UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

INVINCIBLE IP LLC, Plaintiff v. **MCAFEE, LLC,** Defendant	**Case No. 4:22-cv-00458** **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Invincible IP, LLC ("Invincible" or "Plaintiff") files this Complaint for patent infringement against McAfee, LLC ("Defendant"), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq*.

PARTIES

2. Invincible is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Plano, Texas.

3. Upon information and belief, Defendant is a limited liability company organized and existing under the laws of the State of Delaware, and has a regular and established place of business at 5000 Headquarters Dr, Plano, Texas 75024.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Upon information and belief, Defendant is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

6. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendant has committed acts of infringement and has a regular and established place of business in this judicial district.

IDENTIFICATION OF THE ACCUSED INSTRUMENTALITY

7. Defendant provides for its customers use McAfee Virtual Network Security Platform ("the Accused Instrumentality").

COUNT I (Infringement of U.S. Patent No. 9,635,134)

8. Invincible incorporates the above paragraphs as though fully set forth herein.

9. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,635,134 ("the '134 Patent"), entitled RESOURCE MANAGEMENT IN A CLOUD COMPUTING ENVIRONMENT, which issued on April 25, 2017. A copy of the '134 Patent is attached as Exhibit PX-134.

10. The ’134 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

11. Defendant has been and is now infringing one or more claims of the ’134 Patent under 35 U.S.C. § 271 by making, using, selling, and offering to sell the Accused Instrumentality in the United States without authority.

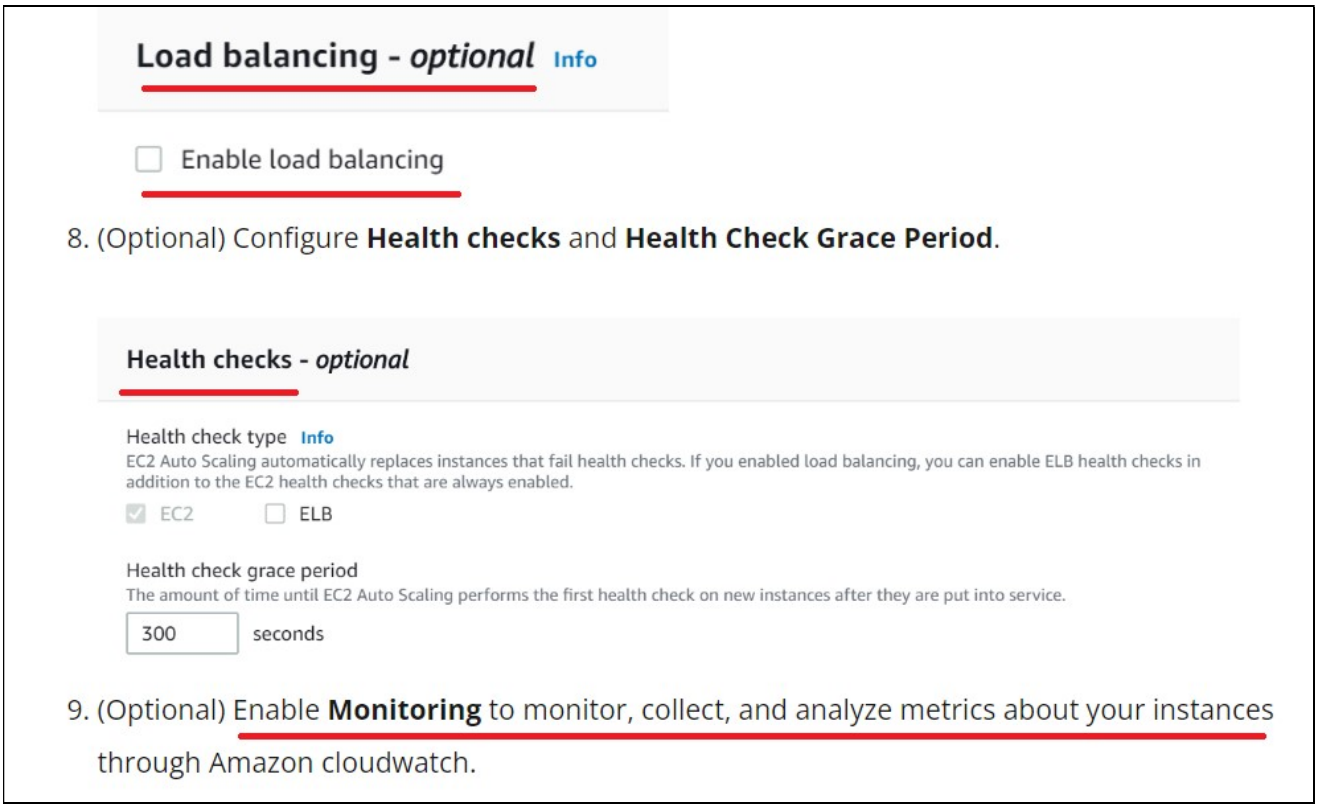
12. Claim 1 of the ’134 Patent recites:

