

Miscellaneous Docket No.

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**United States Court of Appeals  
for the Federal Circuit**

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IN RE: CIRBA INC. (d/b/a DENSIFY)

*Petitioner.*

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*On Petition for a Writ of Mandamus to the  
United States District Court for the District of Delaware in  
Case No. 1:19-cv-00742-LPS  
Chief Judge Leonard P. Stark*

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**PETITION FOR A WRIT OF MANDAMUS**

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June 11, 2021

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## CERTIFICATE OF INTEREST

Pursuant to Federal Circuit Rule 47.4(a) and Federal Rule of Appellate Procedure 26.1, counsel for Petitioner Cirba Inc. certifies the following:

1. The full name of every party represented by me is Cirba Inc.
2. There are no other real parties in interest represented by me.
3. All parent corporations and any publicly held companies that own 10% or more of the stock of the parties I represent are as follows: None.
4. The names of all law firms and the partners or associates that appeared for the parties now represented by me in the trial court or that are expected to appear in this court are:

**Kirkland & Ellis LLP:** Paul D. Clement, Julie M.K. Siegal

**Reichman Jorgensen Lehman & Feldberg:** Courtland L. Reichman, Sarah O. Jorgensen, Christine E. Lehman, Shawna Ballard, Jennifer P. Estremera, Kate Falkenstien, Khue V. Hoang, Wesley White, Adam Adler, Jaime Cardenas-Navia, Michael G. Flanigan, Ariel C. Green, Aisha Mahmood Haley, Connor Houghton, Leaf Williams, Phillip Lee (former firm attorney), Joachim B. Steinberg (former firm attorney), and Rahul Sarkar (former firm attorney).

**Weinberger Wheeler Hudgins Gunn & Dial:** Gary J. Toman

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**Law Office of Peter J. Ayers:** Peter J. Ayers (currently Senior Counsel for

Patent Law & Litigation at the U.S.P.T.O.; formerly solo practitioner)

5. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal:

- *VMWare, Inc. v. Cirba, Inc.*, No. 1:20-cv-272-LPS (D. Del. filed Oct. 21, 2019) is *another* case that may be affected by this Court's decision on this mandamus petition. That case is consolidated with the instant case for which the writ is sought.

The following are related proceedings:

- *Ex Parte Reexamination* of U.S. Patent 8,209,687, Control No. 90/014,660 (filed in the U.S.P.T.O. on January 22, 2021), involves one of the asserted patents.
- Request for *Ex Parte* Reexamination of U.S. Patent 9,645,367 (filed in the U.S.P.T.O. on April 22, 2021), which has not yet been instituted but involves one of the asserted patents.

6. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees): Not Applicable.

Dated: June 11, 2021

/s/Paul D. Clement

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Paul D. Clement

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## **RELIEF SOUGHT**

Petitioner Cirba Inc. d/b/a Densify (“Inc.”) respectfully seeks a writ of mandamus directing the U.S. District Court for the District of Delaware to vacate its Order granting VMware Inc.’s (“VMware”) Motion to Dismiss (Appx37–47) and its Order granting VMware’s Motion for a New Trial (Appx48–65).

## **QUESTION PRESENTED**

Whether the District Court erred in refusing to exercise jurisdiction over Inc. because it conflated statutory and Article III standing and held, contrary to this Court’s precedents, that exclusionary rights in a patent are necessary for Article III standing and that the entity irreparably harmed by infringement did not suffer an Article III injury.

## **STATEMENT OF JURISDICTION**

The petition arises from orders issued by the Honorable Leonard P. Stark in *Cirba Inc. and Cirba IP, Inc. v. VMware, Inc.*, Nos. 19-742 & 20-272 (D. Del. June 3, 2020 & Dec. 21, 2020). This Court has jurisdiction to grant mandamus relief under the All Writs Act, 28 U.S.C. § 1651.

## **INTRODUCTION**

Mandamus is an extraordinary measure reserved for extraordinary circumstances. But this case is extraordinary in every respect. Here, the District Court threw out a \$236 million patent infringement verdict by treating an express,

intra-company “exclusive license” as conveying only a bare license and disregarding binding case law to hold that exclusionary rights are necessary for Article III standing. Worse still, unless corrected, that ruling will govern and distort a retrial and deprive the party irreparably injured by ongoing infringement from seeking injunctive relief before it is too late to do any good. Thus, mandamus is the only way that Cirba, Inc. (“Inc.”) can have its rightful day in court and correct the District Court’s jurisdictional error before further irreparable injury is inflicted and substantial judicial resources are wasted.

The key question presented here is targeted, and the answer is clear. Under Supreme Court and Federal Circuit cases, exclusionary rights in a patent are no longer required for Article III standing. The District Court’s decision hinges on its mistaken conclusion that exclusionary rights are required for Article III standing. If Inc. had Article III standing (or is more than a “bare licensee”), then the District Court’s dismissal of Inc. and new trial order must be reversed.

