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

		§
UNILOC USA, INC. a	nd	§
UNILOC LUXEMBOU	URG, S.A.,	§
		§
I	Plaintiffs,	§
		§
V.		§
		§
NETSUITE, INC.,		§
		§
I	Defendant.	§
		§

Civil Action No. 2:16-cv-862

PATENT CASE

JURY TRIAL DEMANDED

## FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs, Uniloc USA, Inc. and Uniloc Luxembourg, S.A. (together "Uniloc"), as and for their First Amended Complaint against Defendant, Netsuite, Inc. ("Netsuite"), 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 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, 4<sup>th</sup> Floor, L-2540, Luxembourg (R.C.S. Luxembourg B159161).

3. Uniloc Luxembourg owns a number of patents in the field of application management in a computer network.

4. Upon information and belief, Netsuite is a California corporation with a principal place of business in San Mateo, California 94403 and offering its products, including those accused herein of infringement, to customers and/or potential customers located in Texas and in the judicial Eastern District of Texas. Netsuite may be served with process through its registered agent: Corporation Service Company d/b/a CSC Lawyers Incorporating Service, 2710 Gateway Oaks Dr., Ste. 150N, Sacramento, California 95833.

#### JURISDICTION AND VENUE

5. Uniloc brings 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). Upon information and belief, NetSuite 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 in this judicial district, including sales to one or more customers in Texas.

7. NetSuite is subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to its substantial business in this State and judicial district, including: (A) at least part of its past infringing activities, (B) regularly doing or soliciting business at 12331-A Riata Trace Parkway, Austin, Texas and/or (C) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas, including the Texas Office of the Comptroller, the Merchant Bank of Texas, WebySuite, Inc. and/or Bazaarvoice.

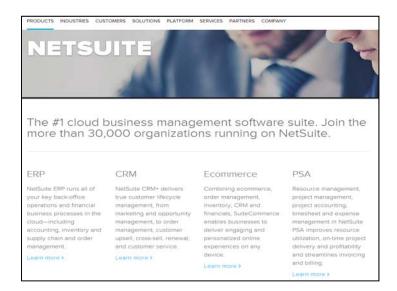
# COUNT I (INFRINGEMENT OF U.S. PATENT NO. 6,510,466)

8. Uniloc incorporates paragraphs 1-7 above by reference.

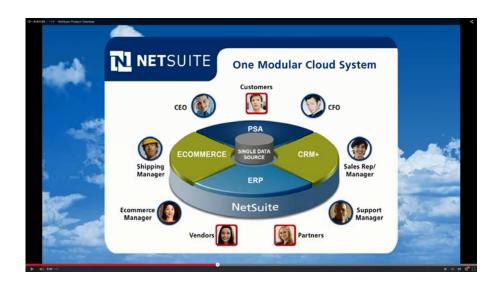
9. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,510,466 ("the '466 Patent"), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR CENTRALIZED MANAGEMENT OF APPLICATION PROGRAMS ON A NETWORK that issued on January 21, 2003. A true and correct copy of the '466 Patent is attached as Exhibit A hereto.

10. Uniloc USA is the exclusive licensee of the '466 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. Upon information and belief, the following describes, at least in part, the NetSuite cloud software suite with a plurality of modules and/or functionalities including, at least, the following ERP, CRM, Ecommerce, and PSA:



12. Upon information and belief, the following describes, at least in part, the NetSuite



software:



14. Upon information and belief, the following describes, at least in part, the NetSuite



software:



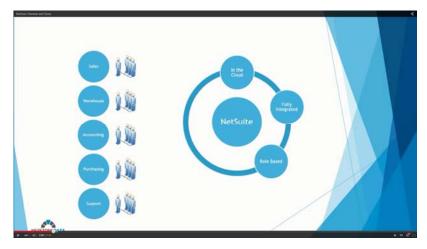
16. Upon information and belief, the following describes, at least in part, the NetSuite

