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24 UNITED STATES DISTRICT COURT  
25 CENTRAL DISTRICT OF CALIFORNIA

26 UNILOC 2017 LLC

27 Plaintiff,

28 v.

MICROSOFT CORPORATION,

Defendant.

CASE NO. 8:19-cv-00956

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Uniloc 2017 LLC (“Uniloc”), by and through the undersigned  
2 counsel, hereby files this Complaint and makes the following allegations of patent  
3 infringement relating to U.S. Patent No. 6,467,088 against Defendant Microsoft  
4 Corporation (“Microsoft”), and alleges as follows upon actual knowledge with  
5 respect to itself and its own acts and upon information and belief as to all other  
6 matters:

7 **NATURE OF THE ACTION**

8 1. This is an action for patent infringement. Uniloc alleges that  
9 Microsoft infringes U.S. Patent No. 6,467,088 (the “’088 patent”), a copy of which  
10 is attached hereto as Exhibit A.

11 2. Uniloc alleges that Microsoft directly and indirectly infringes the ’088  
12 patent by making, using, offering for sale and selling devices that perform a  
13 processor-implemented method for controlling the reconfiguration of an electronic  
14 device, including but not limited to devices that perform Windows Update. Uniloc  
15 alleges that Microsoft also induces and contributes to the infringement of others.  
16 Uniloc seeks damages and other relief for Microsoft’s infringement of the ’088  
17 patent.

18 **THE PARTIES**

19 3. Uniloc 2017 LLC is a Delaware corporation having places of business  
20 at 1209 Orange Street, Wilmington, Delaware 19801, 620 Newport Center Drive,  
21 Newport Beach, California 92660 and 102 N. College Avenue, Suite 303, Tyler,  
22 TX 75702.

23 4. Uniloc holds all substantial rights, title and interest in and to the ’088  
24 patent.

25 5. Upon information and belief, Defendant Microsoft is a corporation  
26 organized and existing under the laws of the State of Washington, with the  
27 following places of business in this District: 3 Park Plaza, Suite 1600, Irvine, CA  
28 92614; 3333 Bristol Street, Suite 1249, Costa Mesa, CA 92626; 578 The Shops at

1 Mission Viejo, Mission Viejo, CA 92691; 331 Los Cerritos Center, Cerritos, CA  
2 90703; 13031 West Jefferson Blvd., Suite 200, Los Angeles, CA 90094; 2140  
3 Glendale Galleria, JCPenney Court, Glendale, CA 91210; 10250 Santa Monica  
4 Blvd., Space #1045, Los Angeles, CA 90067; 6600 Topanga Canyon Blvd, Canoga  
5 Park, CA 91303. Microsoft can be served with process by serving its registered  
6 agent for service of process in California: Corporation Service Company which  
7 Will Do Business in California as CSC - Lawyers Incorporating Service, 2710  
8 Gateway Oaks Dr., Ste. 150, Sacramento, CA 95833.

### 9 **JURISDICTION AND VENUE**

10 6. This action for patent infringement arises under the Patent Laws of the  
11 United States, 35 U.S.C. § 1 et. seq. This Court has original jurisdiction under 28  
12 U.S.C. §§ 1331 and 1338.

13 7. This Court has both general and specific jurisdiction over Microsoft  
14 because Microsoft has committed acts within the Central District of California  
15 giving rise to this action and has established minimum contacts with this forum  
16 such that the exercise of jurisdiction over Microsoft would not offend traditional  
17 notions of fair play and substantial justice. Defendant Microsoft, directly and  
18 through subsidiaries, intermediaries (including distributors, retailers, franchisees  
19 and others), has committed and continues to commit acts of patent infringement in  
20 this District, by, among other things, making, using, testing, selling, licensing,  
21 importing and/or offering for sale/license products and services that infringe the  
22 '088 patent.

23 8. Venue is proper in this district and division under 28 U.S.C. §§  
24 1391(b)-(d) and 1400(b) because Microsoft has committed acts of infringement in  
25 the Central District of California and has regular and established places of business  
26 in the Central District of California.

### 27 **COUNT I– INFRINGEMENT OF U.S. PATENT NO. 6,467,088**

28 9. The allegations of paragraphs 1-8 of this Complaint are incorporated

1 by reference as though fully set forth herein.

