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12 Attorneys for Plaintiff
Landmark Networks, LLC

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 LANDMARK NETWORKS, LLC,

17 Plaintiff,

18 vs.

19 NINTENDO CO., LTD. AND NINTENDO OF
20 AMERICA, INC.

21 Defendants.

CASE NO. 17-cv-5734

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

22 Plaintiff Landmark Networks, LLC (“Landmark”) files this Original Complaint against
23 Nintendo Co., Ltd. and Nintendo of America, Inc. (“Defendants” or “Nintendo”) for infringement
24 of U.S. Patents Nos. 6,018,720 and 6,856,966.

25 **PARTIES**

26 1. Landmark Networks, LLC is a limited liability company organized under the laws of
27 the State of Texas with its headquarters and principal place of business at 1400 Preston Road, Suite
28 475, Plano, Texas 75093.

2. Defendant Nintendo Co., Ltd. is Japanese company with a regular place of business at 1101 Kamitoba hokotate-cho, Minami-ku, Kyoto 601-8501 Japan.

3. Defendant Nintendo of America, Inc. is a Washington corporation. Nintendo of America is registered to do business in the State of California and it may be served with process through its registered agent, CT Corporation System, 818 W 7th Street STE 930 Los Angeles California 90017.

4. Collectively Nintendo of America, Inc. and Nintendo Co., Ltd. shall be referred to as “Defendants” or “Nintendo.”

JURISDICTION AND VENUE

5. Landmark brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1400(b). Landmark is informed and believes Defendants have physical office(s) in this judicial district, do business in this judicial district, have committed acts of infringement in this judicial district, have purposely transacted business in this judicial district involving the accused products, and/or, have a regular and established places of business in this judicial district.

7. Defendants have a physical office in this judicial district at 2000 Bridge Parkway # 200, Redwood City, California 94065.



8. Defendants' physical office in this judicial district is advertised and marked as a Nintendo office.

INTRADISTRICT ASSIGNMENT

9. Pursuant to Local Rule 3-2(c), this case is subject to district-wide assignment because it is an Intellectual Property Action.

THE PATENTS-IN-SUIT

10. Landmark is the owner by assignment of U.S. Patent No. 6,856,966 (the “’966 Patent”) issued on February 15, 2005, and titled “Product Delivery Methods” and U.S. Patent No. 6,018,720 (the “’720 Patent”) issued on January 25, 2000, and titled “Data Delivery Method and System Therefor” (collectively the “Landmark Patents”).

11. A true and correct copy of the ’966 Patent is attached as Exhibit A.

12. A true and correct copy of the ’720 Patent is attached as Exhibit B.

13. The patents originated from Universal Entertainment Corporation (“UEC”).



14. UEC is a Japanese gaming and entertainment company that is publicly traded on the Tokyo Stock Exchange.

15. UEC develops, manufactures, and sells electronic and computerized Pachislot and Pachinko machines and peripheral devices.



16. UEC’s research and development efforts focus on gaming systems and software distribution.

17. The ’966 and ’720 Patents generally relate to product delivery methods and systems

1 for performing product delivery and accounting simultaneously by utilizing rewritable record
2 mediums and systems therefor.

3 18. Conventional card systems, including prepaid cards, credit cards, and IC cards, have
4 encountered numerous problems in the case of delivering software, such as game software, and data
5 by using these cards. Such problems include: counterfeiting; specialized card readers for reading
6 prepaid cards; the lack of reloading on a prepaid card; purchasers are limited to possessors of credit
7 cards; processing the credit card can cause difficulty; lack of communications between the credit
8 card and computer of a software deliverer about the sales conditions of software; memory capacity
9 for IC cards is low; data stored on an IC card includes personal data which requires encryption and
10 anti-copying techniques; and the cost of IC cards.

11 19. The claimed inventions solve these problems as a purchaser buys and acquires
12 software media (purchaser record medium), to which game software is rewritten or reloaded. The
13 purchaser writes data representing a predetermined amount of money to the purchaser record
14 medium.

15 20. At the time of purchase, the purchaser also writes purchaser inherent data to the
16 purchaser record medium. When game software is requested from a computer of the shop, data
17 recorded in the purchaser record medium is sent to software deliverers through communication
18 networks and is collated with past data recorded in the computer. If matched, the game software is
19 delivered from the software deliverer to the shop and is then recorded in the purchase record
20 medium. Simultaneously, additional data relating to the game software is recorded in the purchase
21 record medium and in the computers of the software deliverers.

22 21. Advantages of the claimed subject matter include online accounting maintenance,
23 without the need for prepaid or reloadable cards, or conversion of currency into computerized
24 credits, as well as simplifying accounting for transactions and balance maintenance.

25 22. After a complete examination, the Patent Office allowed the claims of the asserted
26 patents finding that they met all requirements for patentability.

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23. The Examiner gave the following reasons for allowing the '966 claims:

Reasons for Allowance

2. The following is an Examiner’s statement of reasons for allowance:

3. The primary reference Suzuki et. al. (U.S. 6,129,274)(Suzuki '274) discloses as previously discussed. However neither Suzuki '274 nor the other documents of record reasonably disclose the combination of the following steps: registering for the purchaser the third data as registered third data, retrieving the registered third data from the data providing system based upon the second data recorded in the rewritable record medium when the purchaser makes a request for the first data; comparing a registered relevant portion of the registered third data with a purchaser relevant portion of the purchaser third data that corresponds to the registered relevant portion to determine a match; and registering the additional third data after the accounting operation has been performed.

24. As the owner of the '720 and '966 Patents, Landmark holds all substantial rights in and under the '720 and '966 Patents, including the right to grant sublicenses, exclude others, and to enforce, sue, and recover damages for past and future infringement.

NINTENDO



25. Nintendo is a leading global consumer electronics and video game company. Nintendo delivers games, content and online services for Internet-connected consoles, mobile phones, and tablets. Nintendo makes, sell, markets, and distributes software games through its Nintendo eShop store and client.

26. Nintendo runs and operates the Nintendo eShop, an application and digital media

1 delivery system.

2 27. Nintendo requires users to agree to the terms of the Nintendo Account User
3 Agreement for Nintendo Application and Related Services (the “Nintendo EULA”).

