

1 CHARLENE M. MORROW (CSB No. 136411)
cmorrow@fenwick.com
2 DAVID L. HAYES (CSB No. 122894)
dhayes@fenwick.com
3 FENWICK & WEST LLP
Silicon Valley Center
4 801 California Street
Mountain View, CA 94041
5 Telephone: 650.988.8500
Facsimile: 650.938.5200

6 Attorneys for PLAINTIFF
7 NUTANIX, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

12 NUTANIX, INC.,

13 Plaintiff,

14 v.

15 UNILOC USA, INC. and UNILOC
16 LUXEMBOURG, S.A.,

17 Defendants.

Case No.: _____

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT
DEMAND FOR JURY TRIAL**

18
19 1. Plaintiff Nutanix, Inc. (“Nutanix”) hereby alleges as follows for this complaint
20 against Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (collectively “Uniloc”):

21 **THE PARTIES**

22 2. Plaintiff Nutanix is a corporation organized under the laws of Delaware, with its
23 headquarters at 1740 Technology Drive, Suite 150, San Jose, California 95110.

24 3. Uniloc USA, Inc. (“Uniloc USA”) is a Texas corporation having a principal place
25 of business at Legacy Town Center I, Suite 380, 7160 Dallas Parkway, Plano, Texas 75024.

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

1 2540, Luxembourg (R.C.S. Luxembourg B159161).

2 **JURISDICTION AND VENUE**

3 5. This action is based on the patent laws of the United States, Title 35 of the United
4 States Code, § 1 et. seq., with a specific remedy sought under the Federal Declaratory Judgments
5 Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy
6 exists between Nutanix and Uniloc that requires a declaration of rights by this Court.

7 6. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C.
8 §§ 1331 and 1338(a).

9 7. This Court has personal jurisdiction over Uniloc USA. Uniloc USA is engaged
10 primarily in the business of patent licensing. It financed the patent licensing and assertion campaign
11 at issue in this case at least in part with funding from a company located in the Northern District of
12 California. In addition, Uniloc USA has at least thirty-three patent licensees in this District. Uniloc
13 USA has further engaged in extensive settlement and licensing negotiations with entities based in
14 this District.

15 8. This Court also has personal jurisdiction over Uniloc Luxembourg. Uniloc
16 Luxembourg, along with Uniloc USA, is primarily engaged in the business of patent licensing.
17 Uniloc Luxembourg also financed the patent-licensing and assertion campaign at issue in this case
18 at least in part with funding from a company located in the Northern District of California. In
19 addition, Uniloc Luxembourg has at least thirty-three patent licensees in this District. Uniloc
20 Luxembourg has further engaged in extensive settlement and licensing negotiations with entities
21 based in this District.

22 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because Uniloc USA
23 resides in this district, and Uniloc Luxembourg is an alien entity and therefore subject to suit in any
24 district.

25 **INTRADISTRICT ASSIGNMENT**

26 10. This is an intellectual property action subject to district-wide assignment pursuant
27 to Local Rule 3-2(c) and 3-5(b).

28

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

FACTUAL BACKGROUND

1
2 11. Nutanix is a leader in enterprise cloud computing and provides a cloud platform that
3 leverages web-scale engineering and consumer-grade design to natively converge compute,
4 virtualization and storage into a resilient, software-defined solution.

5 12. Uniloc is a patent-licensing company that neither makes nor sells any products or
6 services.

7 13. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.
8 6,324,578 (“the ’578 patent”), entitled “Methods, Systems and Computer Program Products for
9 Management of Configurable Application Programs on a Network.”

10 14. Uniloc USA purports to be the exclusive licensee of the ’578 patent.

11 15. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.
12 7,069,293 (“the ’293 patent”), entitled “Methods, Systems and Computer Program Products for
13 Distribution of Application Programs to a Target Station on a Network.”

14 16. Uniloc USA purports to be the exclusive licensee of the ’293 patent.

15 17. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.
16 6,510,466 (“the ’466 patent”), entitled “Methods, Systems and Computer Program Products for
17 Centralized Management of Application Programs on a Network.”

18 18. Uniloc USA purports to be the exclusive licensee of the ’466 patent.