This petition arises out of a patent infringement suit brought by Inc. and its wholly-owned subsidiary, Cirba IP, Inc. (“IP”). They filed suit in April 2019 following Defendant VMware’s infringement of patents related to machine learning analytics and optimization of IT infrastructure. In lieu of the preliminary injunction immediately requested by Inc. and IP, the Court ordered an expedited trial. After hearing about VMware’s infringement and Inc.’s competitive injuries, the jury

returned a \$236 million willful infringement verdict in favor of Plaintiffs. After trial, the District Court construed an expressly exclusive license between parent (Inc.) and subsidiary (IP) to convey only non-exclusive rights and then granted VMware's motion to dismiss Inc. under Federal Rule of Civil Procedure 12(b)(1) because, as a "bare licensee," Inc. lacked Article III standing. The District Court subsequently ordered a new trial on the basis that VMware was prejudiced by the jury improperly hearing evidence concerning Inc.'s competitive harms. The retrial is not scheduled until April 2023.

The District Court's dismissal of Inc. was premised on an outmoded and mistaken view of Article III that this Court has explicitly rejected. In *Lone Star Silicon Innovations LLC v. Nanya Technology Corporation*, this Court held that under the Supreme Court's *Lexmark* decision, the question whether a plaintiff has sufficient exclusionary rights to obtain Patent Act relief is a question of statutory right, not constitutional standing—it thus does not go to the court's jurisdiction. 925 F.3d 1225, 1235–36 (Fed. Cir. 2019); see *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). *Lone Star* explicitly recognized that *Lexmark* had abrogated decades of precedent on "standing" in patent cases, which had treated the Patent Act's requirements and Article III as coextensive. 925 F.3d at 1235–36. This Court reaffirmed *Lone Star* in *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065 (2020). *Schwendimann* announced:

“decisions treating the prerequisites of the Patent Act as jurisdictional were wrong.”  
*Id.* at 1071.

The orders giving rise to this petition are in direct defiance of *Lexmark*, *Lone Star*, and *Schwendimann*. They improperly conflate statutory requirements and the irreducible minima required for Article III standing. Worse still, they leave Inc. facing the prospect of irreparable harm from at least two more years of patent infringement that a jury already concluded was willful. Absent a writ of mandamus, Inc. has no way to prevent that harm, which will likely force Inc. out of business. This Court should issue the writ to correct the District Court’s mistaken jurisdictional ruling and to “compel [the District Court] to exercise its authority when it is its duty to do so,” *Roche v. Evaporated Milk Ass’n*, 319 U.S. 21, 26 (1943).

### **STATEMENT OF THE CASE**

#### **I. THE DISTRICT COURT DISMISSED INC. FOR LACK OF ARTICLE III STANDING AND ORDERED A NEW TRIAL.**

On April 25, 2019, Inc. and IP (together, “Plaintiffs”) sued VMware for patent infringement and for unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a), deceptive trade practices in violation of Delaware law, and common law trademark infringement. Appx49. On May 6, 2019, Plaintiffs moved for a preliminary injunction, principally based on competitive harms suffered by Inc., which the District Court denied on August 6, 2019, in favor of an expedited merits trial, *see* Appx148–61, 163.

The trial went forward in January 2020, and the jury returned a verdict largely in favor of Plaintiffs. Appx243–249. The jury found that VMware willfully infringed the patents-in-suit, that the claims in U.S. Patent No. 8,209,687 (the “’687 patent”) were not invalid, and that VMware owed Plaintiffs \$235,724,765 in damages for infringement of the ’687 patent and \$1,112,111 in damages for infringement of U.S. Patent No. 9,654,367 (the “’367 patent”). Appx243–48. The jury found VMware not liable for trademark infringement or for violating the Delaware Deceptive Trade Practices Act. Appx247.

After trial, VMware renewed a motion to dismiss under Rule 12(b)(1) that it first raised on the eve of trial, alleging that Inc. lacked Article III standing.<sup>1</sup> Appx38. VMware addressed Inc.’s standing in a single paragraph on the last page of its 25-page opening post-trial brief. Appx254. VMware argued that despite Inc.’s exclusive license from IP, Inc. was “a bare licensee,” and thus lacked Article III standing. *Id.* (citing Rule 12(b)(1)).

On May 13, 2020, after briefing on post-trial motions, this Court issued its *Schwendimann* decision. Two days later, the District Court heard argument on the

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<sup>1</sup> VMware also sought judgment as a matter of law, a new trial, and remittitur on a variety of other bases. Plaintiffs filed a post-trial motion seeking, *inter alia*, a permanent injunction, enhanced damages, ongoing royalties, and pre- and post-judgment interest. The District Court did not decide those other post-trial motions because it granted a new trial based on its dismissal of Inc. from the case for lack of subject matter jurisdiction. Appx61–65.

parties' post-trial motions, with the bulk of the hearing focused on issues other than standing, including Plaintiffs' motion for a permanent injunction. Appx314–22.

On June 3, 2020, the District Court granted VMware's Rule 12(b)(1) motion to dismiss Inc. for lack of constitutional standing. Appx37–47. Relying on cases that pre-date *Lone Star* and *Schwendimann*, the District Court proceeded from the premise that Article III standing "turns on whether the licensee enjoys an exclusive license or is merely a bare licensee." Appx39–40. That is, a party that "lack[s] exclusionary rights[] also lacks standing to sue for patent infringement." Appx41. Because the District Court viewed the question as one of Article III standing, the court put the burden on Inc. and excused VMware's failure to raise the objection before the eve of trial, Appx45–46, n.4. The District Court analyzed the Assignment Agreement and License Agreement between IP and Inc. and concluded that Inc. was a bare licensee despite language expressly conveying an "exclusive" license. Appx42–45. As such, the court held that Inc. lacked Article III standing and must be dismissed. Appx45.