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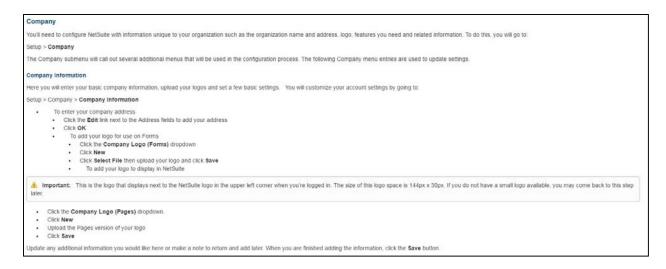
18. Upon information and belief, the following describes, at least in part, the NetSuite



software:

Overview – the purpose of roles	
NetSuite allows you to easily manage permissions, access to functionality and access to data for all employees using role- based access.	
Role-based access control ensures that users can only use data and application functionality that is related to their responsibilities.	

20. Upon information and belief, the following describes, at least in part, the NetSuite





# software:

Menus
Menus in NetSuite are based on roles and may vary depending on the user and their role. For example, the standard NetSuite role named 'A/P Clerk' features a menu tailored to Entities such as Customers and Vendors, with transaction sub-menus for each.
To provide a consistent user interface among all roles, NetSuite.org recommends enabling the "Classic" interface. To enable the Classic Interface on a non-Administrator role, go to:
Set Preferences > Appearance
The Classic Menu (also known as the Classic Center) referenced throughout this guide is:
🕉 ★ 😤 Activities Transactions Lists Reports Customization Documents Setup Support
The menu for the A/P Clerk Role, as referenced above and as an example, is:
迭 ★ 🙆 Activities Customers Vendors Financial Reports Documents Setup Support
Personal Preferences .
individual users can personalize certain elements of their NetSuite dashboard. To access and change personal preferences, go to:
Home (the House kon on the main menu) > Set Preferences
The General, Transaction and Appearance tabs provide the most options for customization from a personal standpoint. A few important notes are:
<ul> <li>The Nickname field is typically the user's name and is the 'from' name when the user sends emails from the system. If the user sends emails frequently, they may want to make their Nickname the organization's name rather than their own.</li> <li>Signature refers to the email signature included on correspondence sent from NetSuite. If it includes more than one line of text, such as an address and phone number, you will need to use HTML formatting to show the data on separate lines or to style the font with bold or italics.</li> <li>On the General tab, check the Show Internal IDS checkbox. This helps users identify and find recently created records.</li> <li>On the Appearance tab, the Landing Page dropdown provides the ability to change the default Dashboard to a menu Dashboard if preferred</li> <li>On the Transactions tab, under the Printing section, choose the PDF radio button if you prefer to send attachments as PDF instead of HTML.</li> <li>On the Analytics tab in the Search section, the option Show List When Only One Result ensures that the search results screen is displayed rather than an individual record when only one result matches the search. This is a common option to select.</li> </ul>
A Important: NetSuite org recommends utilizing the Suite-Volunteer program to assist with further development, customization and publishing of Dashboards for employees. For more information visit http://www.netsuite.org/pro-bono.

# 23. Upon information and belief, the following describes, at least in part, the NetSuite

SuiteTraining"	NetSuite Essentials
	Day 4 Agenda
	<ul> <li>Set Up Order Management: Introduce quote to order process and fulfillment flow. Set up sales orders. Transaction types. Sales order forms. Types of fulfillment. Standard reports.</li> </ul>
	Setting Up Accounts Receivable and General Ledger • Set Up Accounts Receivable (JAT): Introduce invoice to payment process flow. Review accounting preferences. Set UP AR Fatures and preferences. Accept outstmere payments, credit card transactions, issue outsomer refunds, return authorizations, oredit memos. Statements and finance drages. Standard reports.
	<ul> <li>Perform Banking and General Ledger (GL) Tasks: Write checks. Transfer funds. Use credit card. Reconcile monthly bank and credit card statements in NetSuite. Standard reports.</li> </ul>
	Data Migration Migrate Your Data: Introduce Import Assistant. Prepare data for import. File formatting guideline. Data handling options. Migrating customers, venders and partners.
	Data Integrity: Mass updates. Duplicate detection and merge.
	Day 5 Agenda
	Setting Up Customer Support
	<ul> <li>Set Up Customer Support and Case Management: Set up support preferences: Case statutes: Case priorities, Case types: Case origin types: Case unles, Case territories. Online case forms, Standard reports. Introduce trandard support process flow, Inter a case. Grab a case. Reasiting a case. Escalate case. Manage activities on your case.</li> </ul>
	Next Steps
	<ul> <li>Reports and Searches: The report interface. Schedule reports. Customize a report, Create a new report. Search for records. Advanced search for records. Create a saved search. Saved searches on the home disabbeard.</li> </ul>
	<ul> <li>Design Dashboards: Dashboard development process. Dashboard layout considerations. Home dashboard considerations.</li> </ul>
	<ul> <li>Incorporate Marketing Automation and Ecommerce: Introduce NetSuite Marketing Automation and Ecommerce features. Identify resources to assist in implementation of marketing and ecommerce.</li> </ul>
	<ul> <li>Go Live and Post-Go Live Activities: Ongoing maintenance activities. NetSuite support and user groups. Considerations around the "go live" event.</li> </ul>
	NetSuite reserves the right to adjust the stated course content to reflect changes to the NetSuite application and to meet the expressed needs of course attendees.
	Features and functions covered in this course might not reflect those in your purchased NetSuite account.

