

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

UNILOC USA, INC. et al Plaintiffs, v. RIOT GAMES, INC. Defendant. NEXON AMERICA, INC., Defendant.	§ § § § § § § §	CIVIL ACTION NO. 2:17-cv-275-JRG <i>CONSOLIDATED LEAD CASE</i> JURY TRIAL DEMANDED CIVIL ACTION NO. 2:17-cv-276-JRG
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FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together “Uniloc”), for their first amended complaint against defendant, Nexon America, Inc. (“Nexon”), 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, Nexon America, Inc. is a Delaware corporation having a place of business in 222 N. Sepulveda Blvd., Suite 300, El Segundo, CA 90245 and offering 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. Nexon America, Inc. may be served with process through its registered agent: Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808.

JURISDICTION AND VENUE

4. 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.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(d) and 1400(b). This Court has personal jurisdiction over Nexon, in part, because Nexon provides infringing online services to subscribers who reside in this district. Upon information and belief, Nexon 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.

6. Upon information and belief, Nexon has physical places in this District through which it not only regularly conducts business, but also has an established place of business. These places are places of Nexon because Nexon obtain the benefit of such locations in this District.

7. Upon information and belief, Nexon has game servers in the Eastern District of Texas (EDTX) and, also, in the Northern District of Texas (EDTX).

8. Upon information and belief, these Nexon EDTX and NDTX game servers allow EDTX and NDTX residents to download games, update games, and communicate with other users during game play.

9. Upon information and belief, Nexon has these game servers as close as possible to NDTX and EDTX users of them to allow quicker downloads of game and low-latency game play.

10. Nexon provides a platform called “Nexon Launcher,” which includes client software and server software that services such client software.

11. One of Nexon’s agents in such game server placement is Amazon Web Services, Inc. Amazon Web Service, Inc.’s server facility through which it provides services to clients is

located in Denton County, TX, which is in the EDTX.

12. As a non-limiting example of the preceding paragraph, Nexon's Launcher communicates with computers at an IP Address of 54.230.120.162, 54.230.120.163, and 54.230.120.250 which resolve to servers that are believed to be in Denton County, TX.

13. Another of Nexon's agents in such game server placement is Akamai Technologies. One of Akamai Technologies server facilities through which it provides services to clients is located in Denton County, TX.

14. Another of Nexon's agents in such game server placement is Google Inc. (now known as Google, LLC). One of Google's server facilities through which it provides services to clients is located in Dallas County, TX, which is in the NDTX.

15. As a non-limiting example of the preceding paragraph, the Nexon Launcher communicates with computers at an IP Address of 172.17.6.174, which resolves to servers that are believed to be Dallas County, TX

16. Upon information and belief, once Nexon software is placed on user machines of EDTX and NDTX customers, Nexon contractually collects information and communicates information back to Nexon.

17. As non-limiting examples of the preceding paragraph, Nexon software can scan an EDTX or NDTX user's machine including "random access memory, video card, central processing unit, hard drive(s) and any other storage devices" for reporting back to Nexon. Nexon also gathers "technical and usage information such as your IP address, your browser type, browser language, referring and exit URLs (including, without limitation, your access to third party sites (including through links, advertisements, or other means), including social networks such as Twitter, Facebook, and Google+), interactions with other users, usage statistics with the [s]ervices, and device identification information regarding the computers, the servers or other devices with which

you use our [s]ervices.” <http://www.nexon.net/en/legal/privacy-policy/>

18. Upon information and belief, Nexon also distributes mobile applications to residents in this judicial district through servers located in Tyler, Texas; Sherman, TX and Texarkana, Texas – all located in the EDTX. Nexon distributes such applications through the Google Play store where Google acts as an agent “solely on [Nexon’s] behalf” – or as Nexon’s agent.