2 10. The '088 patent titled, "Reconfiguration Manager For Controlling  
3 Upgrades Of Electronic Devices," issued on October 15, 2002. A copy of the '088  
4 patent is attached as Exhibit A.

5 11. Pursuant to 35 U.S.C. § 282, the '088 patent is presumed valid.

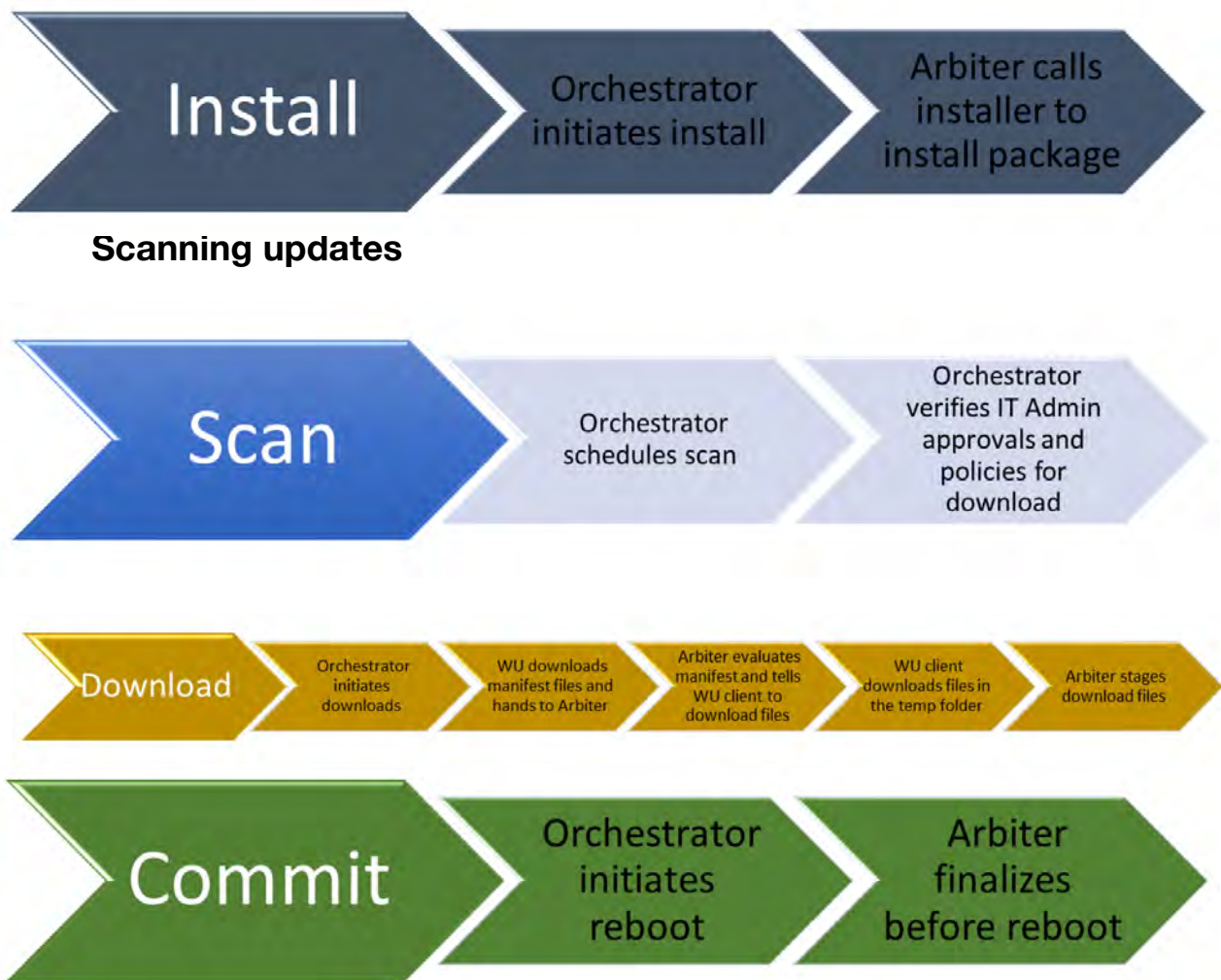
6 12. Microsoft makes, uses, offers for sale, and sells in the United States  
7 and imports into the United States devices that practice a processor-implemented  
8 method for controlling the reconfiguration of an electronic device, for example,  
9 Windows Update, as well as computer readable media storing software programs  
10 (e.g., Windows Update) that when executed implement the method (collectively the  
11 "Accused Infringing Devices").