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25. Upon information and belief, the following describes, at least in part, the NetSuite

software:

<b>Suite</b> Training <sup>™</sup>	NetSuite Essentials
KEY TASKS	Course Description
How do I: • Organize the implementation plan to "go live" for my company	To help ensure your success, NetSuite Essentials is the first course that administrators and anyone responsible for setting up NetSuite should take. This five-day course provides critica information that implementation teams need to make intelligent decisions before going live. By understanding core NetSuite capabilities, how standard ERP and CMM business
Determine user roles and permissions	processes work in NetSuite and implementation best practices, you can more accurately ma your business requirements to the application and work with your implementation team to set up NetSuite for your company.
<ul> <li>Set up initial controls for CRM</li> </ul>	
<ul> <li>Set up initial controls for ERP</li> </ul>	For hands-on exercises, attendees are provided with a blank account and a business requirements document to simulate the real-world experience of configuring a new
<ul> <li>Configure NetSuite functionality to meet our business requirements</li> </ul>	NetSuite account, practice setting up and enabling preferences for CRM and ERP, and in
Plan for data migration	some cases, perform end-user tasks to better support their activities. Course materials include a student guide, exercise book and extended access to the same account you set up
<ul> <li>Plan for ongoing maintenance of our NetSuite account</li> </ul>	include a student guide, exercise book and extended access to the same account you set up during the training class after the class concludes, enabling you to continue to work with the concepts and examples presented during the course.
	Who Should Attend
RELATED COURSES Take these courses for more training: • SuiteAnalytics	NetSuite Essentials is designed for application administrators who are responsible for the setup, configuration and maintenance of the NetSuite application within their organization Others who benefit from this course include business analysts, project team members and business process owners.
Ecommerce Workshop	
Marketing Automation Workshop     Implementing Advanced Financials	Prerequisites
Implementing Advanced Financials     Creating Custom Financial	Complete the following self-paced training courses available on SuiteAnswers > Self-Paced Learning.
Statements	Logging In and Setting Passwords
	Getting Help
	<ul> <li>Finding Your Records: Using Global Search</li> </ul>
	Working with Lists
	Course Objectives and Topics
	<ul> <li>Describe the role and tasks of the implementation team</li> </ul>
	Use NetSuite basic functionality
	Configure your account using the Set Up Manager to enable features and define preferences
	Customize the user interface     Extract business intelligence
	Plan next steps

26. Upon information and belief, the following describes, at least in part, the NetSuite

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software:

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28. Upon information and belief, the following describes, at least in part, the NetSuite

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29. Upon information and belief, the following describes, at least in part, the NetSuite