The District Court made clear that both its holding and VMware's motion rested on constitutional standing. Appx38 n.1 ("Standing is 'comprised of both constitutional and prudential components,' **but the Standing Motion here relates only to constitutional standing.**") (citation omitted and emphasis added). The District Court's ruling depended entirely on its (mistaken) conclusion that all

plaintiffs must possess exclusionary rights in a patent to have Article III standing and its (mis)reading of the exclusive license. *See* Appx38–45.

The District Court then ordered supplemental briefing on the consequences of that dismissal and whether the trial would have been materially different had IP been the sole plaintiff. Appx45–47. Plaintiffs submitted their supplemental briefing and separately moved for reconsideration of Inc.’s dismissal based on, *inter alia*, the clear teaching of *Lone Star* and *Schwendimann* that any issues concerning Inc.’s status were merely statutory considerations, rather than prerequisites for Article III standing, and argued that the non-jurisdictional nature of the objections made a new trial an inappropriate remedy. Appx324–326, 327–339.

On December 21, 2020, the District Court denied Plaintiffs’ motion for reconsideration and ordered a new trial based on Inc.’s lack of Article III standing. Appx48–65. The court dismissed *Schwendimann* as not “decid[ing] an issue of constitutional standing,” whereas the District Court’s own decision “*was* based entirely on Inc.’s **lack of constitutional standing.**” Appx52. As an issue of constitutional standing, the District Court found it could be raised at any time. Appx57 (n.4). In addition, while the District Court did not believe *Schwendimann* to be relevant, it ruled that Inc. waived its right to rely on this precedent by not raising it until after the court issued its order. Appx51–52.

The District Court further held that the corporate relationship between IP and

Inc. did not confer Article III standing on Inc., reasoning that “Article III standing hinges on exclusionary rights.” Appx52–53 (citing *Lone Star*, 925 F.3d at 1234–36).

In light of its conclusion that Inc. lacked Article III standing, the court ordered a new trial on IP’s claims that VMware infringes IP’s ’687 and ’367 patents. Appx52–61. The court’s analysis centered on the proposition that the harm suffered by Inc. differed from the harm suffered by IP because Inc. was an operating company that practiced the patents-in-suit and suffered competitive injury, whereas IP merely owned the patents and related intellectual property. Appx55–58. The court viewed it as prejudicial that the jury heard about Inc.’s competitive injuries, and the harm to its flesh-and-blood employees, when Inc. should have not been a party at all. *Id.*

Inc. sought certification for an interlocutory appeal under 28 U.S.C. § 1292(b) on the question whether exclusionary rights are necessary for Inc.’s Article III standing. While the District Court accepted that this was a controlling issue of law on which there is at least substantial ground for difference of opinion, it determined that an immediate appeal would not materially advance the ultimate termination of this case. Appx340, 341–343.

The patent infringement claims are currently set for retrial in April 2023, along with seven patents asserted by VMware against Inc. and two other patents



asserted by Plaintiffs.<sup>2</sup> Appx344–47. Given the District Court’s mistaken Article III holding, Inc. is disabled from seeking any interim injunctive relief from the willful infringement found by the jury.

## **II. VMWARE’S WILLFUL INFRINGEMENT INDISPUTABLY HARMS INC.**

In this industry, Inc. is David to VMware’s Goliath. They are direct competitors offering competing products covered by the patents-in-suit, and VMware’s well-financed infringement poses an existential threat to Inc. Appx55–56, 138, 141–47, 193–95, 213–29, 278–79, 283–84.

Inc. invented the technology covered by the patents-in-suit, developed products covered by those patents, and sought to compete with the benefit of the market exclusivity afforded by those patents. *See* Appx166–77, 195, 239–40. It never licensed the patents to others, and intentionally refrained from doing so in order to build a competitive business from its market exclusivity. *See* Appx44–45, 139–40, 195, 233. Plaintiffs brought this case so they could stop VMware from infringing and allow Inc. to compete in the marketplace. Appx239–240.

Inc. sells software that helps companies optimize their IT infrastructure. *See* Appx166–77, 186–92. Operating since 1999, Inc. grew to 180 employees, serving dozens of leading global companies with sophisticated IT needs. Appx137, 139–40,

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<sup>2</sup> These nine other patents were not part of the January 2020 trial. *See* Appx243–49.

188. Inc. has won numerous awards for its workload optimization software and is a recognized industry leader in this space. Appx261–262. Its software optimizes the use of servers, making them more efficient, requiring fewer physical resources and software licenses, and hence costing less. Appx258–261. That optimization can save millions of dollars in server and software costs, reduce risk, and improve efficiency. Appx259–60.

Through 15 years of hard work and tens of millions of dollars of investment, Inc. became a leader in the virtual machine workload optimization space. Appx260–61. Inc.’s customers, some of which manage massive server farms, have included such companies as Citibank, Bank of America, Disney, Kohl’s, Liberty Mutual, IKEA, Lloyds Bank, AIG, Kaiser Permanente, TD Bank, Cigna, Hilton, Federal Express, American Express, and many others. *See, e.g.*, Appx115.