4 28. The current version of the Nintendo EULA is available at
5 <https://accounts.nintendo.com/term/eula/US?lang=en-US>.

6 29. Under the Nintendo EULA, Nintendo the right to automatically download and install
7 updates to the Nintendo software and the user is prohibited from modifying the application
8 software or using it in any manner contrary to the terms of the license grant from Nintendo.

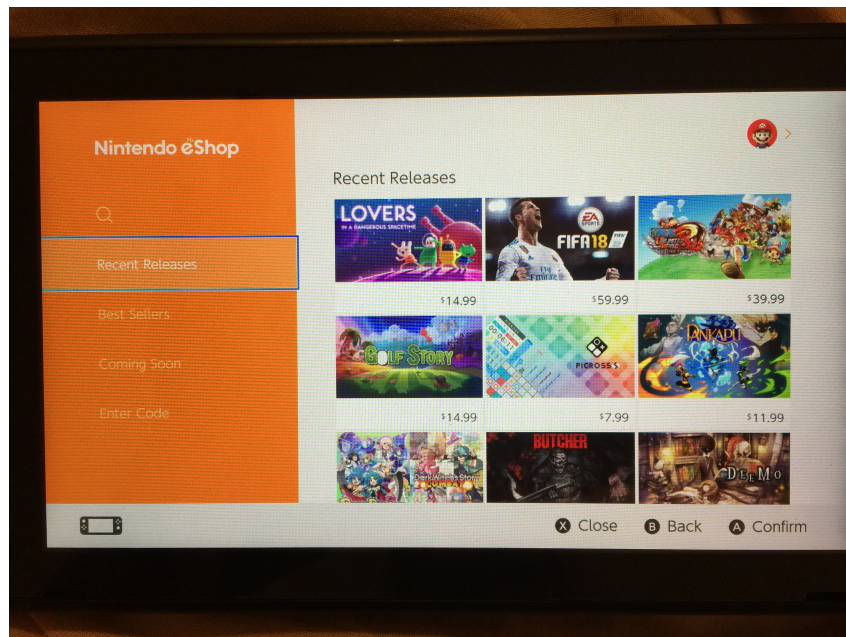
9 30. Nintendo delivers products to its end-users via its Nintendo eShop store (“Nintendo
10 Store”).



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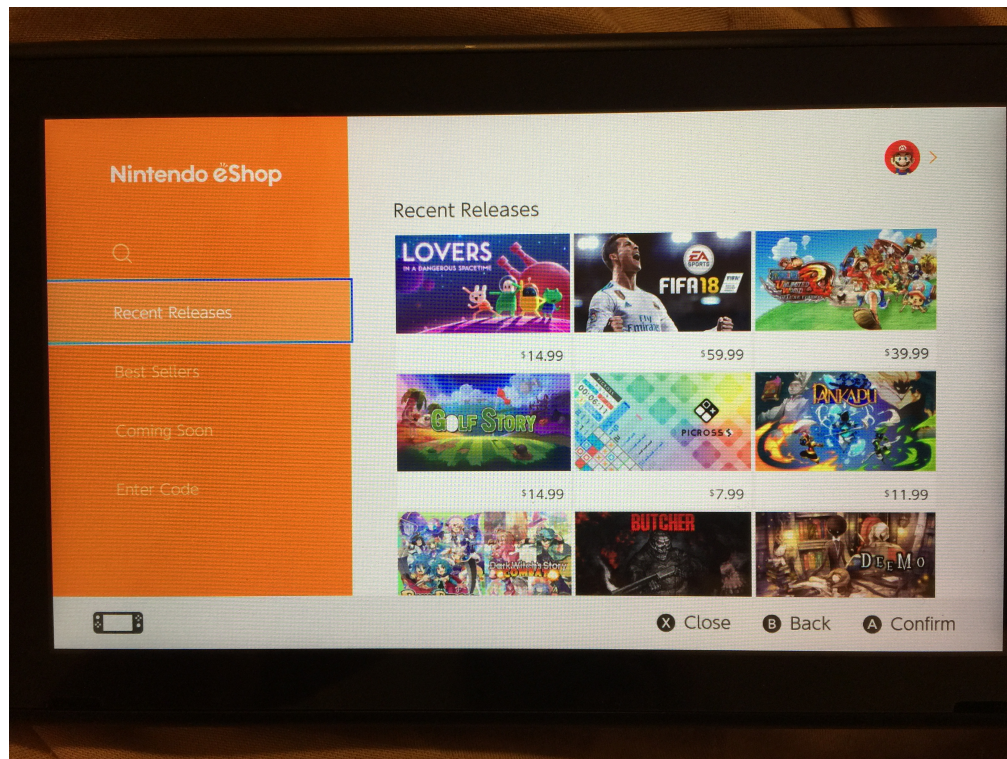
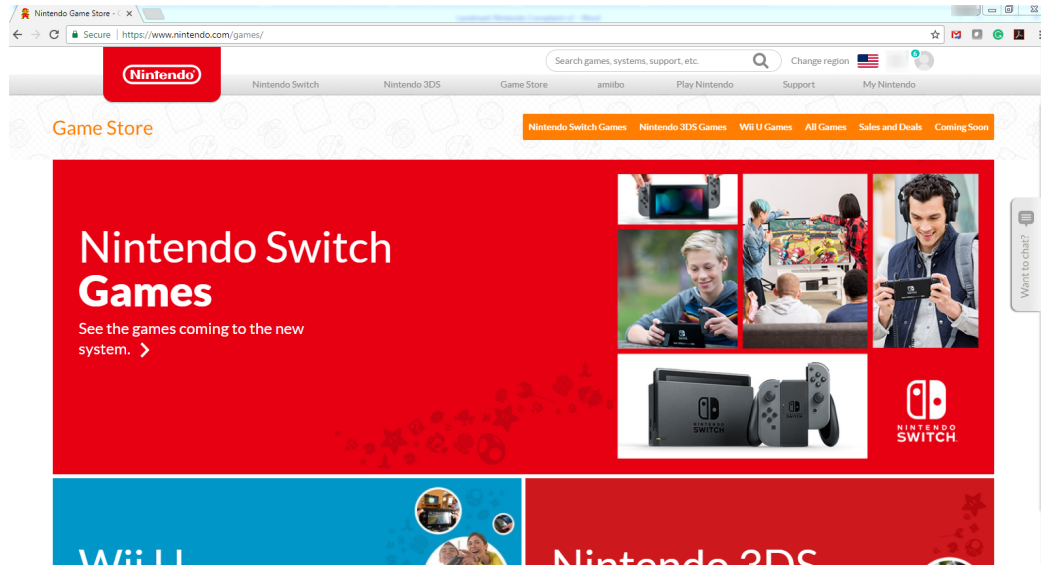
14 31. The Nintendo Store is an application (client) and a digital media store available to
15 users.