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software:

	https://system.netsuite.com	Netblock Owner	NetSuite, Src.	
Domain	netsute.com	Noneserver.	ens0.netauite.com	
IP address	167.216.129.11	DNS admin	sysadmin@natsuita.com	
IPv6 address	Not Present.	Reverse DNS	unknown	
Domain registrar	tudows.com	Nameserver organisation	whois.tucows.com	
Organisation	NetSuite, Inc., 2955 Campus Dr. Suite 100, San Nates, 94403, US	Hosting company	CenturyLink	
Top Level Domain	Commercial entities (.com)	<b>DNS Security Extensions</b>	unknown	
Hesting country	the US			
SSL/TLS				
SSLv3/POODLE	This site does not support the SSL version 3 protocol.			
	New Information about \$55, version 2 and the PODDLR vulnerability.			
Heartbleed				
	The site offered the Heartbeat TLS extension prior to the Heartbleed disclosure, but is using a new certificate and no longer offers Heartbeat.			
	This lead does not exploit the inactifieed rulescaleby but one information from sprowths	out w1790 mission. Here information about Hee	diani delettor.	
Assurance	Extended validation			
Organisation	tectivite inc.	Common name	system_netsuite.com	
State	California	Country	US	
Organisational unit	Aut Present	Subject Alternative Name	systemunetsuite.com	
	From Jan 27 2016 to Jan 26 2018 (23 months, 4 weeks, 2 days)	<b>Hatches</b> bostname	Yes	
validity period				
	Apartie	Public key algorithm	rsaEncryption	
Validity period Server Protocol version		Public key algorithm Public key length	rsativeryption 2048	
Server Protocol versilon	Apathe			
Server Protocol version Certificate check	Apartie TLSv1.2	Public key length	2048	
Server Protocol version Certificate check Serial number	Apache TLSv1.2 ck	Public key length Signature algorithm	2048 sha25684hR5AEncryption	
Server Protocol version Certificate check Serial number Version number	Apache 11.541.2 ok 0440d41480d2036c234269983007748ef	Public key length Signature algorithm Cipher Perfect Forward Secrecy	2048 sha25688698548548noryston ECDHE #SA-4ES128-GCH-6H4256	
Server Protocol version Certificate check Serial number Version number Next Protocol Negotiation	Apache 17,54-2 ok 0+44444 (a6b02836c214206083db7748ef 0x82	Public key length Signature algorithm Cipher Perfect Forward Secrecy	2048 sha2568x8548548rcryston ECDHE RSA AES128-GCM-SH4256 Yes	
Server Protocol version Certificate check Serial number Version number Next Protocol Negotiation Essaing organisation	Apahe TSG125 de 0+4441.eBK083642342698300748ef 0487.eBK07 0487.eBK07 0487.eBK07	Public key length Signature algorithm Cipher Perfect Forward Secrecy Supported TLS Extensions	2048 shu2398969858685528-GOV 694256 Yee RFC3746 renegotation infto RFC4492 BC point formate	
Server Protocol version Certificate check Serial number Version number Next Protocol Negotiation Essaing organisation Essaing organisation	Aade TSH-2 a DedaHLabd2BEQ13489833d9748ef Sol2 Ref Reset Servindes Corporation	Public key length Signature algorithm Cipher Perfect Forward Secrecy Supported TLS Extensions Issuer common name	2048 sha258HKHRSABEncrystein ECIME 358-ABS128-GCM-GH4256 Yee KKC3466 minipotution inftu KPC4492 BC point formatis Symantice Case 3 EV SSL CA - G3	
Server	Asake Ts/St12 ok 0+o4H4862816234269838577484 642 842 845 Asset Senance Senance Tsut Honork	Public key length Signature algorithm Cipher Perfect Forward Secrecy Supported TLS Extensions Issuer common name Issuer location	2049 sin22948958548595950 EDItel #ASA-AES128-GCM-94A256 Yell REC3746 inneptiation influ #EC4492 EC point firmates Symmetric Cales 3 EV 555, CA - G2 Act Present	
Server Protocol version Certificate check Serlaf number Version number Next Protocol Negotiation Issuer programisation Issuer unit Issuer country Certificate Revecation	Anale Tot-1.2 Int Cell Sel2 Ref Americ Senated Semantic Semantic Semantic Unit Metalik UK	Public key length Signature algorithm Cipher Perfect Forward Secrecy Supported TLS Extensions Essuer common name Essuer common name Essuer statie Certificate Nach	2048 ina258869858540mgtom ECDH 4554-455129-604-094256 Yes KRC244 megizitation influ RFC4492 BC point families Seminteic Orea 3 EV 555, CA + 63 har Americ And Americ	
Server Protocol version Certificate check Serial number Version number Next Protocol Negotiation Issuing organisation Issuing companisation Issuing committy Certificate Revocation Lists	Aashe TSH-12 at DeAdHLabd285623439933d77484 Sol2 Bot SenateCorporten SenateCor	Public key length Signature algorithm Cipher Perfect Forward Secrecy Supported TLS Extensions Essuer common name Essuer common name Essuer statie Certificate Nach	2048 ina2588895854540mgtom ECDH 4554-455129-604-094256 Yes KRC244 inmagitution influ RFC4492 BC port firmate Sementer: Ones 3 EV 558, CA+ 63 httr Americ And Americ	
Server Protocol version Certificate check Sorial number Version number Issuing organisation Issuing organisation Issuing romanisation Issuing comments Second results Second results Second results Second Research Links	Austre Tohs 1.2 04 04-644148042384238429893057488 042 842 Award Semantics from Hanavik US 105 107/01/01 and Manavik at 1.207% uptime in the part 24 Navis 105 47484063547582721665535485552776695114943324515253252	Public key length Signature algorithm Cipher Perfect Forward Secrecy Supported TLS Extensions Essuer common name Essuer common name Essuer statie Certificate Nach	2048 ina2588895854540mgtom ECDH 4554-455129-604-094256 Yes KRC244 inmagitution influ RFC4492 BC port firmate Sementer: Ones 3 EV 558, CA+ 63 httr Americ And Americ	