VMware is the virtualization industry behemoth. Appx200–03. VMware has dominated this market with 34,000 employees, over 500,000 customers, \$11 billion in annual sales, 99% of the *Fortune 1000* list as customers, and 85% of the broader market. Appx278–79, 283–84, 349.

For years, Inc.’s product complemented VMware’s offerings, and accordingly many of Inc.’s clients purchased VMware’s products too. Appx196–99, 260–68, 280–81. Inc. survived in a niche, catering to enterprise customers that needed advanced optimization technology beyond VMware’s product offerings. *Id.* Inc.

thrived thanks to technology so advanced that *Fortune 500* companies were willing to pay millions of dollars for it on top of the cost of VMware's products. *See, e.g., Appx145–47, 1121.*

Unsurprisingly, the mammoth VMware showed intense interest in acquiring Inc. and its innovative and lucrative product offerings. VMware and Inc. engaged in multiple acquisition discussions. *See, e.g., Appx270–71.* In the course of those talks, Inc. in good faith disclosed its technology and patents to VMware. *E.g., Appx178, 180–84, 233–37, 242, 270–71.* VMware analyzed Inc.'s product offerings and company in detail, and it was estimated that Inc.'s technology could make billions of dollars of additional revenue for VMware. *See Appx114–16, 204–05.* Instead of buying Plaintiffs, VMware decided to build Inc.'s technology (which VMware valued at around \$300 million) for itself – what VMware's internal documents call the “buy vs. build” decision. *Appx203–05, 207–17.*

Having decided to build Inc.'s technology for itself, VMware began competing aggressively with Inc. *See, e.g., Appx260–68.* VMware's internal documents show secret plans to “destroy” Inc. Characterizing itself as the “800 pound gorilla,” VMware sought to put a “bullet in the head” of its smaller rival by adopting infringing technology to take away Inc.'s most significant customers. *See Appx118; see also Appx213–29.*

Inc. tried to compete without suing the industry giant, but each year VMware

adopted ever increasing amounts of Inc.'s technology, shrinking the already small niche in which Inc. competed. *See* Appx233–38, 278–81, 286–312. Eventually, Plaintiffs filed suit as a potentially company-saving effort. They immediately sought a preliminary injunction to halt VMware's ongoing infringement pending a merits trial. Following an evidentiary hearing in August 2019, the District Court struck a compromise and denied the preliminary injunction while ordering a merits trial to take place only five months later. Appx148–61, 163. The jury concluded that VMware's infringement was willful. Appx244–46.

Inc., not IP, was the party directly competing with VMware and directly suffering irreparable harm. Employees of Inc. invented the patents-in-suit and assigned them to Inc. Appx166–77, 186–95, 239–40. Inc. alone owned the patents from the beginning, throughout most of the parties' acquisition discussions, and during VMware's initial infringement. *See* Appx41–43, 56–57. Then, in 2016, Inc. transferred its patents to its wholly owned subsidiary, IP, for uncontroversial tax reasons. Appx41–43, 129–132. In turn, IP granted back to Inc. an exclusive license to all patents for Inc. to use in connection with its operating business. Appx43,120–28. There is no dispute that this contract was designed to grant Inc. an exclusive license to the patents, and that at all relevant times, Inc. has, in fact, been the sole licensee of the patents. Appx43–45, 120, 195, 233. The irreparable harm alleged in the Complaint, which was presented at the preliminary injunction hearing and gave

rise to the extraordinarily expedited trial, was the harm suffered *by Inc.* as the party with flesh-and-blood employees competing directly with VMware. *See* Appx53–58, 148–61, 163, 231–32, 273–76.

Paradoxically, the distinct competitive harm suffered by Inc. provided the linchpin for the District Court’s decision to grant a new trial after dismissing Inc. for lack of Article III standing. It recognized that the jury heard evidence of competitive harm suffered only by Inc., as VMware’s direct competitor, and not by IP. Appx53 (“Plaintiffs together seek relief beyond what IP as a sole plaintiff could obtain: equitable relief based on Inc.’s status as a competitor of VMWARE, and a permanent injunction based on competitive harm to Inc.”); Appx55 (noting that Inc.’s trial theme was that it was competing with VMware and that VMware was trying to drive it out of business); Appx55–58 (recognizing that the jury heard evidence showing the harm Inc. was suffering from VMware’s infringement of the patents-in-suit). The District Court never acknowledged the paradox of dismissing a party for lack of Article III standing (a.k.a., injury-in-fact) and then ordering a new trial because the jury heard evidence of that party’s distinct injuries.

That competitive harm has only intensified since the jury verdict. *See, e.g.*, Appx273–76, 286–312. Even after the willful infringement verdict, VMware sped up its efforts to crush Inc., perversely capitalizing on the infringement finding by broadcasting to potential customers that a federal jury has concluded that its products

are, in fact, the same as Inc.'s. *See id.* As a result, Inc.'s revenues have dropped dramatically and it has been forced to lay off 100 employees—more than half of its workforce. As a result of VMware's infringement, Inc. is rapidly losing market share and its ability to survive at all.