1 32. The Nintendo Store is accessible through icons or menus on the Nintendo consoles
2 and online through the Nintendo website (<https://www.nintendo.com>).

3 **NINTENDO AND THE '966 PATENT**

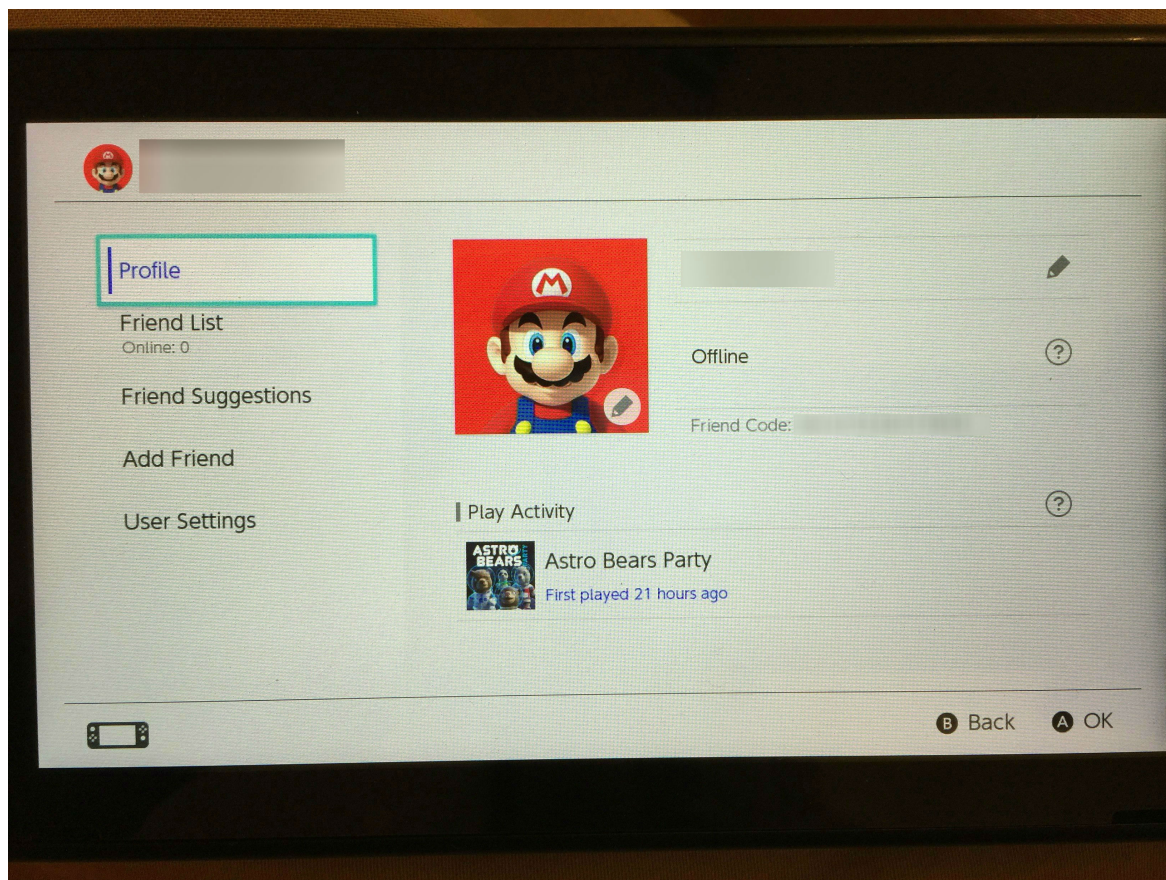
4 33. The screenshots below show the Nintendo Store accessible via Internet browsers and
5 the Nintendo client.



28 34. The Nintendo Store delivers data (e.g., a game) via a communication line (e.g.,

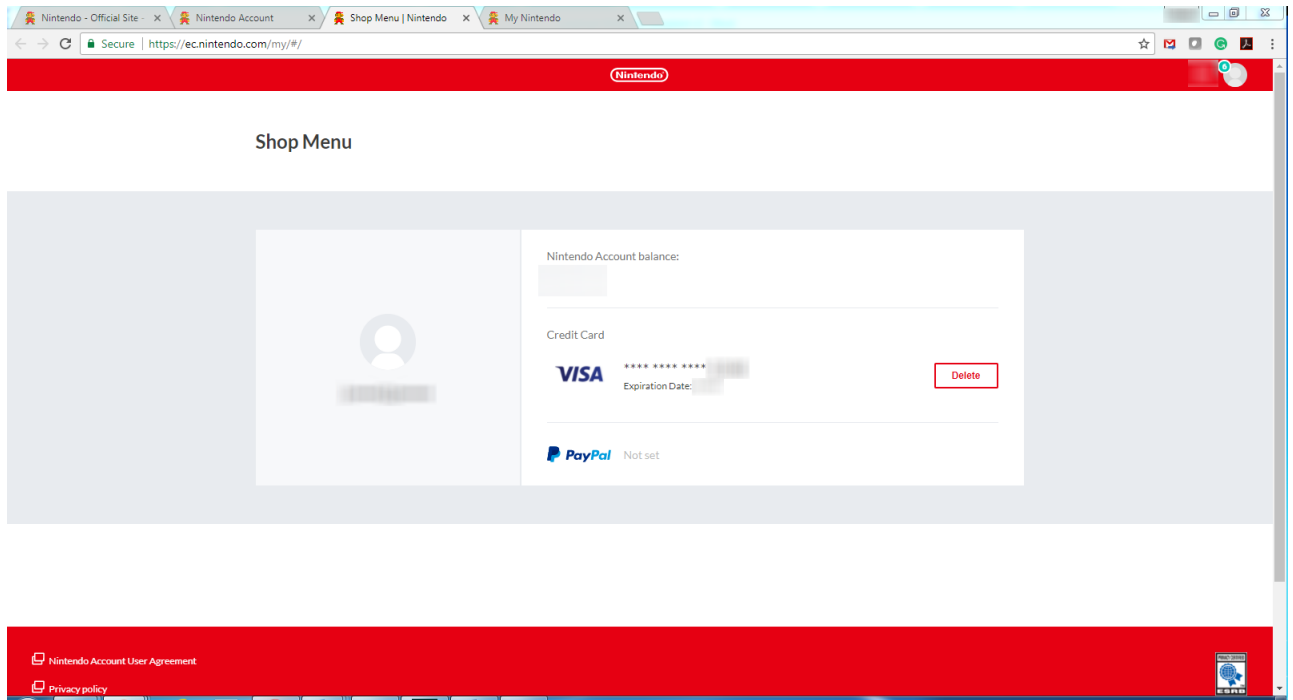
1 WAN, LAN, the internet, etc.) to a user's rewritable record medium (e.g., a user's computer).