19. Nexon 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

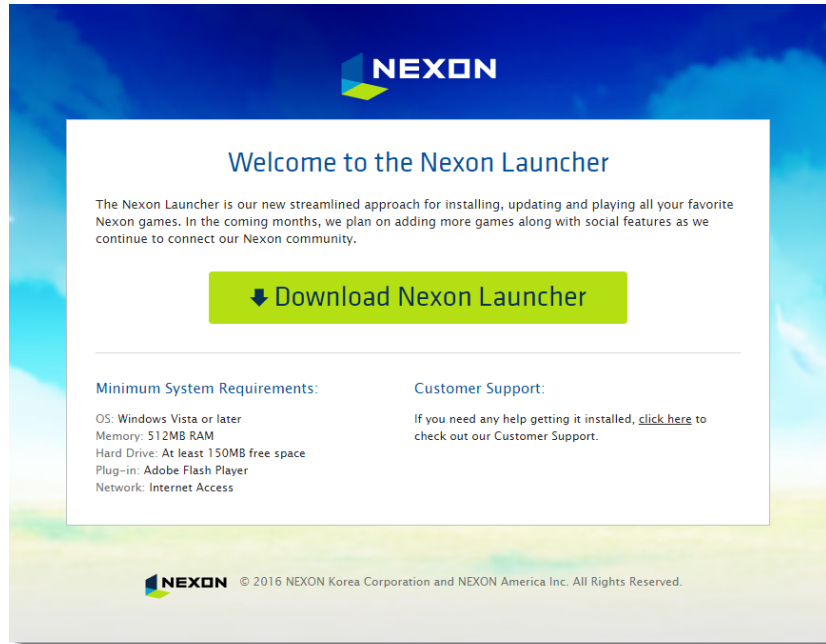
(INFRINGEMENT OF U.S. PATENT NO. 6,110,228)

20. Uniloc incorporates the paragraphs above by reference.

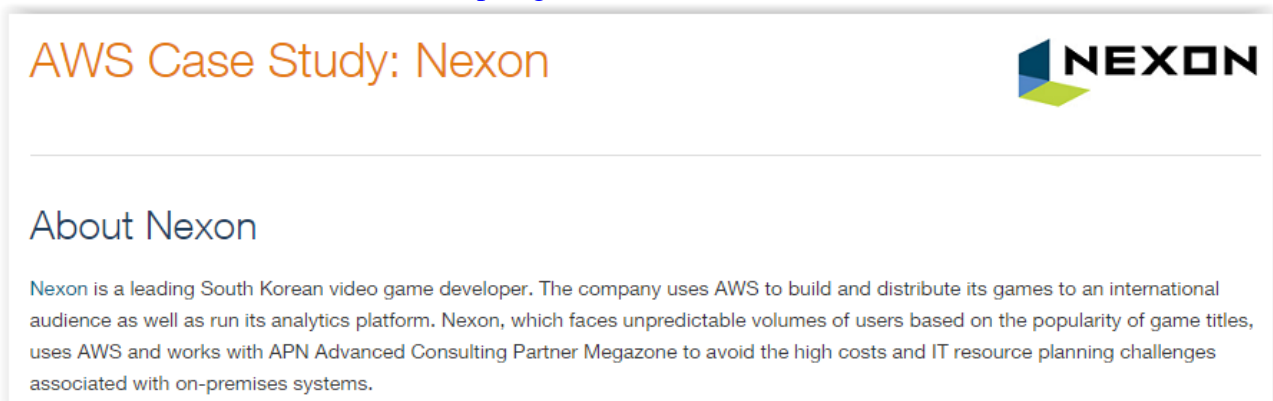
21. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,110,228 (“the ’228 Patent”), entitled METHOD AND APPARATUS FOR SOFTWARE MAINTENANCE AT REMOTE NODES that issued on August 29, 2000. A true and correct copy of the ’228 Patent is attached as Exhibit A hereto.

22. 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.

23. Upon information and belief, the following describes, at least in part, how certain aspects of Nexon’s platform operate:

