

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

INVINCIBLE IP LLC,

Plaintiff

v.

CIRBA, INC. d/b/a DENSIFY,

Defendant

Case No. 2:22-cv-01007

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Invincible IP, LLC (“Invincible” or “Plaintiff”) files this Complaint for patent infringement against Cirba, Inc. d/b/a Densify. (“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, Cirba, Inc. is a Canadian corporation with a principal place of business located at 400-179 Enterprise Boulevard, Markham, Ontario L6G 0E7, Canada.

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. This Court has personal jurisdiction over Defendant because it has engaged in systematic and continuous business activities in this District. As described below, Defendant has committed acts of patent infringement giving rise to this action within this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400.

IDENTIFICATION OF THE ACCUSED SYSTEMS

7. Defendant provides for its customers use of the Densify Cloud Resource Management system.

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.

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 use of the Densify Cloud Resource Management system 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.

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

13. Defendant makes, uses, sells, and offers to sell use of the Densify Cloud Resource Management system, which practices a method to manage resources in a cloud computing environment (e.g., the Densify Cloud Resource Management system

provides monitoring and performance metrics, provides recommendations, and manages resources in the Densify cloud computing environment).

14. On information and belief, the Densify Cloud Resource Management system determines a consumption rate (e.g., `cpu<cpu>` or CPU the instance is currently consuming, and active memory usage) of cloud resources (e.g., CPU and memory) by one or more virtual machines (e.g., VMs), 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 VMs are located).

15. On information and belief, the Densify Cloud Resource Management system prioritizes the one or more VMs for consumption of the cloud resources (e.g., CPU and memory resources) using a first resource management scheme (e.g., calculation for CPU and memory demand) based, at least in part, on the determined consumption rate (e.g., CPU and active memory currently used).

16. On information and belief, the Densify Cloud Resource Management system determines whether a change in the consumption rate of the cloud resources exceeds a predetermined threshold (e.g., a preset threshold level), 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.

17. On information and belief, the Densify Cloud Resource Management system 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., Workload balancing power management) based, at least in part, on a maximum capacity for utilization of allowed cloud resources for the cloud computing environment (e.g., the high threshold, the total resource available for the origin host where the VMs are located) 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 causes a load imbalance which exceeds the preset threshold).

18. On information and belief, the Densify Cloud Resource Management system migrates the consumption of the cloud resources to alternate cloud resources located outside of the cloud computing environment (e.g., destination host where the VMs are migrated to) 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., prioritizing VMs that would reduce the load imbalance of the original host the most upon migration by the Workload balancing functions).

19. 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.

Dated: September 27, 2022

Respectfully Submitted

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