2 35. Nintendo Store records and stores a purchaser's identification data. Such
3 information may include a user's ID, password or other identifying or authenticating data relating
4 to the user account.



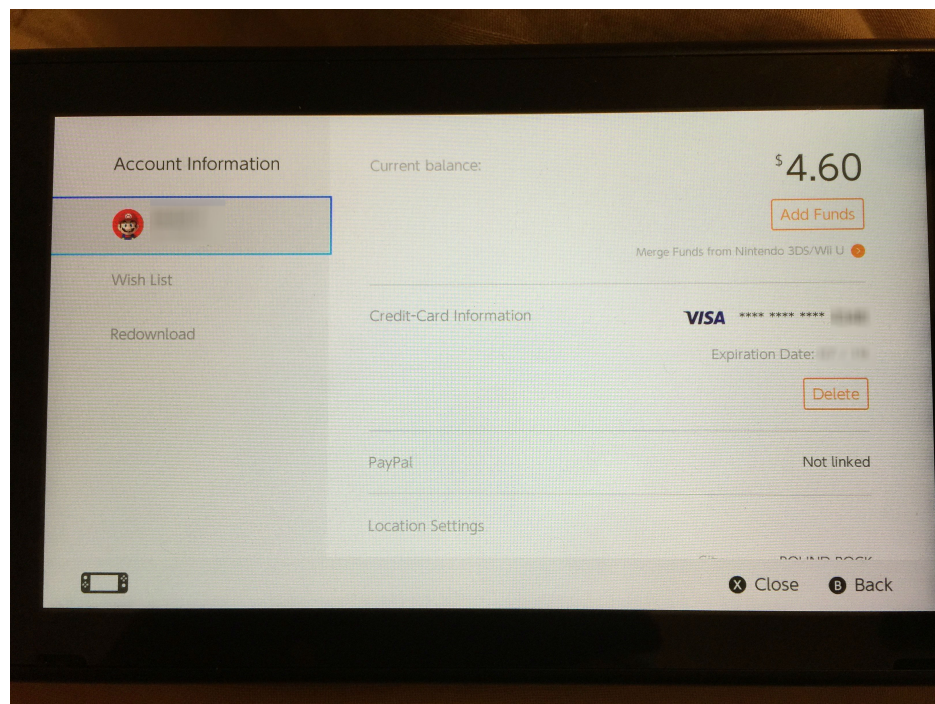
21 36. Nintendo servers store data used to determine whether a purchase satisfies a data
22 purchase requirement.

23 37. A purchase from the Nintendo Store generates data that includes purchase
24 information on available purchaser balances.



38. User information is stored on Nintendo Store and used in connection with the purchase process. Such information includes available balance and information required to effect a purchase transaction by the user. Purchase information, or third data, is stored on the Nintendo servers.

39. The Nintendo system includes account information that reflects, among other things, a purchaser's available funds as shown below:



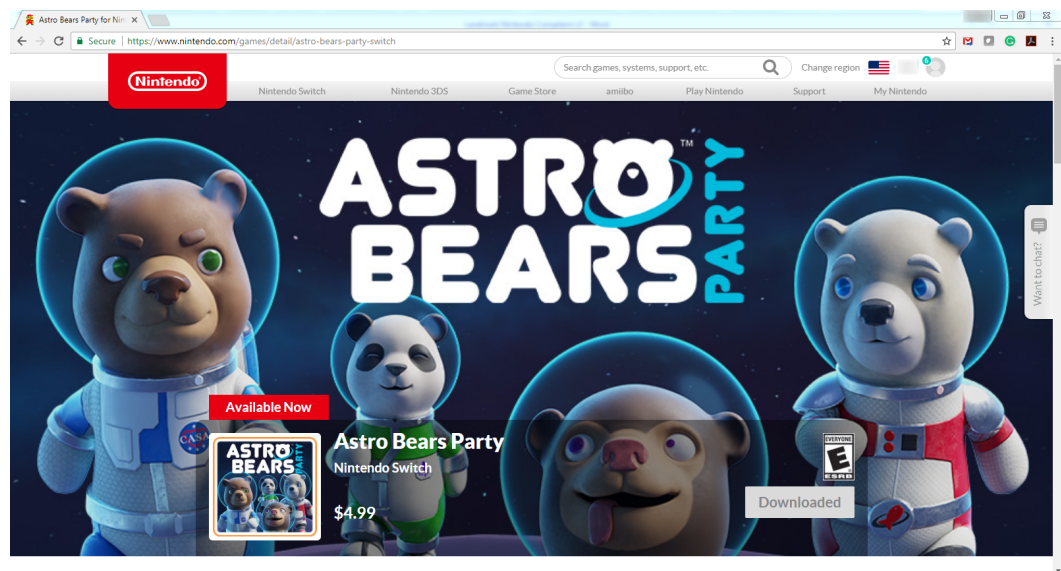
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2 40. When a user makes a purchase through the Nintendo Store, purchase information is
3 generated and recorded on the user's computer to register the purchaser's product, her account
4 balance and financial information, and information in local cache files and folders that entitle her to
5 future downloads, access to software patches and updates, and use of the software on additional
6 machines.