19 19. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.
20 6,728,766 (“the ’766 patent”), entitled “Methods, Systems and Computer Program Products for
21 License Use Management on a Network.”

22 20. Uniloc USA purports to be the exclusive licensee of the ’766 patent.

23 21. Uniloc Luxembourg purports to be the owner, by assignment, of U.S. Patent No.
24 6,110,228 (“the ’228 patent”), entitled “Method and Apparatus for Software Maintenance at
25 Remote Nodes.”

26 22. Uniloc USA purports to be the exclusive licensee of the ’228 patent.

27 23. Collectively, the ’578 patent, the ’293 patent, the ’466 patent, the ’766 patent, and
28 the ’228 patent, will be referred to as the “patents-in-suit.”

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

1 to articulate a factual basis for Uniloc’s infringement contentions. Among other things, it does not
2 even purport to map the Nutanix products to all elements of any asserted claim.

3 31. Nutanix asserts that it does not infringe or contribute to any infringement of any
4 claim of the ’578 patent either literally or under the doctrine of equivalents. Nutanix further asserts
5 that it has not and does not induce any infringement of any claim of the ’578 patent.

6 32. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the
7 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
8 of a declaratory judgment that Nutanix has not infringed any claim of the ’578 patent.

9 33. An actual and justiciable controversy exists regarding the alleged infringement of
10 the ’578 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights,
11 duties, and obligations with regard to the ’578 patent.

12 34. A judicial declaration is necessary and appropriate so that Nutanix may ascertain its
13 rights regarding the ’578 patent.

14 **SECOND CAUSE OF ACTION**

15 **(Declaratory Judgment of Non-Infringement of the ’293 Patent)**

16 35. Nutanix incorporates by reference its allegations contained in paragraphs 1 through
17 28 of this Complaint as though fully set forth herein.

18 36. Uniloc alleges in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-
19 RWS (E.D. Tex.) that Nutanix infringes one or more claims of the ’293 patent. Nutanix
20 incorporates by reference the content of that Complaint, which is facially deficient, in that it fails
21 to articulate a factual basis for Uniloc’s infringement contentions. Among other things, it does not
22 even purport to map the Nutanix products to all elements of any asserted claim.

23 37. Nutanix asserts that it does not infringe or contribute to any infringement of any
24 claim of the ’293 patent either literally or under the doctrine of equivalents. Nutanix further asserts
25 that it has not and does not induce any infringement of any claim of the ’293 patent.

26 38. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the
27 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
28 of a declaratory judgment that Nutanix has not infringed any claim of the ’293 patent.

1 39. An actual and justiciable controversy exists regarding the alleged infringement of
2 the '293 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights,
3 duties, and obligations with regard to the '293 patent.

4 40. A judicial declaration is necessary and appropriate so that Nutanix may ascertain
5 its rights regarding the '293 patent.

6 **THIRD CAUSE OF ACTION**

7 **(Declaratory Judgment of Non-Infringement of the '466 Patent)**

8 41. Nutanix incorporates by reference its allegations contained in paragraphs 1 through
9 28 of this Complaint as though fully set forth herein.

10 42. Uniloc alleges in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-
11 RWS (E.D. Tex.) that Nutanix infringes one or more claims of the '466 patent. Nutanix
12 incorporates by reference the content of that Complaint, which is facially deficient, in that it fails
13 to articulate a factual basis for Uniloc's infringement contentions. Among other things, it does not
14 even purport to map the Nutanix products to all elements of any asserted claim.

15 43. Nutanix asserts that it does not infringe or contribute to any infringement of any
16 claim of the '466 patent either literally or under the doctrine of equivalents. Nutanix further asserts
17 that it has not and does not induce any infringement of any claim of the '466 patent.

18 44. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the
19 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
20 of a declaratory judgment that Nutanix has not infringed any claim of the '466 patent.

21 45. An actual and justiciable controversy exists regarding the alleged infringement of
22 the '466 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights,
23 duties, and obligations with regard to the '466 patent.

24 46. A judicial declaration is necessary and appropriate so that Nutanix may ascertain
25 its rights regarding the '466 patent.