### **STANDARD OF REVIEW**

The All Writs Act permits this Court to “issue all writs necessary or appropriate in aid of” its jurisdiction, including mandamus. 28 U.S.C. § 1651(a). Mandamus relief is warranted when (1) the “right to issuance of the writ is clear and indisputable”; (2) the petitioner has “no other adequate means” of obtaining relief; and (3) “the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 381 (2004) (quotation omitted). Those requirements, “however demanding, are not insuperable.” *Id.* Indeed, the Supreme Court has recognized that mandamus is properly employed to “confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *Roche*, 319 U.S. at 26. Mandamus may also be used to address “basic” and “undecided” legal questions where district courts are “deeply split on the answer.” *In re Micron Tech., Inc.*, 875 F.3d 1091, 1095 (Fed. Cir. 2017) (citing *Schlagenhauf v. Holder*, 379 U.S. 104, 110 (1964)); *In re BigCommerce, Inc.*, 890 F.3d 978, 981 (Fed. Cir. 2018) (“[M]andamus may be appropriate ‘to further supervisory or instructional goals where issues are unsettled and important.’”)

(quotation omitted).

### **REASONS THE WRIT SHOULD ISSUE**

All three requirements for mandamus are amply satisfied here. First, the right to the writ is indisputable. The District Court dismissed Inc. and wiped out a \$236 million jury verdict based on the mistaken perception that Inc. lacked constitutional standing to sue. That decision is wrong twice over. It rests on the mistaken premise that exclusionary rights are necessary for Article III standing and the equally mistaken notion that despite an exclusive license from its own subsidiary, Inc. is a “bare licensee.” Whatever can be said about statutory prerequisites, the notion that Inc. lacks Article III injury-in-fact is plainly mistaken. Indeed, the District Court granted a new trial largely based on “prejudice” to VMware from the jury having heard evidence of the competitive injuries suffered by Inc. and its employees. Second, Inc. plainly has no alternative to mandamus. Given the District Court’s finding that Inc. lacks Article III standing, Inc. is locked in a legal limbo. Without standing, it can seek no relief from the District Court for the irreparable harm it suffers from VMware’s continuing, willful infringement until after an April 2023 trial. By the time Inc. can seek to exercise its appellate rights and reinstate the first jury verdict and re-establish its eligibility to seek and obtain injunctive relief, it will be too late. Inc. will have ceased to exist as a viable entity. Third, mandamus relief is plainly appropriate not just to free Inc. from its legal limbo but also to provide

appellate guidance on an issue that continues to confound lower courts. The teaching of *Lexmark*, *Lone Star*, and *Schwendimann* are clear, yet lower courts continue to conflate the statutory requirements of § 281 and the requirements of Article III. The decision below exemplifies the errors, with outsized consequences for the jury’s verdict and Inc.’s ability to secure relief from irreparable injury. Mandamus is warranted.

### **III. THE RIGHT TO A WRIT IS CLEAR AND INDISPUTABLE**

#### **A. The District Court’s Holding Is Clearly Erroneous.**

The “irreducible constitutional minimum of standing” is “a concrete and particularized ‘injury in fact’ that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.” *Lexmark*, 572 U.S. at 125 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). These three requirements—injury in fact, causation, and redressability—apply to all cases. *Lujan*, 504 U.S. at 560 (the three requirements are “an essential and unchanging part of the case-or-controversy requirement of Article III”).

Under the Patent Act, only a “patentee” is permitted to pursue an action for patent infringement. 35 U.S.C. § 281. When a “plaintiff[] hold[s] exclusionary rights and interests created by the patent statutes, but not all substantial rights to the patent,” they can also bring suit under the Patent Act, provided the patentee is joined. *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1340 (Fed. Cir. 2007). “Parties that hold



the exclusionary rights are often identified as exclusive licensees, because the grant of an exclusive license to make, use, or sell the patented invention carries with it the right to prevent others from practicing the invention.” *Id.*

For decades, this Court treated the statutory requirements of § 281—and, in particular, the presence of exclusionary rights—as jurisdictional. That is, this Court previously held that “the touchstone of constitutional standing in a patent infringement suit is whether a party can establish that it has an exclusionary right in a patent that, if violated by another, would cause the party holding the exclusionary right to suffer legal injury.” *WiAV Sols., LLC v. Motorola, Inc.*, 631 F.3d 1257, 1265 (Fed. Cir. 2010); *see also, e.g., Rite-Hite Corp. v. Kelley Co., Inc.*, 56 F.3d 1538, 1552–54 (Fed. Cir. 1995) (en banc) (treating § 281 requirements as “jurisdictional”).

Because this Court previously treated § 281’s requirements as jurisdictional, it also held that defects could not be fixed after the complaint was filed. *See Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359, 1364 (Fed. Cir. 2010) (“[I]n a patent infringement action, ‘the plaintiff must demonstrate that it held enforceable title to the patent at the inception of the lawsuit to assert standing.’ . . . Thus, ‘if the original plaintiff lacked Article III initial standing, the suit must be dismissed, and the jurisdictional defect cannot be cured’ after the inception of the lawsuit.” (citation omitted)).