12 13. Upon information and belief, the Accused Infringing Devices infringe  
13 claims 1 and 21 of the '088 patent in the exemplary manner described below.

14 14. The Accused Infringing Devices perform a processor-implemented  
15 method for controlling the reconfiguration of electronic devices (e.g., computers  
16 that are running a version of Microsoft Windows).

### 17 **How updating works**

18  
19 During the updating process, the Windows Update Orchestrator operates in the  
20 background to scan, download, and install updates. It does this automatically,  
21 according to your settings, and in a silent manner that doesn't disrupt your computer  
22 usage.  
23  
24  
25  
26  
27  
28



<https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works>

15. The Accused Infringing Devices receive information representative of a reconfiguration request relating to the electronic device. For example, the information is received when an instance of Windows Update Orchestrator running on the electronic device initiates a request for reconfiguration at random intervals to avoid overloading the Windows Update server.

## Scanning updates



The Windows Update Orchestrator on your PC checks the Microsoft Update server or your WSUS endpoint for new updates at random intervals. The randomization ensures that the Windows Update server isn't overloaded with requests all at the same time. The Update Orchestrator searches only for updates that have been added since the last time updates were searched, allowing it to find updates quickly and efficiently.

When checking for updates, the Windows Update Orchestrator evaluates whether the update is appropriate for your computer using guidelines defined by the publisher of the update, for example, Microsoft Office including enterprise group policies.

<https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works>

16. Windows Update determines at least one device component required to implement the reconfiguration request. “The Windows Update Orchestrator determines which updates apply to your computer.” Also, the update offered is dependent on, among other things, the OS Architecture. The OS Architecture may depend on, for example, whether the processor is capable of 32 or 64 bit operation.

Once the Windows Update Orchestrator determines which updates apply to your computer, it will begin downloading the updates, if you have selected the option to automatically download updates. It does this in the background without interrupting your normal use of the computer.

**Source:** <https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works>



The update that is offered to a device depends on several factors. Some of the most common attributes include the following:

- OS Build
- OS Branch
- OS Locale
- OS Architecture
- Device update management configuration

**Source:** <https://docs.microsoft.com/en-us/windows/deployment/update/windows-update-troubleshooting>

To install a 64-bit version of Windows, you need a CPU that's capable of running a 64-bit version of Windows. The benefits of using a 64-bit operating system are most apparent when you have a large amount of random access memory (RAM) installed on your computer, typically 4 GB of RAM or more. In such cases, because a 64-bit operating system can handle large amounts of memory more efficiently than a 32-bit operating system, a 64-bit system can be more responsive when running several programs at the same time and switching between them frequently.

**Source:** <https://support.microsoft.com/en-us/help/15056/windows-32-64-bit-faq>

17. The Accused Infringing Devices compare the determined component and information specifying at least one additional component currently implemented in the electronic device with at least one of a list of known acceptable configurations for the electronic device and a list of known unacceptable configurations for the electronic device. In addition to “software” (OS and apps) updates, the Accused Infringing Devices perform driver updates that necessarily require determining additional components currently implemented in the electronic device (e.g., known acceptable configurations). See, for example, <https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works>.

18. The Accused Infringing Devices can also perform a Product Sync,

where “Attributes based sync, where client provides a list of device, product and caller attributes ahead of time to allow service to evaluate applicability in the cloud.” See, for example, <https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works>.

19. In the event of specific component incompatibilities, the Windows Show/Hide Updates tool is used to create a list of known unacceptable configurations for the electronic device.

### Choose your automatic updates

To prevent the driver from being reinstalled by Windows Update, use the “Show or Hide Updates” troubleshooter to hide the driver. Window Update won't install hidden drivers or updates.

Download the troubleshooter from the Microsoft Download Center:

When you click the download link, you're prompted to open or save wushowhide.diagcab.