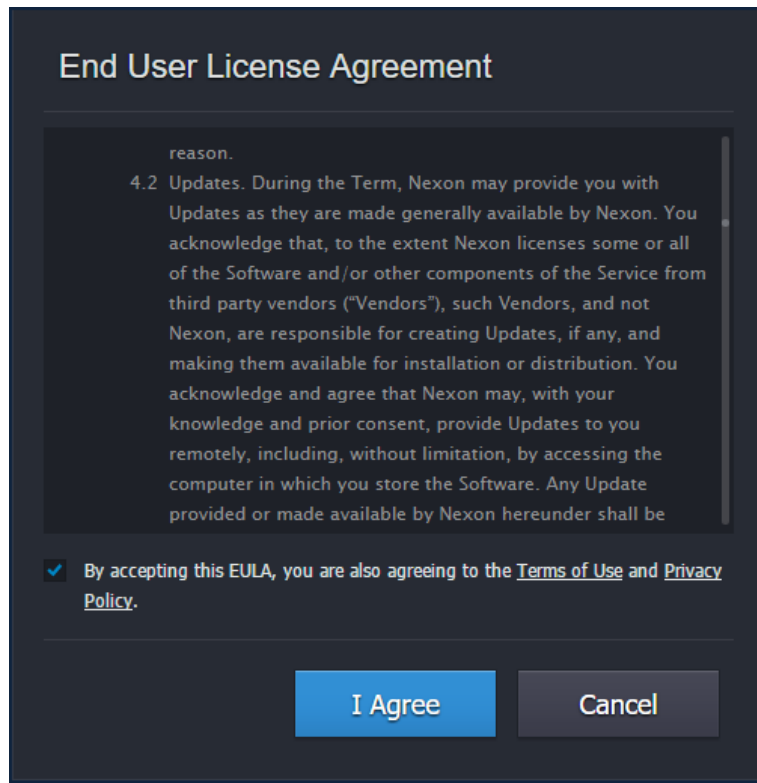


Source: <https://games.nexon.net/nexonlauncher>



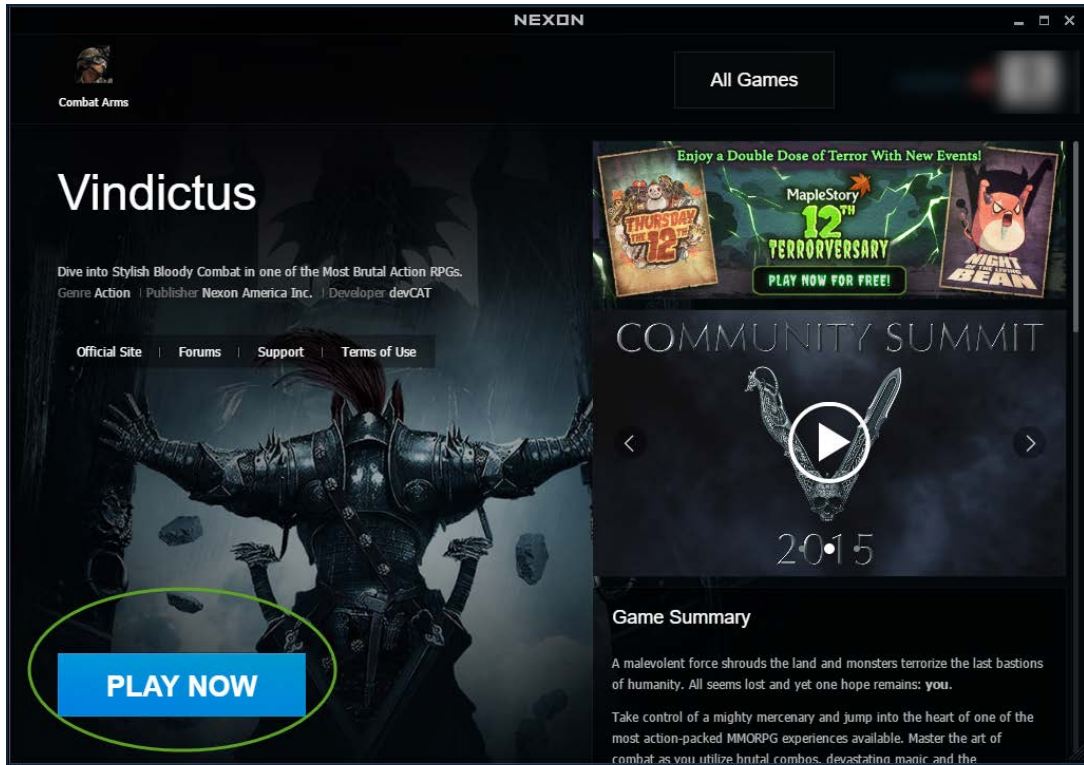
Source: <https://aws.amazon.com/solutions/case-studies/nexon/>

24. Using the Nexon Launcher, a user not only can download a new game, but can also receive updates – either automatically or manually. Such updates are contemplated by the user agreement.