7 41. Nintendo maintains logs and data files reflecting purchase transactions.

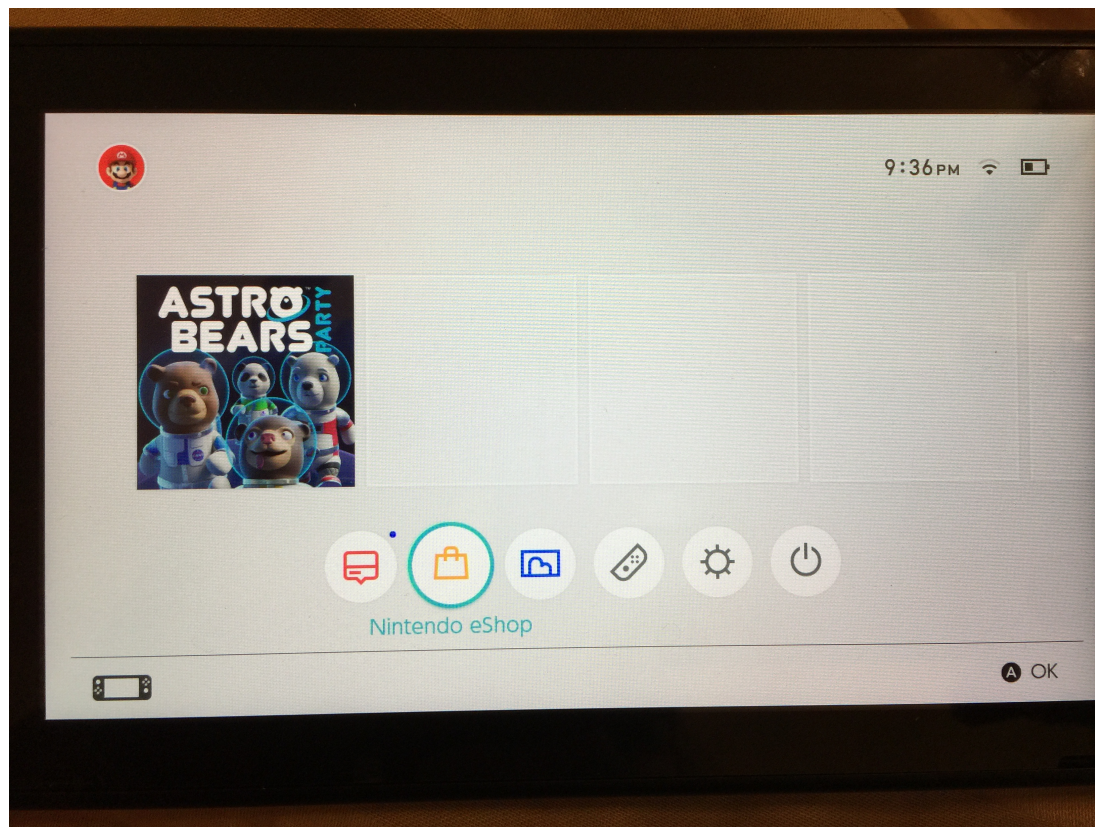
8 42. Purchase information is registered on Nintendo servers.

9 43. Purchase history and data reflecting purchased games are stored on Nintendo
10 servers.

11 44. When a user accesses the online Nintendo Store using an Internet browser, the user's
12 list of games is shown in the Game Library, pictured below.

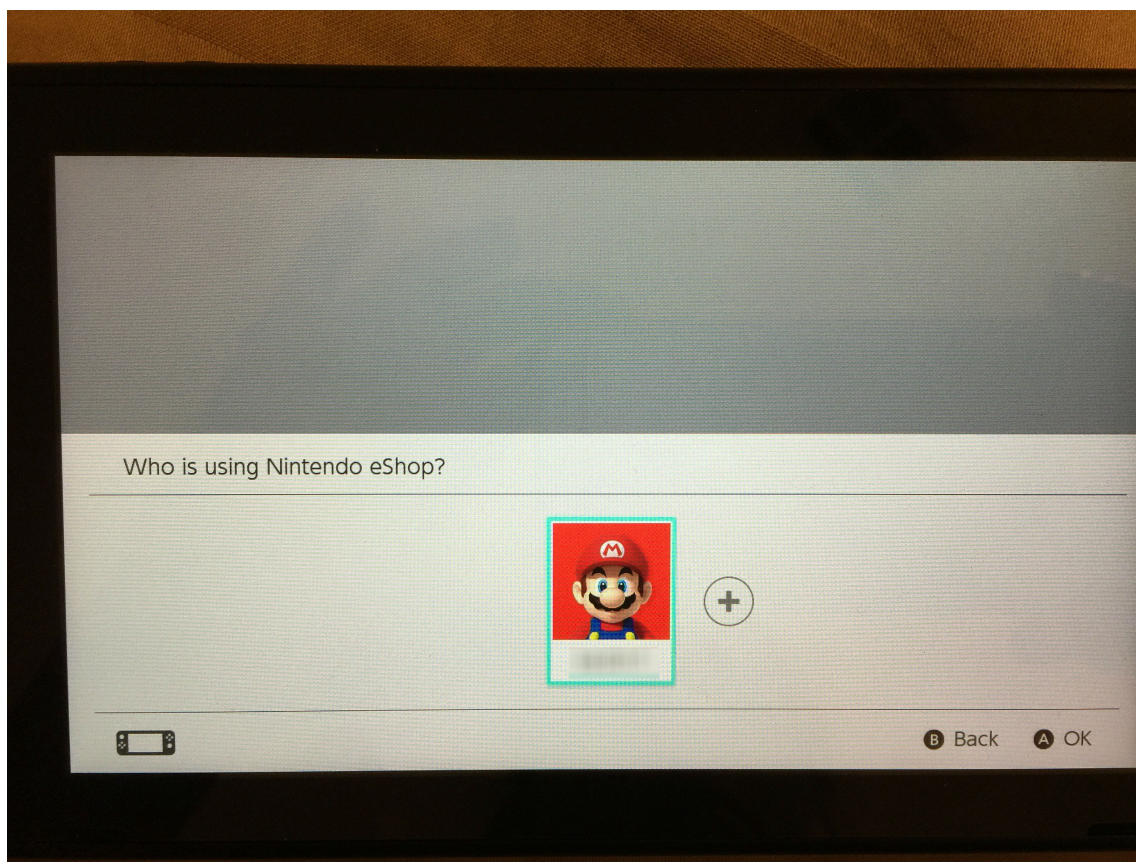


1 45. When a user accesses the Nintendo Store, the user's games are displayed in the
2 user's library, as shown below.