Do you want to open or save wushowhide.diagcab (45.3 KB) from download.microsoft.com?

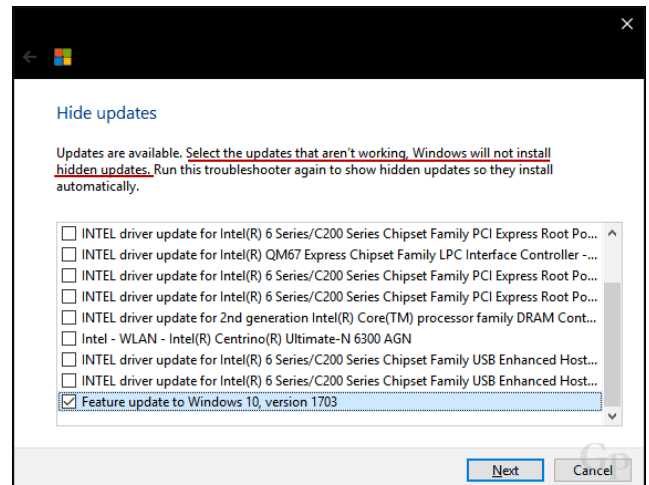
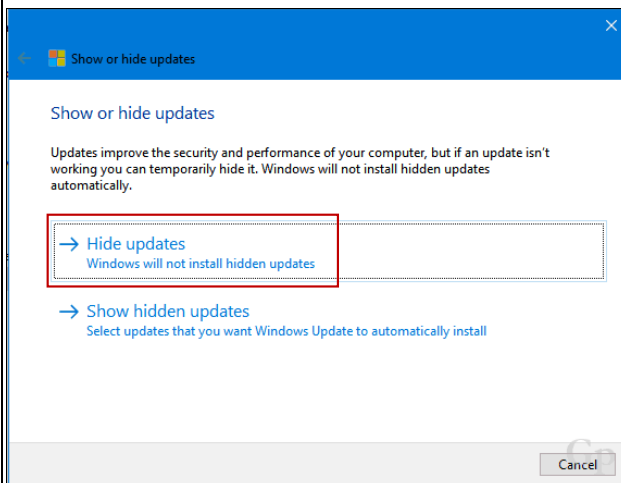
Open

Save

Cancel

To run the troubleshooter, open wushowhide.diagcab, select Next, and then follow the instructions in the troubleshooter to hide the problematic driver or update.

**Source:** <https://support.microsoft.com/en-us/help/3073930/how-to-temporarily-prevent-a-driver-update-from-reinstalling-in-window>



**Source:** <https://www.groovypost.com/howto/block-windows-10-feature-update-why/>



20. The Accused Infringing Devices generate information indicative of an approval or denial of the reconfiguration request based at least in part on the results of the comparing step. For example, the Accused Infringing Devices generate an update history (e.g. indicative of approval) for updates that are successfully installed. This history can be viewed in Windows.

“Installing updates



When an update is applicable, the “Arbiter” and metadata are downloaded. Depending on your Windows Update settings, when downloading is complete, the Arbiter will gather details from the device, and compare that with the downloaded metadata to create an “action list”.

The action list describes all the files needed from WU, and what the install agent (such as CBS or Setup) should do with them. The action list is provided to the install agent along with the payload to begin the installation.”

<https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works>

#### ^ How do I see installed updates?

An update history is available so you can see which updates were installed, and when. You can also use this list to remove specific updates, although we don't recommend this unless it's necessary.

To see your PC's update history, open Windows Update by swiping in from the right edge of the screen (or, if you're using a mouse, pointing to the lower-right corner of the screen and moving the mouse pointer up), select **Settings > Change PC settings > Update and recovery > Windows Update > View your update history**.

<https://support.microsoft.com/en-us/help/12373/windows-update-faq>

21. Microsoft has infringed, and continues to infringe, at least claims 1 and

1 21 of the '088 patent in the United States, by making, using, offering for sale,  
2 selling and/or importing the Accused Infringing Devices in violation of 35 U.S.C. §  
3 271(a).