### **1. Statutory Prerequisites Are Not Part Of The Article III Standing Inquiry.**

This Court's old understanding of the § 281 requirements as jurisdictional is no longer viable. In *Lexmark*, the Supreme Court "clarified that so-called 'statutory standing' defects do not implicate a court's subject-matter jurisdiction." *Lone Star*, 925 F.3d at 1235. As the Supreme Court put it:

We have on occasion referred to [whether a plaintiff has a cause of action under a certain statute] as "statutory standing" and treated it as effectively jurisdictional. That label is an improvement over the language of "prudential standing," since it correctly places the focus on the statute. But it, too, is misleading, since "the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional power to adjudicate the case."

*Lexmark*, 572 U.S. at 128 n.4 (citations omitted).

In *Lexmark*, the parties asked the Supreme Court to decide "the appropriate analytical framework for determining a party's standing to maintain an action for false advertising under the Lanham Act." *Id.* at 125. The Court concluded this was the wrong question. Article III "standing" was not at issue because Static Control's allegations of "lost sales and damage to its business reputation" sufficed to "give it standing under Article III." *Id.* Accordingly, the real question was whether Static Control stated a claim under § 43(a) of the Lanham Act, a question requiring statutory interpretation, which differed from Article III's "case or controversy" requirement. *See id.* at 128.

## **2. This Court Applied *Lexmark* To Patent Infringement Cases, Overturning Contrary Precedent.**

This Court has recognized that *Lexmark* abrogated its caselaw treating § 281 as jurisdictional. In *Lone Star*, this Court expressly disavowed its earlier treatment of § 281. 925 F.3d at 1235. It clarified that statutory requirements to sue “do not implicate a court’s subject matter jurisdiction.” *Id.* (quoting *Lexmark*, 572 U.S. at 128 n.4). The Court held that “whether a party possesses all substantial rights in a patent does not implicate standing or subject matter jurisdiction.” *Id.* at 1235–36. In so doing, it stated that it was “firmly bring[ing this Court] into accord with *Lexmark* and our sister circuits,” and overturned prior cases holding that the requirements of § 281 are part of the Article III standing inquiry. *Id.* at 1235 (“*Lexmark* is irreconcilable with our earlier authority treating § 281 as a jurisdictional requirement.”).

*Schwendimann* reinforced that result and provided further clarity. There, the plaintiff *thought* she had been assigned rights to a patent at the time of suit but, in fact, had not. *See* 959 F.3d at 1068–70. Only after the defendant filed a motion to dismiss for lack of standing did the plaintiff take corrective action (having the patent owner execute a new assignment and recording it with the PTO) to fix the failed assignment. *Id.* at 1070. At the time of filing, the plaintiff had **no** legal rights—exclusionary or otherwise—to the patent. *See id.* The District Court nonetheless retroactively reformed the assignment. This Court affirmed, concluding that the

plaintiff's complete lack of legal rights to the patent at the outset did not pose an Article III problem. "In *Lone Star*, we made clear that whether one qualifies as a patentee under 35 U.S.C. § 281 is a statutory prerequisite to the right to relief in a patent infringement action, but does not implicate the District Court's subject matter jurisdiction." *Schwendimann*, 959 F.3d at 1071. Because the plaintiff alleged that she was the owner by assignment of the patent and defendants infringed that patent, there was "no 'standing' issue to be decided in th[e] appeal." *Id.* at 1071. The plaintiff may have failed to meet the statutory prerequisites of § 281 at the outset, but she met the three irreducible requirements of Article III: injury, causation, and redressability.

The dissent concluded that because the plaintiff did not possess exclusionary rights when the suit was filed, she lacked Article III standing. *See id.* at 1077 (Reyna, J., dissenting) ("Post-suit activities cannot confer Article III standing that was otherwise lacking when the suit was filed"). The dissent faulted the majority for not examining whether the plaintiff possessed at least some exclusionary rights at the time of filing, which it viewed as the sine qua non for Article III standing. *Id.* at 1077, 1081. The dissent read *Lone Star* to establish only that a plaintiff with some exclusionary rights did not need something more "*—i.e., 'all substantial rights' in the patent—*" to satisfy Article III. *Id.* at 1077 (citing *Lone Star*, 925 F.3d at 1234–35).

The *Schwendimann* majority rejected this argument:

The dissent disagrees and asserts that the Patent Act’s prerequisites must be treated as jurisdictional because the right to exclude has constitutional underpinnings. There are two problems with that contention. First, *Lone Star* states the opposite in a precedential decision. The dissent, like all subsequent panels, is bound by *Lone Star*. Second, not only has the Supreme Court made clear that virtually all statutory prerequisites are non-jurisdictional, but it has held that the registration requirement in the Copyright Act is non-jurisdictional. The Copyright Act is no less tied to the Intellectual Property Clause in the Constitution than is the Patent Act.

*Id.* at 1071 n.6 (citations omitted).

In sum, under *Lexmark*, *Lone Star*, and *Schwendimann*, “exclusionary rights” are not required for Article III standing. The District Court’s decision to overturn the jury verdict based on the opposite view was a clear and indisputable error.