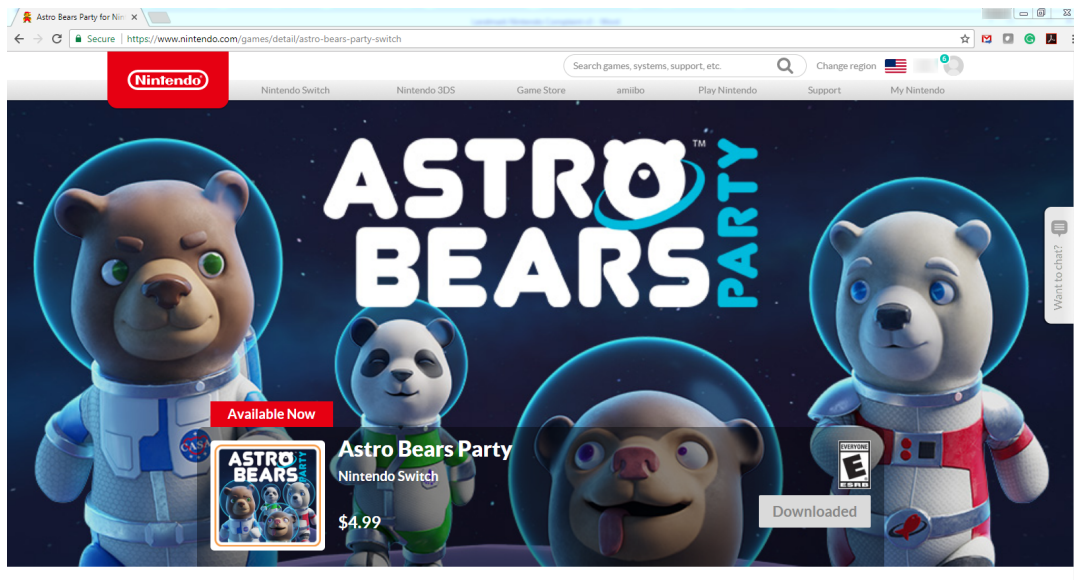


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18 46. A purchaser must be “signed in” to a Nintendo account in order to make a purchase
19 request.
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47. When a user accesses the Nintendo Store using an Internet browser, the system indicates games previously purchased, as exemplified below.

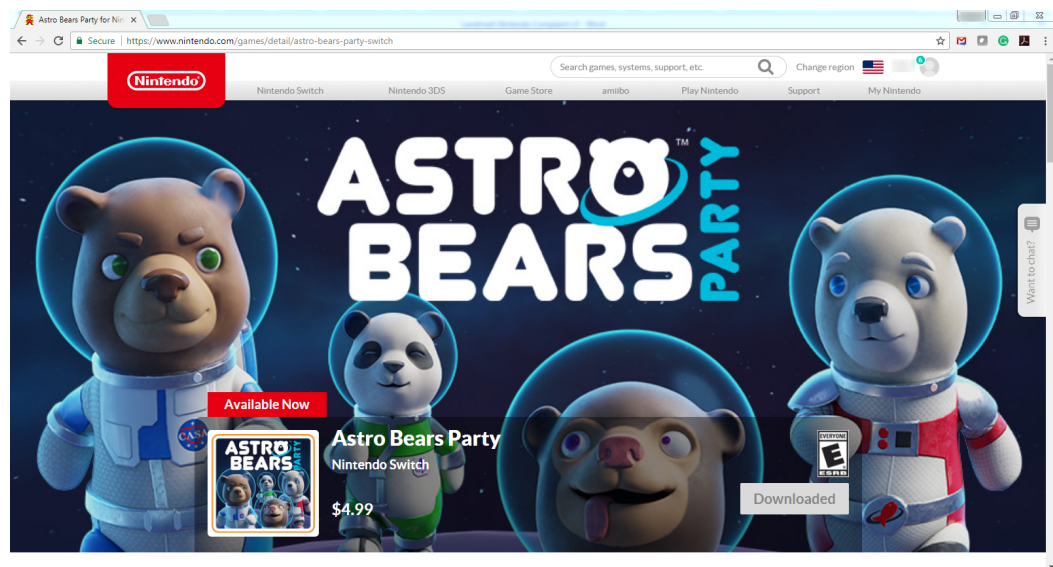


48. When a user accesses the Nintendo Store on a console, games previously purchased

1 are indicated, as exemplified below.

2 49. Nintendo prevents a user from purchasing a game she already owns by removing the
3 “buy” button and indicating that the game is already in the user’s library, as exemplified below.

4 50. The screenshot above shows a notification Eshop provides to a user trying to
5 purchase content already in her library.



15 51. Purchase information associated with a purchaser’s account is retrieved from a
16 Nintendo server when the purchaser requests the purchase of content data (e.g., a game).

17 52. A game can be downloaded when: 1) the username and password entered in the
18 application match what is stored on the Nintendo server, and 2) the application checks that the
19 game is not already installed on the user’s console.

20 53. Purchase information associated with a purchaser’s account is retrieved from a
21 Nintendo server or servers when the purchaser requests the purchase of content data (e.g., a game).

22 54. Purchase information associated with a purchaser’s account is retrieved from a
23 Nintendo server or servers when the purchaser requests the purchase of content data (e.g., a game).

24 55. Nintendo systems perform an accounting operation that provides the requested data
25 when relevant portions of purchase information match.

26 56. A purchase from the Nintendo system generates content data for delivery to the user.