> 1. A method to manage resources in a cloud computing environment, comprising:
>
> determining a consumption rate of cloud resources by one or more virtual machines (VMs), the determining based on monitoring at least one of processor usage, memory usage, or input/output (I/O) access rates for the one or more virtual machines in the cloud computing environment;
>
> prioritizing the one or more VMs for consumption of the cloud resources using a first resource management scheme based, at least in part, on the determined consumption rate;
>
> determining whether a change in the consumption rate of the cloud resources exceeds a predetermined threshold, the change in the consumption rate including a change in the at least one of processor usage, memory usage, I/O access rates, or a change region size based on changed regions of a graphical display generated by the one or more VMs;
>
> prioritizing the one or more VMs for consumption of the cloud resources using a second resource management scheme based, at least in part, on a maximum capacity for utilization of allowed cloud resources for the cloud computing environment and whether the determined change in the consumption rate of the cloud resources exceeds the predetermined threshold; and
>
> migrating the consumption of the cloud resources to alternate cloud resources located outside of the cloud computing environment for at least one of the one or more VMs based, at least in part, on the one or more VMs

prioritized for consumption of the cloud resources using the second resource management scheme.

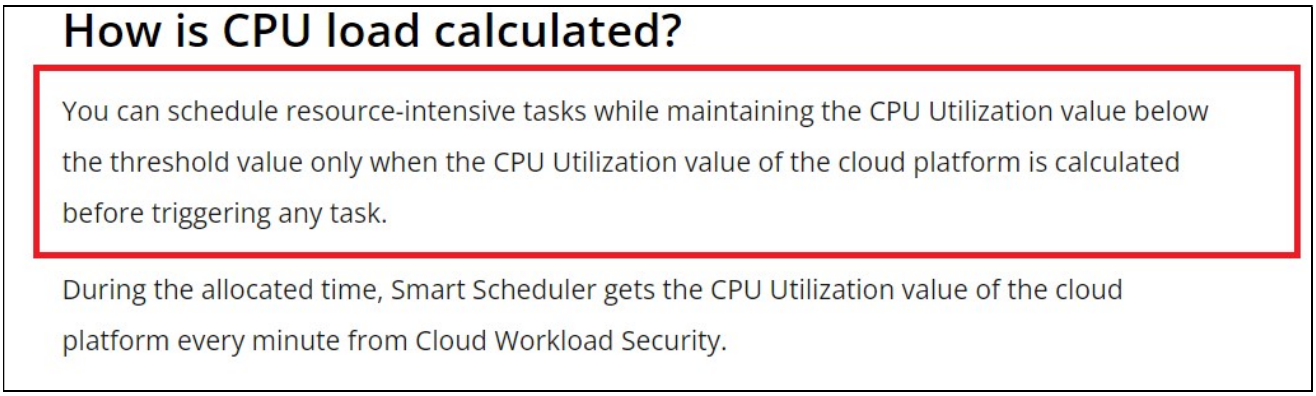
13. More particularly, Defendant infringes at least claim 1 of the '134 Patent.