31. Upon information and belief, the following describes, at least in part, the NetSuite



SuiteCloud: Exploring the NetSuite Platform	2 Days	Course Schedule
SuiteFlow: Workflow Fundamentals	2 Days	Course Schedule
SuiteFlow: Workflows for Developers	3 Days	Course Schedule
SuiteScript 2.0: Extend NetSuite with JavaScript	5 Days	Course Schedule
SuiteScript 2.0 for Experienced SuiteScript Developers	2 Days	Course Schedule
SuiteScript 1.0: Extend NetSuite with JavaScript	5 Davs	Course Schedule

33. NetSuite has directly infringed, and continues to directly infringe one or more claims of the '466 Patent in this judicial district and elsewhere in Texas, including at least Claims 1-5, 7-9, 13, 15-20, 22-24, 28-33, 35-37, and 41-42 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling its NetSuite software and distribution management system during the pendency of the '466 Patent which software and associated backend server architecture *inter alia* allows for installing application programs on a server, receiving a login request, establishing a user desktop interface, receiving a selection of one of the programs displayed in the user desktop interface and providing an instance of the selected program for execution.

34. In addition, should NetSuite's software distribution and management system be found to not literally infringe the asserted claims of the '466 Patent, NetSuite's accused products would nevertheless infringe the asserted claims of the '466 Patent. More specifically, the accused Netsuite software performs substantially the same function (selection of an application program), in substantially the same way (via an established user desktop interface), to yield substantially the same result (providing the program for execution). NetSuite would thus be liable for direct infringement under the doctrine of equivalents.

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35. NetSuite has indirectly infringed and continues to indirectly infringe at least claims 1-5, 7-9, 13, 15-20, 22-24, 28-33, 35-37, and 41-42 of the '466 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the NetSuite software distribution and management system. NetSuite's customers who use the NetSuite software distribution and management system in accordance with NetSuite's instructions directly infringe one or more of the forgoing claims of the '466 Patent in violation of 35 U.S.C. § 271. NetSuite directly and/or indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

- www.netsuite.com
- www.youtube.com

NetSuite is thereby liable for infringement of the '466 Patent under 35 U.S.C. § 271(b).

36. NetSuite has indirectly infringed and continues to indirectly infringe at least claims 1-5, 7-9, 13, 15-20, 22-24, 28-33, 35-37, and 41-42 of the '466 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the NetSuite software distribution and management system, 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 '466 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

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

38. NetSuite will have been on notice of the '466 Patent since, at the latest, the service of the original complaint upon NetSuite. By the time of trial, NetSuite 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 1-5, 7-9, 13, 15-20, 22-24, 28-33, 35-37, and 41-42 of the '466 Patent.