27 57. An accounting operation occurs during checkout when a credit card is charged or
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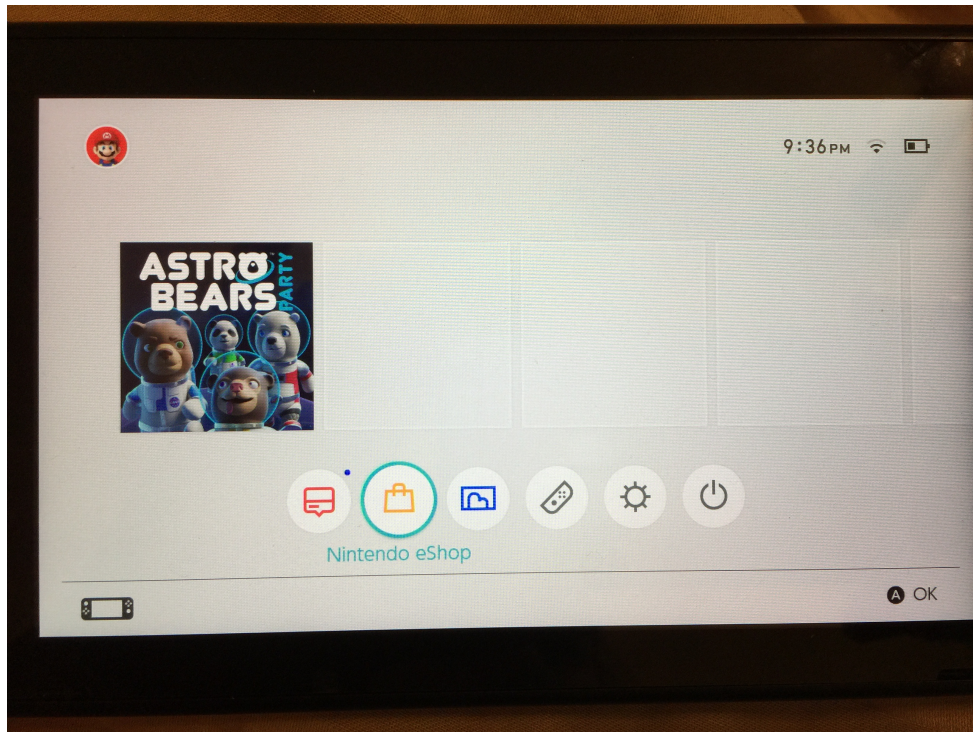
1 funds are deducted from the Nintendo accounting system.

2 58. The Nintendo system reflects a user's purchase information including available
3 balances and purchase transaction history.

4 59. After a purchase transaction, data is recorded onto rewritable record medium.

5 60. Data can be downloaded only after it is purchased.

6 61. A list of purchased games (in the user's library) is shown via the user's account
7 management interface as shown below.



20 62. After a purchase transaction, purchase information and available purchaser balance
21 are registered in the Nintendo data providing system.

22 63. Purchase history is stored on Nintendo servers and is accessible via an Internet
23 browser.

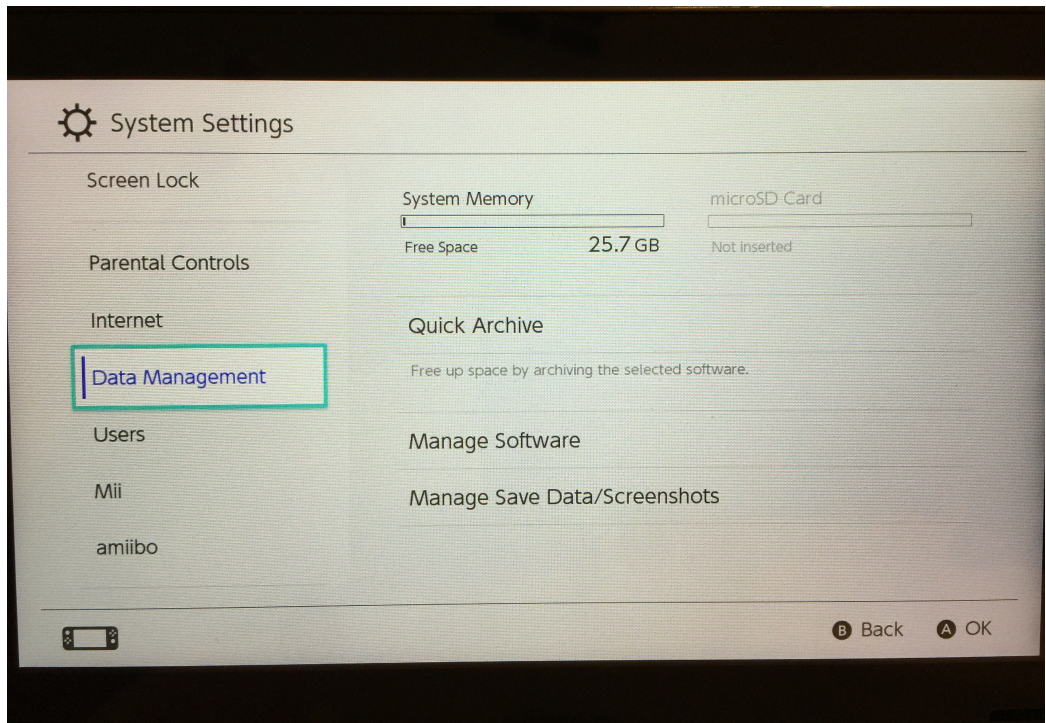
24 64. Each purchase is registered on a Nintendo Store computer.