14. Defendant makes, uses, sells, and offers to sell the Accused Instrumentality, which provides a method to manage resources in a cloud computing environment (e.g., McAfee provides monitoring and performance metrics and manages resources in the McAfee computing environment).



https://docs.trellix.com/bundle/virtual-network-security-platform-10.1.x-product-guide/page/GUID-7F384B55-617C-4F27-8343-76603F36559E.html

15. On information and belief, the Accused Instrumentality determines a consumption rate (CPU resource the instance is currently consuming, etc.) of cloud resources (e.g., CPU, etc.) by one or more virtual machines (e.g., VM Instances), the determining based on monitoring at least one of processor usage (e.g., CPU usage), memory usage, or input/output (I/O) access rates for the one or more virtual machines in the cloud computing environment (e.g., the origin host where the VM instances are located).

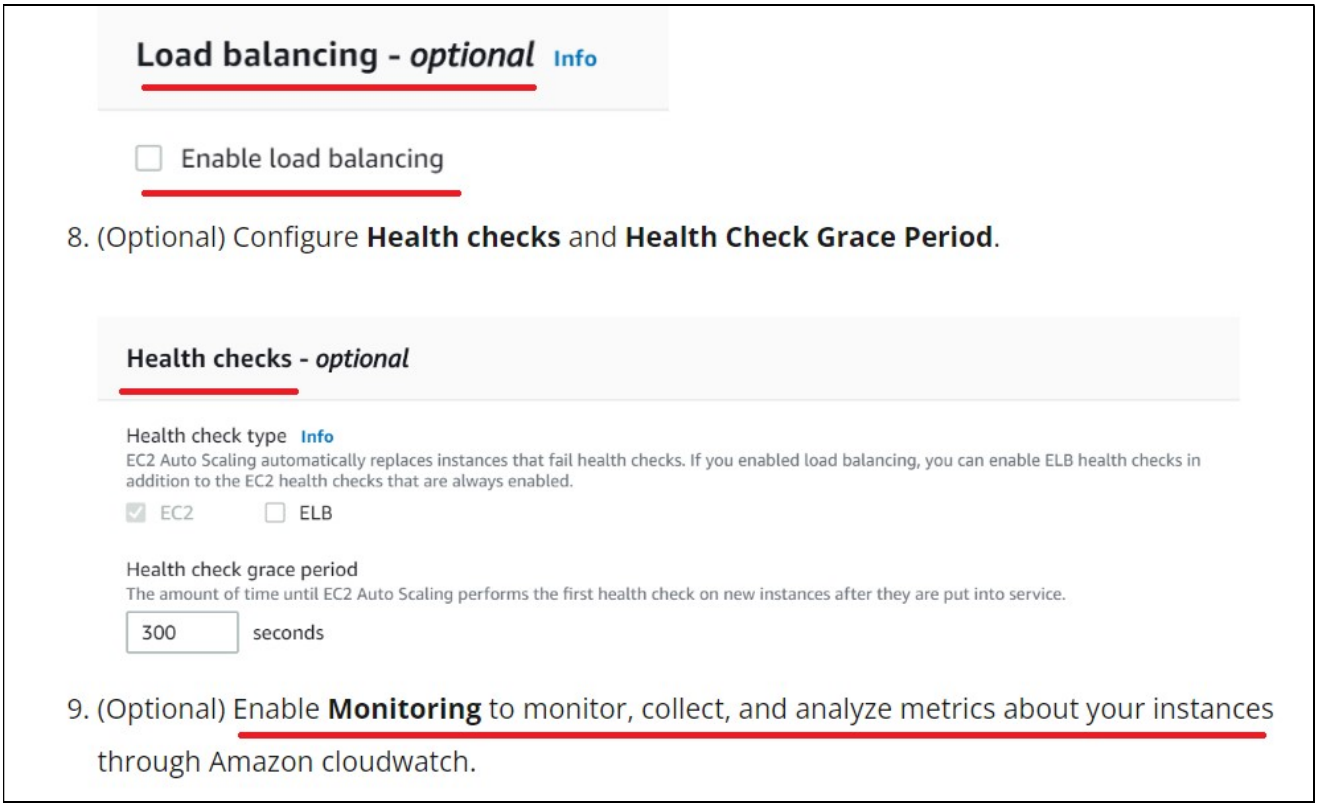


How is CPU load calculated?

You can schedule resource-intensive tasks while maintaining the CPU Utilization value below the threshold value only when the CPU Utilization value of the cloud platform is calculated before triggering any task.

During the allocated time, Smart Scheduler gets the CPU Utilization value of the cloud platform every minute from Cloud Workload Security.

https://docs.trellix.com/bundle/endpoint-security-servers-5.2.0-product-guide/page/GUID-1D7E4612-C8E6-42A6-BB22-6EBA3121555C.html



Load balancing - *optional* Info

☐ Enable load balancing

8. (Optional) Configure **Health checks** and **Health Check Grace Period**.

Health checks - *optional*

Health check type Info