39. NetSuite may have infringed the '466 Patent through other software utilizing the same or reasonably similar functionality, including other versions of NetSuite software. Uniloc reserves the right to discover and pursue all such additional infringing software.

40. Uniloc has been damaged, reparably and irreparably, by NetSuite's infringement of the '466 Patent and such damage will continue unless and until NetSuite is enjoined.

# (INFRINGEMENT OF U.S. PATENT NO. 6,324,578)

41. Uniloc incorporates paragraphs 1-40 above by reference.

42. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 6,324,578 ("the '578 Patent"), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR MANAGEMENT OF CONFIGURABLE APPLICATION PROGRAMS ON A NETWORK that issued on November 27, 2001. A true and correct copy of the '578 Patent is attached as Exhibit B hereto.

43. Uniloc USA is the exclusive licensee of the '578 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.

44. NetSuite has directly infringed, and continues to directly infringe one or more claims of the '578 Patent in this judicial district and elsewhere in Texas, including at least claims 1-8, 10-11, 13-39, and 41-46 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the NetSuite software distribution and management system during the pendency of the '578 Patent which software and associated backend server architecture *inter alia* allows for installing an application program having a plurality of configurable preferences and authorized users on a server coupled to a network, distributing an application launcher program to a client, obtaining a user set of the configurable preferences, obtaining an administrator set of configurable preferences responsive to a request from a user.

45. In addition, should the NetSuite software distribution and management system be found to not literally infringe the asserted claims of the '578 Patent, the product would nevertheless infringe the asserted claims of the '578 Patent. More specifically, the accused software/system performs substantially the same function (obtaining user and administrator sets of configurable preferences), in substantially the same way (via a user and administrator), to yield substantially the same result (executing an application program using the configurable preferences in response to a request from a user on a network). NetSuite would thus be liable for direct infringement under the doctrine of equivalents.

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46. NetSuite has indirectly infringed and continues to indirectly infringe at least claims 1-8, 10-11, 13-39, and 41-46 of the '578 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the NetSuite software distribution and management system. NetSuite's customers who use the NetSuite software distribution and management system in accordance with NetSuite's instructions directly infringe one or more of the forgoing claims of the '578 Patent in violation of 35 U.S.C. § 271. NetSuite directly and/or indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

- www.netsuite.com
- www.youtube.com

NetSuite is thereby liable for infringement of the '578 Patent under 35 U.S.C. § 271(b).

47. NetSuite has indirectly infringed and continues to indirectly infringe at least claims 1-8, 10-11, 13-39, and 41-46 of the '578 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the NetSuite software distribution and management system, 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 '578 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

48. For example, the NetSuite software distribution and management system is a component of a patented machine, manufacture, or combination, or an apparatus for use in

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practicing a patent process. Furthermore, the NetSuite software distribution and management system 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. NetSuite is, therefore, liable for infringement under 35 U.S.C. § 271(c).

49. NetSuite will have been on notice of the '578 Patent since, at the latest, the service of the original complaint upon NetSuite. By the time of trial, NetSuite 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 '578 Patent.

50. NetSuite may have infringed the '578 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the NetSuite software distribution and management system. Uniloc reserves the right to discover and pursue all such additional infringing software.

51. Uniloc has been damaged, reparably and irreparably, by NetSuite's infringement of the '578 Patent and such damage will continue unless and until NetSuite is enjoined.

#### <u>COUNT III</u> (INFRINGEMENT OF U.S. PATENT NO. 7,069,293)

52. Uniloc incorporates paragraphs 1-51 above by reference.

53. Uniloc Luxembourg is the owner, by assignment, of U.S. Patent No. 7,069,293 ("the '293 Patent"), entitled METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS FOR DISTRIBUTION OF APPLICATION PROGRAMS TO A TARGET STATION ON A NETWORK that issued on June 27, 2006. A true and correct copy of the '293 Patent is attached as Exhibit C hereto.

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54. Uniloc USA is the exclusive licensee of the '293 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.