26
27
28

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

FOURTH CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the '766 Patent)

47. Nutanix incorporates by reference its allegations contained in paragraphs 1 through 28 of this Complaint as though fully set forth herein.

48. Uniloc alleges in *Uniloc USA, Inc., et. al., v. Nutanix, Inc.*, Case No. 2:16-cv-01193-RWS (E.D. Tex.), that Nutanix infringes one or more claims of the '766 patent. Nutanix incorporates by reference the content of that Complaint, which is facially deficient, in that it fails to articulate a factual basis for Uniloc's infringement contentions. Among other things, it does not even purport to map the Nutanix products to all elements of any asserted claim.

49. Nutanix asserts that it does not infringe or contribute to any infringement of any claim of the '766 patent either literally or under the doctrine of equivalents. Nutanix further asserts that it has not and does not induce any infringement of any claim of the '766 patent.

50. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Nutanix has not infringed any claim of the '766 patent.

51. An actual and justiciable controversy exists regarding the alleged infringement of the '766 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '766 patent.

52. A judicial declaration is necessary and appropriate so that Nutanix may ascertain its rights regarding the '766 patent.

FIFTH CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement of the '228 Patent)

53. Nutanix incorporates by reference its allegations contained in paragraphs 1 through 28 of this Complaint as though fully set forth herein.

54. Uniloc alleges in *Uniloc USA, Inc., et. al. v. Nutanix, Inc.*, Case No. 2:17-cv-00174-JRG (E.D. Tex.), that Nutanix infringes one or more claims of the '228 patent. Nutanix incorporates by reference the content of that Complaint, which is facially deficient, in that it fails to articulate a

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

1 factual basis for Uniloc’s infringement contentions. Among other things, it does not even purport
2 to map the Nutanix products to all elements of any asserted claim.

3 55. Nutanix asserts that it does not infringe or contribute to any infringement of any
4 claim of the ’228 patent either literally or under the doctrine of equivalents. Nutanix further asserts
5 that it has not and does not induce any infringement of any claim of the ’228 patent.

6 56. Therefore, there exists a substantial controversy between Nutanix and Uniloc, the
7 parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance
8 of a declaratory judgment that Nutanix has not infringed any claim of the ’228 patent.

9 57. An actual and justiciable controversy exists regarding the alleged infringement of
10 the ’228 patent by Nutanix. Nutanix accordingly requests a judicial determination of its rights,
11 duties, and obligations with regard to the ’228 patent.

12 58. A judicial declaration is necessary and appropriate so that Nutanix may ascertain its
13 rights regarding the ’228 patent.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Nutanix prays for a declaratory judgment against Uniloc as follows:

16 A. A declaration that Nutanix’s technology is not covered by any claim of the ’578
17 patent and that Nutanix does not infringe any claim of the ’578 patent;

18 B. A declaration that Nutanix’s technology is not covered by any claim of the ’293
19 patent and that Nutanix does not infringe any claim of the ’293 patent;

20 C. A declaration that Nutanix’s technology is not covered by any claim of the ’466
21 patent and that Nutanix does not infringe any claim of the ’466 patent;

22 D. A declaration that Nutanix’s technology is not covered by any claim of the ’766
23 patent and that Nutanix does not infringe any claim of the ’766 patent;

24 E. A declaration that Nutanix’s technology is not covered by any claim of the ’228
25 patent and that Nutanix does not infringe any claim of the ’228 patent;

26 F. A declaration that Nutanix’s case against Uniloc is an exceptional case within the
27 meaning of 35 U.S.C. § 285;

28 G. An award of costs and attorneys’ fees to Nutanix; and

H. Such other and further relief as the Court deems just and reasonable.

JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE

Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 3-6, Plaintiff Nutanix hereby demands a trial by jury of all issues triable before a jury.

Dated: June 2, 2017

Respectfully submitted,

FENWICK & WEST LLP

By: /s/ Charlene M. Morrow
Charlene M. Morrow (CSB No. 136411)
cmorrow@fenwick.com
David L. Hayes (CSB No. 122894)
dhayes@fenwick.com
Attorneys for Plaintiff
NUTANIX, INC.

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28