EC2 Auto Scaling automatically replaces instances that fail health checks. If you enabled load balancing, you can enable ELB health checks in addition to the EC2 health checks that are always enabled.

☑ EC2 ☐ ELB

Health check grace period

The amount of time until EC2 Auto Scaling performs the first health check on new instances after they are put into service.

300 seconds

9. (Optional) Enable **Monitoring** to monitor, collect, and analyze metrics about your instances through Amazon cloudwatch.

https://docs.trellix.com/bundle/virtual-network-security-platform-10.1.x-product-guide/page/GUID-7F384B55-617C-4F27-8343-76603F36559E.html

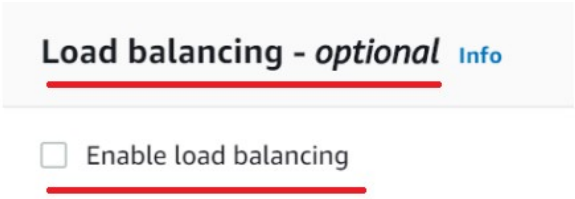
Scaling	**Scaling policy**— McAfee recommends you to select this option to scale the External Controller scale set based on any capacity or schedule. **Minimum number of VMs**— McAfee recommends you to set this value to 1 for External Controller high availability. **Maximum number of VMs**— McAfee recommends you to set this value to 1 for External Controller high availability.
Scale out	**CPU threshold (%)**— Enter the CPU percentage threshold to start the **Scale out** for autoscale set. **Duration in minutes**— Enter the duration for which the samples are collected for the metric when auto scaling.

https://docs.trellix.com/bundle/virtual-network-security-platform-10.1.x-product-guide/page/GUID-27BB6B61-F46D-493D-BA9D-D16BF217FB86.html

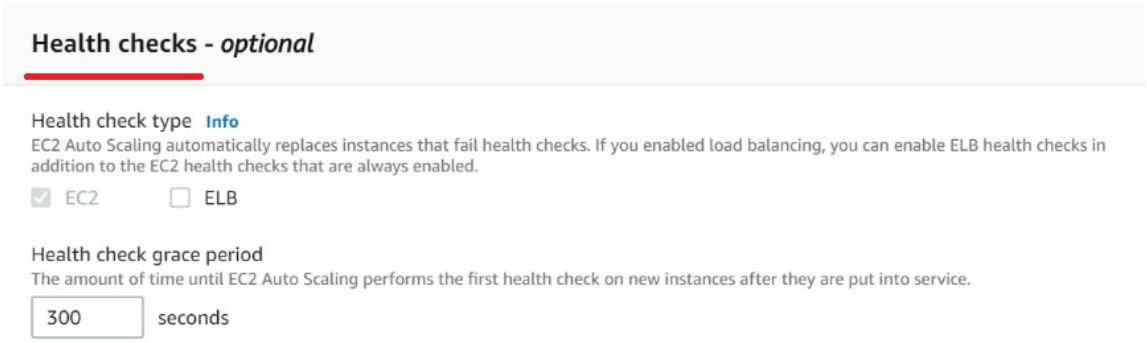
Scale in	**CPU threshold (%)**— Enter the CPU percentage threshold to start the **Scale in** for autoscale set. **Number of VMs to decrease by**— Enter the number of External Controllers to be deleted when the autoscale reaches **Scale in** condition.

