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

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UNILOC USA, INC. and	ş	
UNILOC LUXEMBOURG, S.A.,	§	Civil Acti
	§	
Plaintiffs,	§	
	§	
V.	§	PATENT
	§	
KASPERSKY LAB, INC.,	§	
	§	
Defendant.	§	JURY TR
	8	

on No. 2:17-cv-0305

CASE

IAL 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

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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

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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.

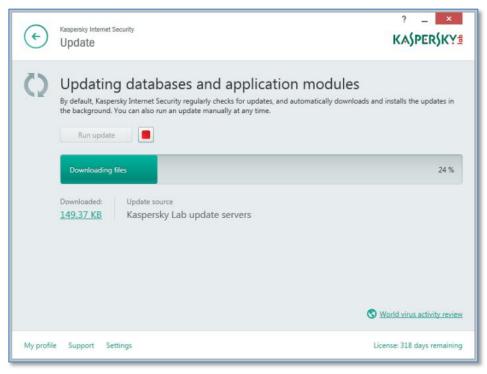
11. Kaspersky provides a platform for a variety of software titles that are updated through interaction with a remote server.

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

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

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

Kaspersky Internet Security	? _ × KA\$PER\$KY±
Protection might be at 1 warning	t risk Details 🕥
Scan	Databases and the application are out of date C) Update
Safe Money	<b>۴۴</b> Parental Control
My profile Support Settings	Show Additional Tools 🕥 License: 318 days remaining

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

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¢	Kaspersky Internet Security			? _ × Ka\$per\$ky±
Q		rity regularly checks for up	n are out of date odates, and automatically downloads time.	and installs the updates in
	Last update: Less than a minute ago	Run mode: <u>Automatically</u>	Descriptions in database: 6,381,474	
				S World virus activity review
My profile	e Support Settings			License: 318 days remaining

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

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



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

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

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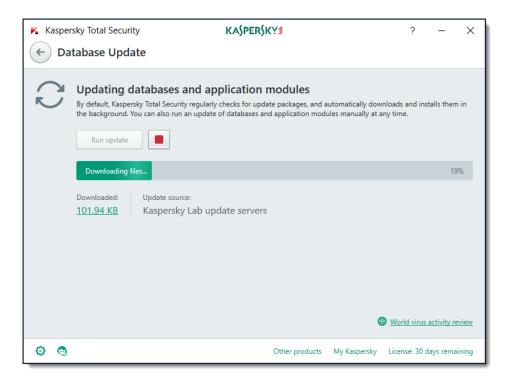
K Kaspersky Total Security	KASPERSKY	B	? – X
!	<b>Protection may be at risk</b> 1 warning, 4 recommendations Details		
Scan	Database Update Update required	Safe Money	Password Manager
Privacy Protection	Backup and Restore Pr	rotection for al devices	Parental Control
Reports	More Tools		
0 0	0	ther products	My Kaspersky License: 30 days remaining

	rsky Total Security	KA\$PER\$KY <u>®</u>	?	-	Х
(←) Da	tabase Update				
$\langle \rangle$	By default, Kaspersky	e not been updated for a long time al Security regularly checks for update packages, and automatically down also run an update of databases and application modules manually at ar		talls them	ı in
		mode: tomatically			
		•	World virus	activity re	<u>view</u>
0 0		Other products My Kaspersky	License: 30 c	days rema	ining

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

K Kasper	rsky Total Security	KASPERSKY		?	_	×
(← Da	tabase Update					
$\mathbb{C}$	Updating databases and a By default, Kaspersky Total Security regular the background. You can also run an upda Run update	rly checks for update packages, and a			talls them	in
	Receiving the list of files to download				99	%
	Downloaded: Update source: 0.00 KB Kaspersky Lab u	pdate servers				
			¢	World virus	activity rev	<u>/iew</u>
0		Other products	My Kaspersky	License: 30 d	ays remaii	ning

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:

	rsky Total Security tabase Update	KA\$PER\$KY₫	? – X
$\langle \rangle$	By default, Kaspersky Total Security	een updated for a long time regularly checks for update packages, and autor n update of databases and application modules	
	Last update: Less than a minute ago	Run mode: Automatically	World virus activity review
0 0		Other products My	/ Kaspersky License: 30 days remaining

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

# pause:

K Kaspei	rsky Total Security	KASPER	¢κγ <del>∎</del>		?	_	×
(← Da	tabase Updat	e					
$\langle \rangle$	By default, Kaspersk	tabases and application y Total Security regularly checks for u i can also run an update of databases	pdate packages, and a			talls them	in
	Receiving the list	of files to download				99	%
	Downloaded: 0.00 KB	Update source: Kaspersky Lab update serve	975	¢	• World virus	activity re	view
0 0			Other products	My Kaspersky	License: 30 d	lays remai	ning

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

a pause:

K Detailed Reports		– 🗆 X
C Database Update ~ 30 days ~	Export	Q Search 🕜
In progress		Undete of detabases and
Update of databases and application modules Updating	93%	Update of databases and application modules
Today		Average download speed: 1.58 MB/s
Update of databases and application modules Operation canceled by the user.	5:24 PM	Status:
Update of databases and application modules Operation canceled by the user.	5:23 PM	Operation canceled by the user.
Update of databases and application modules Operation canceled by the user.	5:22 PM	13.53 MB
Update of databases and application modules Operation canceled by the user.	5:22 PM	Total duration 33 seconds
Update of databases and application modules Operation canceled by the user.	5:22 PM	Time Today, 4/7/2017 5:24 PM
		<u>Details</u>

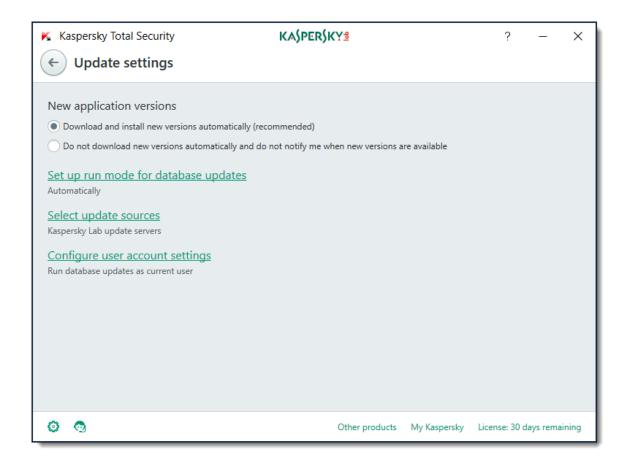
21. The below shows that 3.48 MB were downloaded in a 1 minute 52 second segment:

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		-		×
	Export	Q. Search		0
In progress		Update of data	bacac ar	d
Update of databases and application modules Updating	98%	application mod		
Today		Average download s 507.05 KB/s	peed:	
Update of databases and application modules Operation canceled by the user.	5:24 PM	Downloaded and up	dated:	
Update of databases and application modules Operation canceled by the user.	5:23 PM	3.48 MB Total duration 1 minute, 52 seconds Startup time Today, 4/7/2017 5:24 PM		
Update of databases and application modules Operation canceled by the user.	5:22 PM		s	
Update of databases and application modules Operation canceled by the user.	5:22 PM		4 PM	
Update of databases and application modules Operation canceled by the user.	5:22 PM	Details		

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

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23. A user is also allowed to choose the source of an update, shown here as "Kaspersky

Update servers."

K Update settings —	
	୍ ଡ
Update sources	
Source	Status
Kaspersky Lab update servers	Active
Remove	Add

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

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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' 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

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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' 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

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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.

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## 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

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