25 NINTENDO AND THE '720 PATENT

26 65. The Nintendo Store requires a user to have a computer having memory with areas
27 for storing primary data and additional data including purchaser, purchase, and accounting data.
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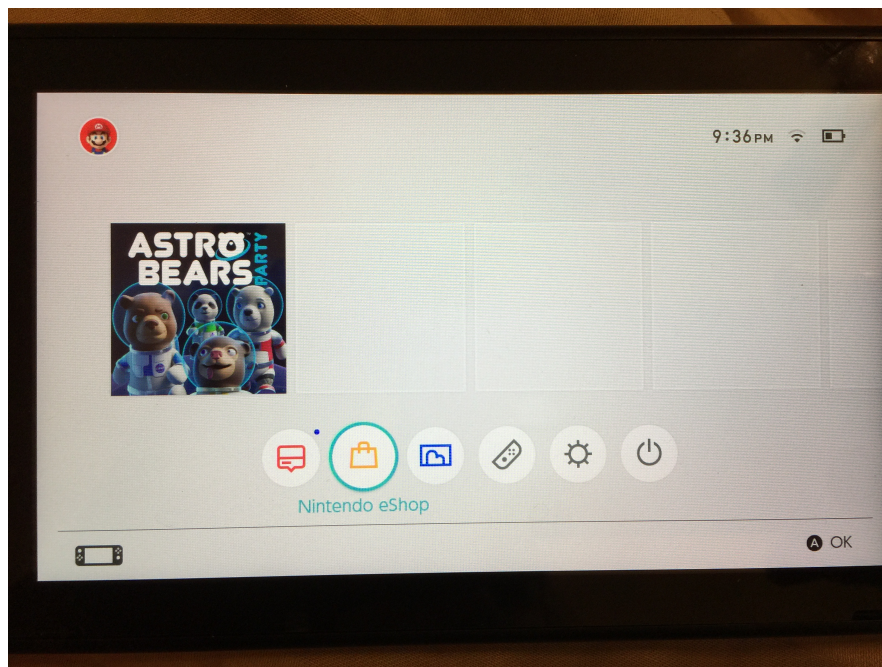
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66. The Nintendo client requires the memory as shown below.



67. Games purchased on the Nintendo Store are stored locally.

68. Local memory stores content data in data structures created by the Nintendo client application, and the library shows stored games, as shown below.



69. A list of game purchases corresponding to a user ID is stored on and available from

1 the Nintendo website and on the Nintendo client.

2 70. Historical data is recorded in an Nintendo server and in the user PC/laptop memory.

3 71. Nintendo creates logs and other files on the user system that record historical data.

4 72. Primary data (e.g., game data) requested by a purchaser is delivered from a Nintendo
5 server to the user computer (i.e., a Nintendo console) when the historical data stored in the user
6 computer is matched to historical data stored on the Nintendo server.

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The screenshot shows the Nintendo Support website interface. On the left is a navigation menu with categories like 'Support Home', 'Nintendo Switch', 'Nintendo 3DS Family', 'Wii U', etc. The main content area is titled 'Digital Game Purchases Through Nintendo.com FAQ'. Below the title, it states 'Applies to: Nintendo Switch, Wii U Deluxe, Wii U Basic, New Nintendo 3DS, New Nintendo 3DS XL, New Nintendo 2DS XL, Nintendo 3DS, Nintendo 3DS XL, Nintendo 2DS, Nintendo Account'. The article content includes a heading 'Buying a Game' and a sub-heading 'How can I purchase a game on Nintendo.com?'. The text explains that a Nintendo Account is required and provides a list of five steps for purchasing a game.

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73. A game can be downloaded from Nintendo when the username and password entered match what is stored on the Nintendo server and Nintendo checks that the game is not already installed/downloaded on the user's computer.

74. Nintendo performs accounting operations for tracking and recording user account information relating to purchases and download transactions.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,856,966)

75. Landmark incorporates paragraphs 1 through 74 herein by reference.

76. As the owner of the '966 Patent, Landmark holds all substantial rights in and under the '966 Patent, including the right to grant sublicenses, exclude others, and to enforce, sue, and recover damages for past and future infringement.

77. The '966 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

78. Defendants have practiced and continue to practice one or more claims of the '966 Patent, including at least claims 1, 2, 3, 4, 5, 6, 7, and 8, by making, using, offering for sale, operating, licensing, selling and/or importing the Nintendo content delivery system and Nintendo Store.

79. Defendants have no consent or authorization to practice the '966 Patent.

80. Defendants are on notice of the '966 Patent.

81. Landmark has been damaged as a result of Defendants' infringing conduct.

82. Defendants are liable to Landmark in an amount that adequately compensates Landmark for Defendants' infringement, which compensation can be no less than a reasonable royalty together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,018,720)

83. Landmark incorporates paragraphs 1 through 82 herein by reference.

84. As the owner of the '720 Patent, Landmark holds all substantial rights in and under the '720 Patent, including the right to grant sublicenses, exclude others, and to enforce, sue, and recover damages for past and future infringement.

85. The '720 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

86. Defendants have practiced and continue to practice one or more claims of the '720

1 Patent, including at least claims 1 and 10, by making, using, licensing, operating, offering for sale,
2 selling and/or importing the Nintendo content delivery system and Nintendo Store.

3 87. Defendants have no consent or authorization to practice the '720 Patent.

4 88. Defendants are on notice of the '720 Patent.

5 89. Landmark has been damaged as a result of Defendants' infringing conduct.

6 90. Defendants are thus liable to Landmark in an amount that adequately compensates it
7 for Defendants' infringement, which compensation can be no less than a reasonable royalty
8 together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

9 **NOTICE**

10 91. Landmark has complied with the notice requirement of 35 U.S.C. § 287 and does
11 not currently distribute, sell, offer for sale, or make products embodying the asserted Landmark
12 Patents.

13 **PRAYER FOR RELIEF**

14 Landmark prays for the following relief:

- 15 a) A judgment be entered that Defendants have infringed one or more claims of the '966
16 Patent and the '720 patent;
- 17 b) A judgment be entered that the '966 Patent and the '720 patent are valid and
18 enforceable;
- 19 c) Landmark be awarded damages adequate to compensate Landmark for Defendants'
20 infringement of the '966 Patent and the '720 patent up until the date such judgment is
21 entered, including prejudgment and post-judgment interest, costs, and disbursements
22 as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate
23 Landmark for Defendants' infringement, an accounting;
- 24 d) A judgment that Landmark be awarded attorneys' fees, costs, and expenses incurred in
25 prosecuting this action; and
- 26 e) A judgment that Landmark be awarded such further relief at law or in equity as the
27 Court deems just and proper.
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Dated: October 4, 2017

By /s/ Marc Belloli
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Landmark Networks, LLC

DEMAND FOR JURY TRIAL

1
2 Landmark demands trial by jury for all issues so triable pursuant to Fed. R. Civ. P. 38(b)
3 and Civil L.R. 3-6(a).

4
5 Dated: October 4, 2017

By /s/ Marc Belloli
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