https://docs.trellix.com/bundle/virtual-network-security-platform-10.1.x-product-guide/page/GUID-27BB6B61-F46D-493D-BA9D-D16BF217FB86.html

16. On information and belief, the Accused Instrumentality prioritizes the one or more VMs for consumption of the cloud resources (e.g., CPU usage) using a first resource management scheme (e.g., calculation for CPU utilization, overloading, etc.) based, at least in part, on the determined consumption rate (e.g., current CPU usage).



8. (Optional) Configure **Health checks** and **Health Check Grace Period**.



9. (Optional) Enable **Monitoring** to monitor, collect, and analyze metrics about your instances through Amazon cloudwatch.

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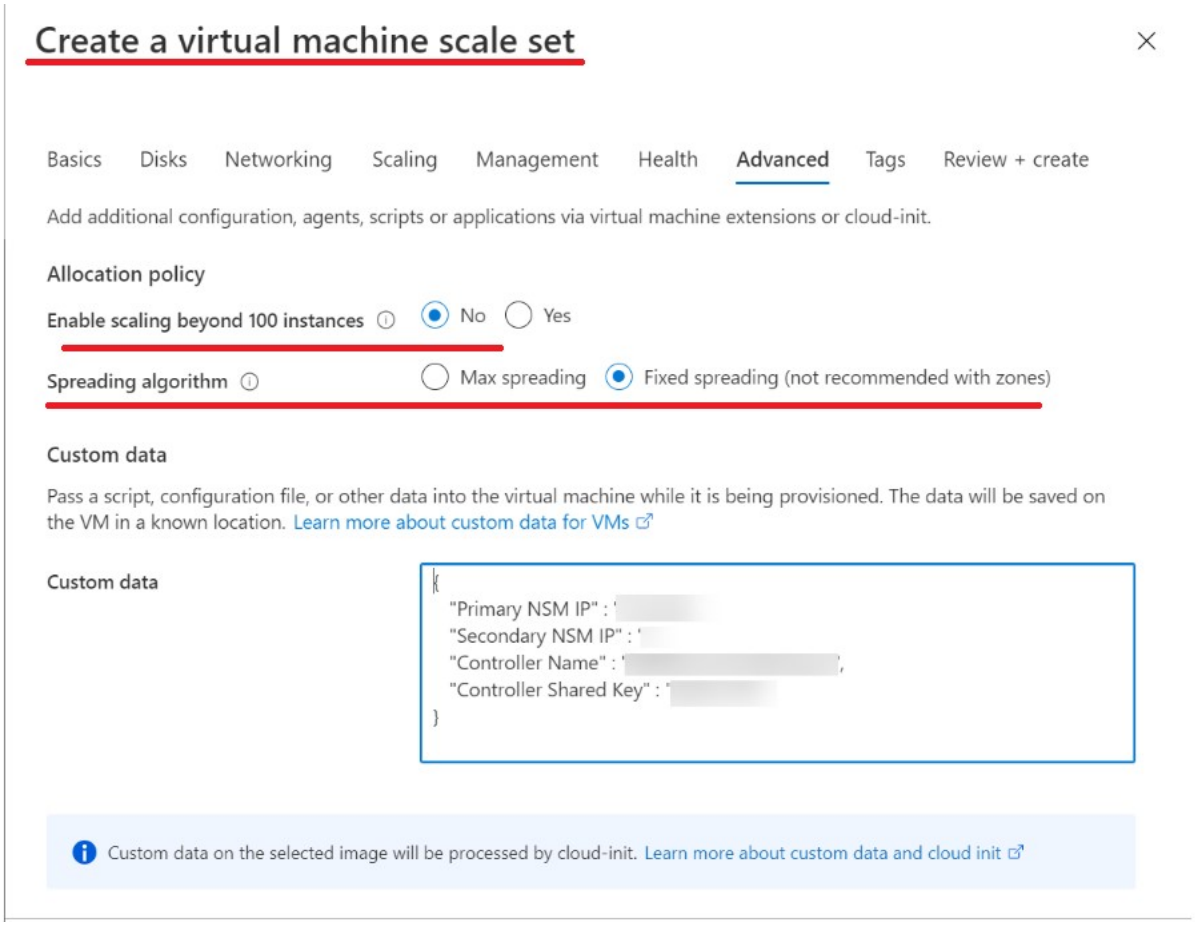