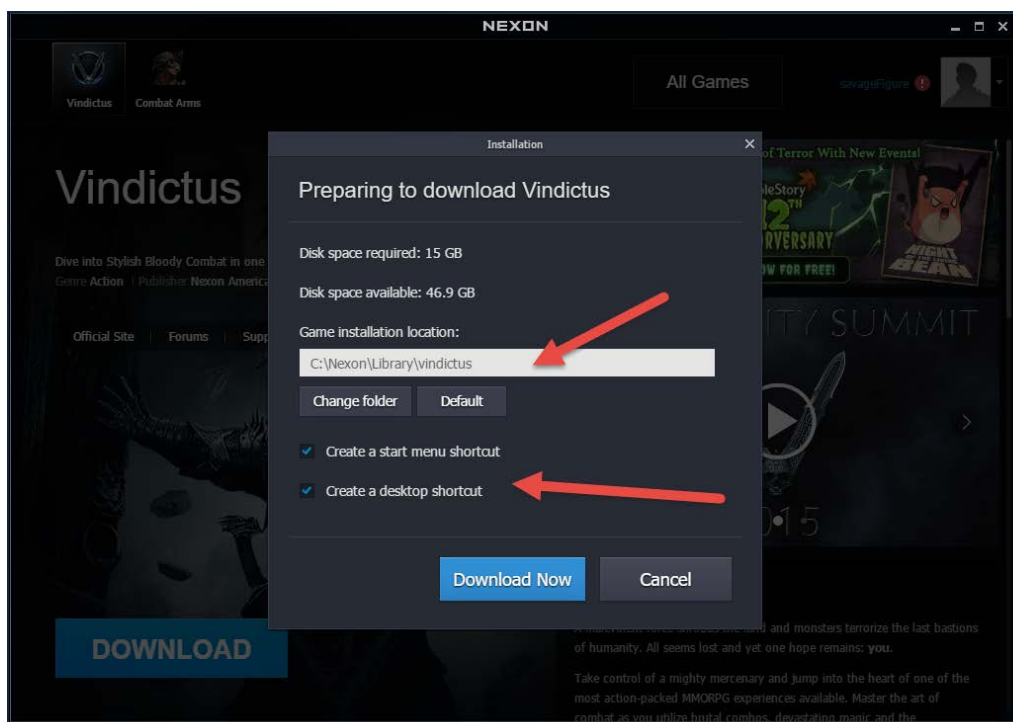
Source: product testing

25. The following is an example of adding a game to the Nexon Launcher library. A user may select "Play Now":



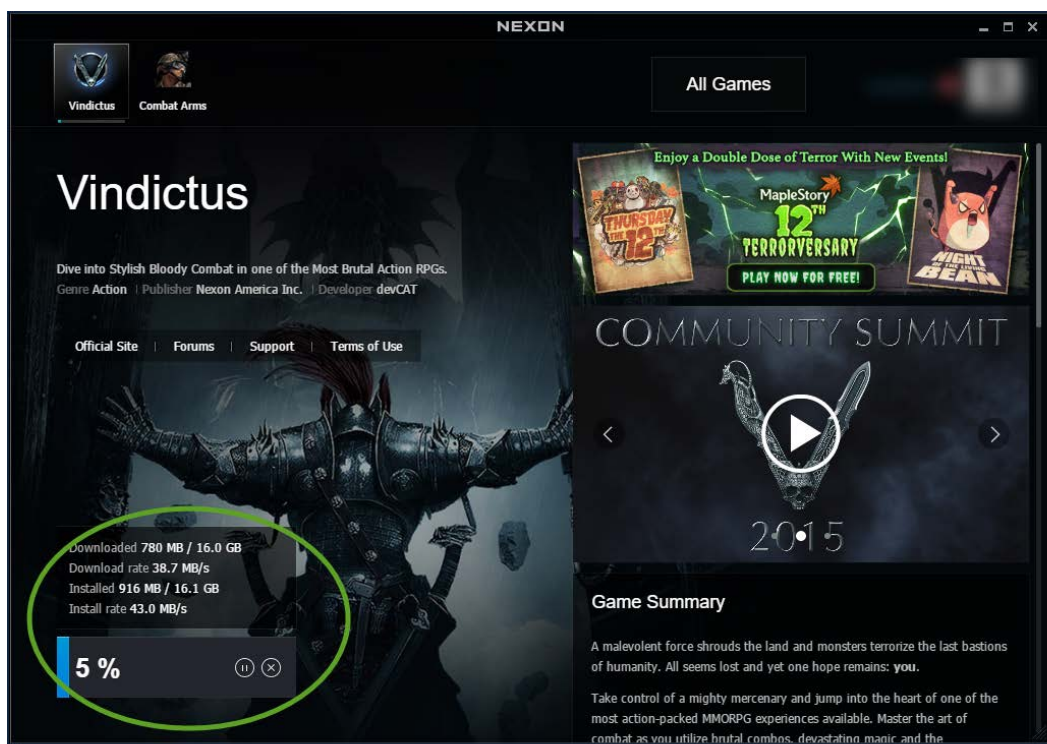
Source: product testing

26. If the game is not in the Nexon Launcher library, a user is prompted to download files. The user is also prompted for a download location for the game, as well as whether a start menu or desktop shortcut should be created.