55. NetSuite has directly infringed, and continues to directly infringe one or more claims of the '293 Patent in this judicial district and elsewhere in Texas, including at least claims 1, 12 and 17 literally and/or under the doctrine of equivalents, by or through making, using, importing, offering for sale and/or selling the NetSuite software distribution and management system during the pendency of the '293 Patent which software and associated backend server architecture *inter alia* allow for providing an application program for distribution to a network server, specifying source and target directories for the program to be distributed, preparing a file packet associated with the program at a target on-demand server and distributing the file packet to the target on-demand server to make the program available for use by a client user.

56. In addition, should the NetSuite software distribution and management system be found to not literally infringe the asserted claims of the '293 Patent, the product would nevertheless infringe the asserted claims of the '293 Patent. More specifically, the accused NetSuite software distribution and management system performs substantially the same function (distributing an application program to a target on-demand server on a network), in substantially the same way (via initiation of registration operations for the application program at the target on-demand server), to yield substantially the same result (making the application program available for use by a user at a client). NetSuite would thus be liable for direct infringement under the doctrine of equivalents.

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57. NetSuite has indirectly infringed and continues to indirectly infringe at least claims 1, 12 and 17 of the '293 Patent in this judicial district and elsewhere in the United States by, among other things, actively inducing the using, offering for sale, selling, or importing the NetSuite software distribution and management system. NetSuite's customers who use the NetSuite software distribution and management system in accordance with NetSuite's instructions directly infringe one or more of the forgoing claims of the '293 Patent in violation of 35 U.S.C. § 271. NetSuite directly and/or indirectly instructs its customers through training videos, demonstrations, brochures, installation and/or user guides, such as those located at the following:

- www.netsuite.com
- www.youtube.com

NetSuite is thereby liable for infringement of the '293 Patent under 35 U.S.C. § 271(b).

58. NetSuite has indirectly infringed and continues to indirectly infringe at least claims 1, 12 and 17 of the '293 Patent in this judicial district and elsewhere in the United States by, among other things, contributing to the direct infringement by others including, without limitation customers using the NetSuite software distribution and management system, 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 '293 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

59. For example, the NetSuite software distribution and management system is a component of a patented machine, manufacture, or combination, or an apparatus for use in

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practicing a patent process. Furthermore, the NetSuite software distribution and management system 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. NetSuite is, therefore, liable for infringement under 35 U.S.C. § 271(c).

60. NetSuite will have been on notice of the '293 Patent since, at the latest, the service of the original complaint upon NetSuite. By the time of trial, NetSuite 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 '293 Patent.

61. NetSuite may have infringed the '293 Patent through other software utilizing the same or reasonably similar functionality, including other versions of the NetSuite software distribution and management system. Uniloc reserves the right to discover and pursue all such additional infringing software.

62. Uniloc has been damaged, reparably and irreparably, by NetSuite's infringement of the '293 Patent and such damage will continue unless and until NetSuite is enjoined.

#### PRAYER FOR RELIEF

Uniloc requests that the Court enter judgment against NetSuite as follows:

(A) that NetSuite has infringed the '466 Patent, the '578 Patent and the '293 Patent;

(B) awarding Uniloc its damages suffered as a result of NetSuite's infringement of the
 '466 Patent, the '578 Patent and the '293 Patent pursuant to 35 U.S.C. § 284;

(C) enjoining NetSuite, 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 '466 Patent, the '578 Patent and the '293 Patent pursuant to 35 U.S.C. § 283;

(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 19, 2016

Respectfully submitted,

/s/ Craig Tadlock Craig Tadlock Texas State Bar No. 00791766 **TADLOCK LAW FIRM PLLC** 2701 Dallas Parkway, Suite 360 Plano, TX 75093 Tel: (903) 730-6789 Email: craig@tadlocklawfirm.com

Paul J. Hayes Kevin Gannon **CESARI AND MCKENNA, LLP** 88 Black Falcon Ave Suite 271 Boston, MA 02110 Telephone: (617) 951-2500 Facsimile: (617) 951-3927 Email: pjh@c-m.com Email: kgannon@c-m.com

# **ATTORNEYS FOR THE PLAINTIFFS**

# **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on October 19, 2016.

<u>/s/ Kevin Gannon</u> Kevin Gannon