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17. On information and belief, the Accused Instrumentality determines whether a change in the consumption rate of the cloud resources exceeds a predetermined threshold (e.g., a predetermined CPU threshold level), the change in the consumption rate including a change in the at least one of processor usage (e.g., CPU Usage), memory usage, I/O access rates, or a change region size based on changed regions of a graphical display generated by the one or more VMs.

Scaling	**Scaling policy**— McAfee recommends you to select this option to scale the External Controller scale set based on any capacity or schedule. **Minimum number of VMs**— McAfee recommends you to set this value to 1 for External Controller high availability. **Maximum number of VMs**— McAfee recommends you to set this value to 1 for External Controller high availability.
Scale out	**CPU threshold (%)**— Enter the CPU percentage threshold to start the **Scale out** for autoscale set. **Duration in minutes**— Enter the duration for which the samples are collected for the metric when auto scaling.

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Scale in	**CPU threshold (%)**— Enter the CPU percentage threshold to start the **Scale in** for autoscale set. **Number of VMs to decrease by**— Enter the number of External Controllers to be deleted when the autoscale reaches **Scale in** condition.

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18. On information and belief, the Accused Instrumentality prioritizes the one or more VMs for consumption of the cloud resources (e.g., prioritizes one or more VMs that would reduce the imbalance the most) using a second resource management scheme (e.g., Maximum number of VMs, etc.) based, at least in part, on a maximum capacity for utilization of allowed cloud resources for the cloud computing environment (e.g., the preset Max Number, etc.) and whether the determined change in the consumption rate of the cloud resources exceeds the predetermined threshold (e.g., whether the change in the consumption rate of the cloud resources exceeds the predetermined CPU threshold level, etc.).

Option	Definition
Instance	**Intial Instance Count** - Enter the number of active instance available in the virtual machine scale set at a time. For External Controller high availability, McAfee recommends you to set this value to 1.
Scaling	**Scaling policy**— McAfee recommends you to select this option to scale the External Controller scale set based on any capacity or schedule. **Minimum number of VMs**— McAfee recommends you to set this value to 1 for External Controller high availability. **Maximum number of VMs**— McAfee recommends you to set this value to 1 for External Controller high availability.

