kaspersky's instructions directly infringe one or more of the foregoing claims of the '229 Patent in violation of 35 U.S.C. § 271. Kaspersky 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 Kaspersky.com. Kaspersky is thereby liable for infringement of the '229 Patent under 35 U.S.C. § 271(b).

39. Kaspersky has indirectly infringed and continues to indirectly infringe one or more claims of the '229 Patent, including at least claim 1, in this judicial district and elsewhere in the Texas by, among other things, contributing to the direct infringement by others including, without limitation customers using the Kaspersky platform, 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.

40. For example, the Kaspersky platform is a component of a patented machine, manufacture, or combination, or an apparatus for use in practicing a patent process. Furthermore, the Kaspersky platform 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. Kaspersky is, therefore, liable for infringement under 35 U.S.C § 271(c).

41. Kaspersky will have been on notice of the '229 Patent since, at the latest, the service of this complaint upon Kaspersky. By the time of trial, Kaspersky 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 of the '229 Patent.

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

PRAYER FOR RELIEF

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

- (A) declaring that Kaspersky has infringed the '228 Patent and '229 Patent;
- (B) awarding Uniloc its damages suffered because of Kaspersky' infringement of the '228 Patent and '229 Patent;
- (C) enjoining Kaspersky, 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 '229 Patent;
- (D) awarding Uniloc its costs, attorneys' fees, expenses, and interest, and
- (E) granting Uniloc 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: April 12, 2017

Respectfully submitted,

/s/ James L. Etheridge

James L. Etheridge (Texas State Bar No. 24059147)
Ryan S. Loveless (Texas State Bar No. 24036997)
Brett A. Mangrum (Texas State Bar No. 24065671)
Travis L. Richins (Texas State Bar No. 24061296)
ETHERIDGE LAW GROUP, PLLC
2600 E. Southlake Blvd., Suite 120 / 324
Southlake, Texas 76092
Telephone: (817) 470-7249
Facsimile: (817) 887-5950
Jim@EtheridgeLaw.com
Ryan@EtheridgeLaw.com
Brett@EtheridgeLaw.com
Travis@EtheridgeLaw.com

Counsel for Plaintiffs Uniloc USA, Inc. and Uniloc Luxembourg S.A.