#### **B. Inc. Has Article III Standing.**

Applying the correct *constitutional* test, Inc.’s standing is not even a close question. Inc. is the entity that employs people to compete with VMware, practices the patented technology, and suffers injury when VMware engages in unlawful infringement. Inc. satisfies the constitutional minima for Article III standing by a mile. Indeed, the District Court ordered a new trial primarily because the jury heard too much about Inc.’s injuries. Appx53–58. Thus, whatever can be said about the requirements of § 281, Inc.’s Article III standing is clear beyond cavil.

The facts at the time this lawsuit was filed (and throughout) underscore Inc.’s Article III standing. This is a case about competitors: Inc. and VMware sell

competing products. IP licensed the patents-in-suit, which originally belonged to Inc., solely to its parent, Inc. VMware's sale of products that infringe those patents and compete with Inc.'s products harms Inc. Put another way, if VMware were not infringing the patents-in-suit, Inc. would directly benefit because it would be the only entity able to offer its efficiency-maximizing software. Because of VMware's infringement, Inc. lost sales, shed employees, and suffered damage to its business. Article III standing requires nothing more (and is satisfied by considerably less). *See Lexmark*, 572 U.S. at 125 (lost sales and damage to business reputation sufficient under Article III).

**C. Plaintiffs Did Not—And Could Not—Waive Their Arguments About Inc.'s Standing And The District Court's Subject Matter Jurisdiction.**

The District Court only compounded its error by suggesting that Plaintiffs “waived” reliance on *Schwendimann* by failing to cite it earlier. Appx51. A district court cannot deem Federal Circuit precedent off-limits or irrelevant, especially when it goes to Article III jurisdiction. Waiver concerns the failure to raise claims or defenses, not particular arguments, let alone particular precedents. *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534–35 (1992). Moreover, questions about standing and the court's subject matter jurisdiction can never be waived or forfeited by the parties. *United States v. Cotton*, 535 U.S. 625, 630 (2002); *see also Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006); *Willis v. Gov't Accountability Off.*, 448 F.3d 1341, 1343 (Fed. Cir. 2006). Indeed, while the District Court ultimately concluded that

*Schwendimann* was irrelevant to its Article III jurisdiction, if it had concluded otherwise, it would have had an obligation to raise that binding precedent *sua sponte*. See *Arbaugh*, 546 U.S. at 514. “Jurisdiction existing, this Court has cautioned, a federal court’s ‘obligation’ to hear and decide a case is ‘virtually unflagging.’” *Sprint Comm’ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quotation omitted). The District Court cannot willfully ignore either this Court’s precedent or a basis for subject-matter jurisdiction.

**D. The License Here Was Exclusive.**

Exclusionary rights are unnecessary for Article III standing, so whether the license here is exclusive does not concern the court’s subject-matter jurisdiction. Nonetheless, the District Court made an equally clear and consequential error in misconstruing the exclusive license IP gave to its own parent. Only Inc. has ever been licensed to practice the patents-in-suit and the contract licensing the patents back to Inc. facially granted an “exclusive license.” The District Court’s conclusion that Inc. was nonetheless merely a “bare licensee” defies basic principles of contract law and common sense.

On March 21, 2016, Inc. transferred all of its rights in the patents-in-suit to its wholly owned subsidiary (IP) in an Assignment Agreement. Appx129–132. On the same day, IP executed a separate License Agreement, which licensed them back to Inc. Section 2 of the License Agreement provides Inc. with “an exclusive,

transferrable, worldwide license to use” the patents-in-suit. Appx120.

Despite that clear language and the intra-company context, the District Court concluded that Inc. was merely a bare licensee. The court pointed to precedent holding that the word “exclusive” is not controlling if context indicates otherwise. Appx40 (citing *Textile Prods. v. Mead Corp.*, 134 F.3d 1481, 1481 (Fed. Cir. 1998)). But instead of evaluating the word “exclusive” in context to discern the parties’ intent or pointing to evidence that the license was not exclusive-in-fact, the court proceeded to erroneously ignore the word “exclusive” altogether. It focused instead on Section 8 of the License Agreement, which states:

The Licensee acknowledges that, between the Licensee and the Corporation, the Corporation is the exclusive owner of all proprietary rights, including rights based upon trade secrets, patent and copyright laws, in and to the Products and the Documentation and information thereof, and agrees to recognize and to abide by the terms thereof. This Agreement gives the Licensee no rights in such proprietary rights.

Appx121–122. The District Court decided that the phrase “proprietary rights” means all rights in and to the patents, not just ownership. Appx426–43. Under that reasoning, Inc. would not have received any license to use the patents at all because it did not have any “proprietary rights.” That makes no sense.

Had the court employed the traditional rules of contract interpretation to discern the parties’ intent (and to avoid an interpretation that renders part of the contract meaningless), it would have seen that the whole purpose of the License Agreement was to exclusively license the patents and related intellectual property to



Inc. By its terms, the License was “exclusive.” Appx120. Reading the contract as a whole, the intent of § 8 was to clarify that as between IP and Inc., IP owned the patents themselves (and other types of property, like trade secrets), not to defeat the plain terms of § 2. Appx121–22.