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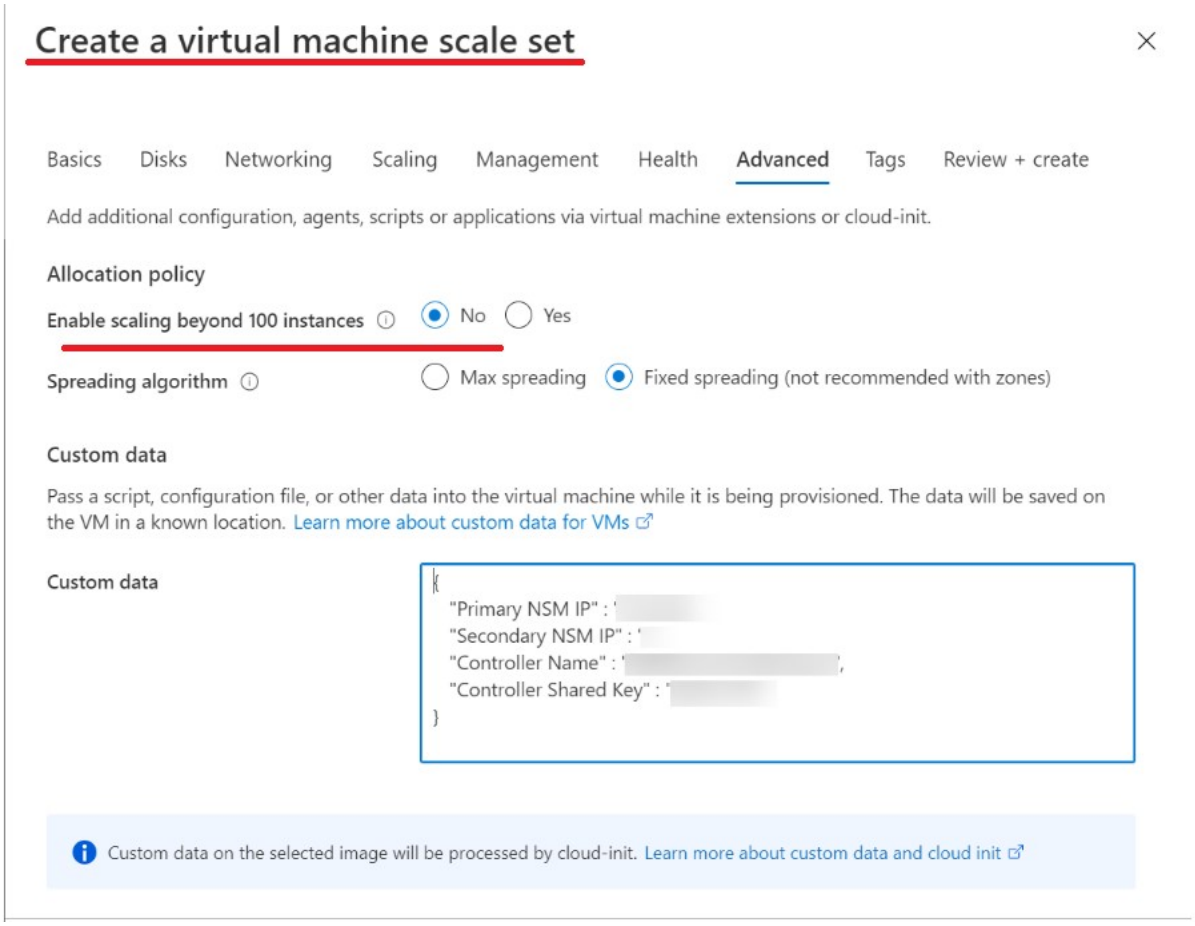
19. On information and belief, the Accused Instrumentality migrates the consumption of the cloud resources to alternate cloud resources located outside of the cloud computing environment (e.g., destination host where the VM loads are migrated to, etc.) for at least one of the one or more VMs based, at least in part, on the one or more VMs prioritized for consumption of the cloud resources using the second resource management scheme (e.g., Rebalance, Maximum capacity of instances in the group, etc.).



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Option	Definition
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20. Plaintiff has been damaged by Defendant's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that Defendant has infringed the '134 Patent;
2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '134 Patent;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and

4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury under Fed. R. Civ. P. 38 on all issues so triable.

Dated: June 1, 2022

Respectfully submitted,

/s/ Raymond W. Mort, III

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