Source: product testing

27. The files for the game begin to download with transfer details provided along with the ability to stop and pause the download:



Source: product testing

28. In downloading and/or updating, Nexon contacts multiple different remote servers.

Non-limiting examples are shown in the screen shots below:

Network Activity 180 Mbps Network I/O

Filtered by nexon_runtime.exe, nexon_client.exe, nexon_client.exe

Image	PID	Address	Send (B/sec)	Receive (B...	Total (B/sec)
nexon_client.exe	56072	dfw06s46-in-f14.1e100.net	36	19	55
nexon_client.exe	66524		0	46	46
nexon_runtime.exe	252	a23-79-152-210.deploy.static.akamaitechnologies.com	108	25,557,877	25,557,985
nexon_runtime.exe	252	ec2-54-84-238-29.compute-1.amazonaws.com	72	262	334
nexon_runtime.exe	252		139	93	232

Network Activity 313 Mbps Network I/O

Filtered by nexon_runtime.exe, nexon_client.exe

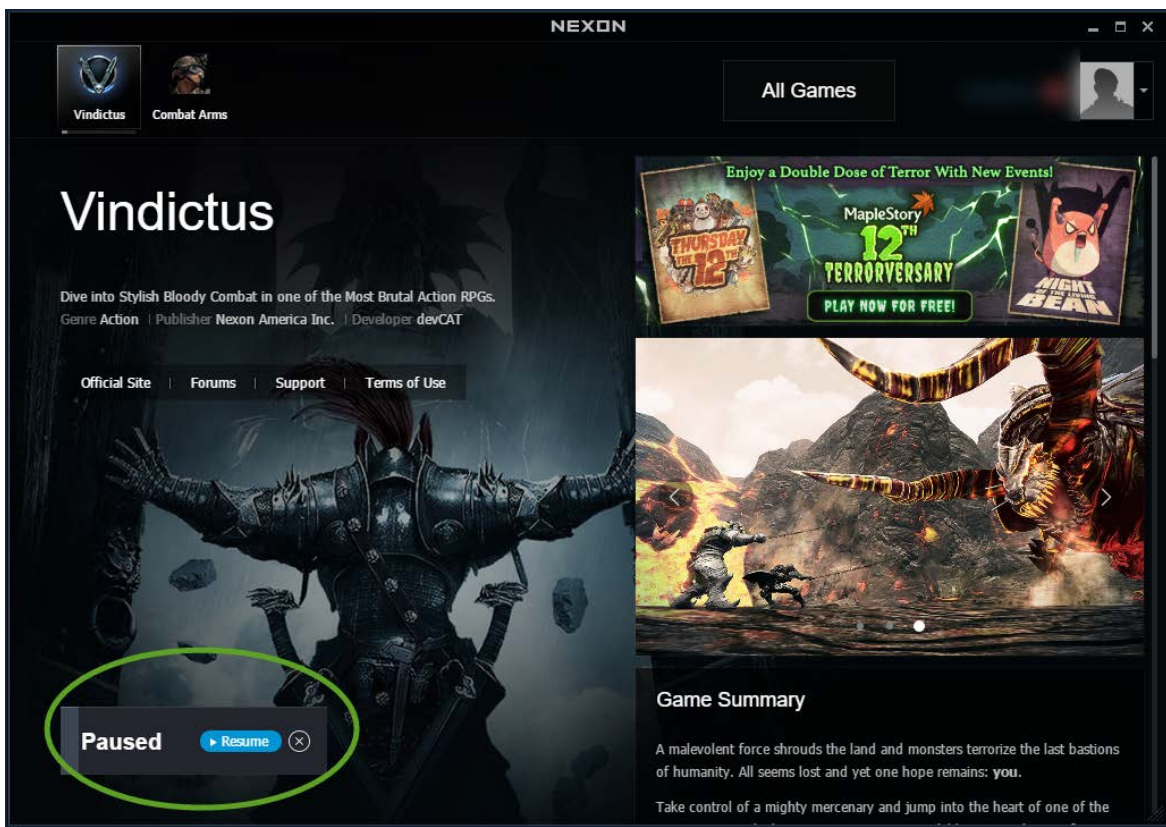
Image	PID	Address	Send (B/sec)	Receive (B...	Total (B/sec)
nexon_client.exe	66524		4	338	342
nexon_runtime.exe	252	a23-79-152-210.deploy.static.akamaitechnologies.com	784	26,052,067	26,052,851
nexon_runtime.exe	252		1,013	679	1,692
nexon_runtime.exe	252	ec2-54-84-238-29.compute-1.amazonaws.com	120	436	556