4 22. Microsoft also has infringed, and continues to infringe, at least claim 1  
5 of the '088 patent by actively inducing others to use, offer for sale, and sell the  
6 Accused Infringing Devices. Microsoft's users, customers, agents or other third  
7 parties who use those devices in accordance with Microsoft's instructions infringe  
8 claim 1 of the '088 patent, in violation of 35 U.S.C. § 271(a). Microsoft  
9 intentionally instructs its customers to infringe through training videos,  
10 demonstrations, brochures, installation and user guides, such as those located at:  
11 [www.microsoft.com](http://www.microsoft.com); [support.microsoft.com](http://support.microsoft.com); [https://support.microsoft.com/en-](https://support.microsoft.com/en-us/help/12373/windows-update-faq)  
12 [us/help/12373/windows-update-faq](https://support.microsoft.com/en-us/help/12373/windows-update-faq); [https://docs.microsoft.com/en-](https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works)  
13 [us/windows/deployment/update/how-windows-update-works](https://docs.microsoft.com/en-us/windows/deployment/update/how-windows-update-works);  
14 [https://support.microsoft.com/en-us/help/3073930/how-to-temporarily-prevent-a-](https://support.microsoft.com/en-us/help/3073930/how-to-temporarily-prevent-a-driver-update-from-reinstalling-in-window)  
15 [driver-update-from-reinstalling-in-window](https://support.microsoft.com/en-us/help/3073930/how-to-temporarily-prevent-a-driver-update-from-reinstalling-in-window); and related domains and sub-domains ].  
16 Microsoft is thereby liable for infringement of the '088 patent under 35 U.S.C. §  
17 271(b).

18 23. Microsoft also has infringed, and continues to infringe, at least claim 1  
19 of the '088 patent by offering to commercially distribute, commercially  
20 distributing, or importing the Accused Infringing Devices which devices are used in  
21 practicing the processes, or using the systems, of the '088 patent, and constitute a  
22 material part of the invention. Microsoft knows portions of the Accused Infringing  
23 Devices to be especially made or especially adapted for use in infringement of the  
24 '088 patent, not a staple article, and not a commodity of commerce suitable for  
25 substantial noninfringing use. Microsoft is thereby liable for infringement of the  
26 '088 patent under 35 U.S.C. § 271(c).

27 24. Microsoft is on notice of its infringement of the '088 patent by virtue  
28 of a letter from Uniloc to Microsoft dated May 20, 2019. Microsoft knows and/or

1 is willfully blind to the fact that its continued actions actively induce and contribute  
2 to the infringement of at least claim 1 of the '088 patent.

3 25. Upon information and belief, Microsoft may have infringed and  
4 continues to infringe the '088 patent through other software and devices utilizing  
5 the same or reasonably similar functionality, including other versions of the  
6 Accused Infringing Devices.

7 26. Microsoft's acts of direct and indirect infringement have caused and  
8 continue to cause damage to Uniloc and Uniloc is entitled to recover damages  
9 sustained as a result of Microsoft's wrongful acts in an amount subject to proof at  
10 trial.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff Uniloc 2017 LLC respectfully prays that the Court enter judgment in its favor and against Microsoft as follows:

a. A judgment that Microsoft has infringed one or more claims of the '088 patent literally and/or under the doctrine of equivalents directly and/or indirectly by inducing infringement and/or by contributory infringement;

b. That this Court find that Microsoft has infringed the '088 patent and award Uniloc its damages pursuant to 35 U.S.C. § 284 and any royalties determined to be appropriate;

c. That this be determined to be an exceptional case under 35 U.S.C. § 285 and that Uniloc be awarded enhanced damages up to treble damages for willful infringement as provided by 35 U.S.C. § 284;

d. That this Court award Uniloc prejudgment and post-judgment interest on its damages;

e. That Uniloc be granted its reasonable attorneys' fees in this action;

f. That this Court award Uniloc its costs; and

g. That this Court award Uniloc such other and further relief as the Court deems proper.

**DEMAND FOR JURY TRIAL**

Uniloc hereby demands trial by jury on all issues so triable pursuant to Fed.  
R. Civ. P. 38.

Dated: May 20, 2019

FEINBERG DAY ALBERTI LIM &  
BELLOLI LLP

By: /s/ M. Elizabeth Day  
M. Elizabeth Day

Attorneys for Plaintiff  
Uniloc 2017 LLC