Network Activity 43051 Kbps Network I/O 2% Network Utilization

Filtered by nexon_runtime.exe, nexon_client.exe

Image	PID	Address	Send (B/sec)	Receive (B...
nexon_client.exe	66524		7	729
nexon_runtime.exe	252	a23-79-152-210.deploy.static.akamaitechnologies.com	741	18,573,681
nexon_runtime.exe	252		2,184	1,462
nexon_runtime.exe	252	nss.nexon.net	182	619
nexon_runtime.exe	252	ec2-54-84-238-29.compute-1.amazonaws.com	131	476

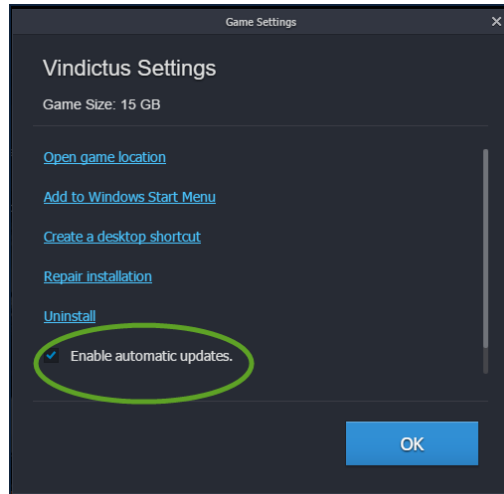
29. If a user were to pause the transfer of file, he or she would be given the option to resume:



Source: product testing

30. A game setting icon gives a user the ability to select whether automatic updates are allowed:





Source: product testing

31. The following is an example view of a manual update



Source: product testing



Source: product testing

32. Nexon uses versioning to determine what software components have been loaded.
33. Nexon 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 Nexon 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 Nexon from the remote user location.
34. In addition, should the Nexon platform be found to not literally infringe one or more claims of the '228 Patent, the Nexon platform would nevertheless infringe one or more

claims of the '228 Patent, including at least Claim 1. More specifically, the Nexon 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 Nexon application). Nexon would thus be liable for direct infringement under the doctrine of equivalents.

35. Nexon 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 Nexon platform. Nexon's customers who use the Nexon platform in accordance with Nexon's instructions directly infringe one or more of the foregoing claims of the '228 Patent in violation of 35 U.S.C. § 271. Nexon 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 Nexon.com. Nexon is thereby liable for infringement of the '228 Patent under 35 U.S.C. § 271(b).

36. Nexon 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 Nexon 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.

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

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

39. Nexon may have infringed the '228 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Nexon 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)

40. Uniloc incorporates the paragraphs above by reference.

41. 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 May 13, 2003. A copy of the '229 Patent is attached as Exhibit B.

42. 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.

43. Nexon 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 Nexon 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.

44. In addition, should the Nexon platform be found to not literally infringe one or more claims of the '229 Patent, the Nexon platform would nevertheless infringe one or more claims of the '229 Patent, including at least Claim 1. More specifically, the accused Nexon 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). Nexon would thus be liable for direct infringement under the doctrine of equivalents.

45. Nexon 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 Nexon portal. Nexon's customers who use the Nexon platform in accordance with Nexon's instructions directly infringe one or more of the foregoing claims of the '229 Patent in violation of 35 U.S.C. § 271. Nexon 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 Nexon.com. Nexon is thereby liable for infringement of the '229 Patent under 35 U.S.C. § 271(b).

46. Nexon 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 Nexon 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.

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

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

49. Nexon may have infringed the '229 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the Nexon 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 Nexon as follows:

- (A) declaring that Nexon has infringed the '228 Patent and the '229 Patent;
- (B) awarding Uniloc its damages suffered as a result of Nexon's infringement of the '228 Patent and '229 Patent;

(C) enjoining Nexon, 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 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.

Dated: October 17, 2017

Respectfully submitted,

/s/ Ryan S. Loveless

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CERTIFICATE OF SERVICE

I hereby certify that counsel who are deemed to have consented to electronic service are being served this October 17, 2017 with a copy of this document *via* the Court's CM/ECF system per Local Rule CV-5(a)(3) and via email.

/s/ Ryan S. Loveless
Ryan S. Loveless