The District Court read “proprietary rights” to mean not just ultimate ownership of the patents but ownership of **any and all** rights in and to the patent. That reading rendered the contract meaningless and nonsensical, and thwarted the parties’ evident purpose. The court should instead have read “proprietary rights” to simply reserve ultimate ownership of the patents themselves to IP. That understanding gives meaning to all the contract’s provisions and effectuates the parties’ undisputed intent. And if the District Court needed to look beyond the plain contractual terms—which provided for an “exclusive license”—to context and parol evidence, those sources would have only fortified the conclusion that in this contract, “exclusive” means exclusive. Not only was this an intra-corporate assignment designed to give an exclusive license to the parent company to practice the patent, but Inc. has always been the sole licensee. Trial testimony only reinforced that the license was intended to be truly exclusive and that Inc. was, in fact, the sole licensee. Appx139–40; 195, 233, 292. Indeed, the whole notion that a licensing subsidiary would defy the contract and its parent by licensing the patents to some third-party blinks reality. Only by misconstruing an exclusive license and then erroneously

deeming that conclusion of jurisdictional import could the District Court have reached its anomalous conclusion, which not only wiped out a jury verdict, but has disabled Inc. from preventing VMware's ongoing infringement and denied Inc. its day in court.

#### **IV. INC. HAS NO OTHER ADEQUATE MEANS OF RELIEF**

The District Court's decision was plainly erroneous several times over; it treated statutory requirements as constitutional minima and converted an exclusive licensee (and corporate parent) into a bare licensee. Thus, the first mandamus factor is plainly satisfied. And it is equally clear that the second factor is satisfied because, having been (erroneously) deemed to lack Article III standing, Inc. is now precluded from obtaining injunctive relief (or any judicial relief whatsoever) despite the jury's determination that VMware is a willful infringer who has caused hundreds of millions of dollars in damage. Indeed, with a trial (from which Inc. will be barred as a patent plaintiff) not scheduled until 2023, Inc. will be denied any opportunity to stave off its irreparable injury for years. And by that time, Inc. is unlikely to survive. Thus, mandamus is the only available mechanism to correct the District Court's clear jurisdictional errors.

Inc. filed this case because of the imminent, existential competitive threat posed by VMware's infringement of its patents. As the party practicing the patents-in-suit and actively competing with VMware in the marketplace, Inc. was the

plaintiff directly suffering the most obvious and irreparable injuries. It promptly moved for a preliminary injunction and, based on the potential for irreparable harm to Inc., the District Court scheduled an extraordinarily expedited jury trial five months later. IP and Inc. prevailed, with the jury finding VMware willfully infringed the patents. IP and Inc. immediately moved for a permanent injunction to prevent further irreparable injury. Rather than rule on that request, or address the other post-trial motions, the District Court dismissed Inc. for lack of Article III standing. The District Court then ordered a new trial in large measure on the ground that the jury improperly heard evidence of Inc.'s competitive injuries. Appx53–58. The District Court never even acknowledged the inherent contradiction between its observation that Inc. was uniquely injured and its conclusion that Inc. lacked Article III standing.

The retrial is not scheduled until April 2023, so absent mandamus, Inc. is locked in a legal limbo for years. *See* Appx346. It is stuck before a court that does not recognize its Article III standing but will nonetheless not allow it to appeal. And because the District Court does not recognize Inc.'s Article III standing, it will not allow Inc. to seek an injunction or any other relief, despite the jury's recognition that VMware is a willful infringer.

With the April 2023 trial date—a trial in which Inc. will be barred as a patent-plaintiff—it is a certainty that Inc. will not be able to begin its direct appeal for at least two years. By that time, Inc. will have endured years of irreparable injury and

almost certainly will have been driven out of business by VMware's infringement. That is the irreparable harm this lawsuit and the expedited trial were meant to avoid. A reversal some three years from now would be cold comfort and inadequate to restore lost jobs, investments, and livelihoods. And it would allow VMware to use a patent infringement lawsuit it lost to ruin a competitor and perpetuate its monopoly.

Simply put, mandamus is the only adequate relief left to release Inc. from its legal limbo and preserve Inc.'s ability to survive and compete based on its innovations, as opposed to becoming a forced patent-assertion entity. *See Anderson v. City of Boston*, 244 F.3d 236, 239 (1st Cir. 2001) ("The district court's determination that the [plaintiffs] lacked standing to seek injunctive relief does have the 'practical effect' of denying an injunction, because it has 'erected a 'legal barrier' foreclosing any meaningful future consideration of a formal application' for injunctive relief by these particular appellants."); *see also Rolo v. Gen. Dev. Corp.*, 949 F.2d 695, 703 (3d Cir. 1991) ("[W]e conclude that the May Order's deferral of consideration of the preliminary injunction application was an effective denial of that application and that, assuming the truth of the Rolos's allegations, that denial would impose 'serious, perhaps irreparable' consequences on them."). Indeed, the case for mandamus is particularly strong here, because the District Court's orders operate as the functional equivalent of a denial of an injunction, which is itself an appealable order. 28 U.S.C. § 1292(a)(1). Moreover, Inc. exhausted the only

available alternative to mandamus—an interlocutory appeal pursuant to § 1292(b)—only to be rebuffed by the District Court. Thus, this is plainly a case where it is mandamus or nothing.

## V. THE ISSUANCE OF A WRIT IS APPROPRIATE

Mandamus is particularly “appropriate” in this case because the writ will not only correct a jurisdictional error and free Inc. from the legal limbo imposed by the District Court’s incorrect standing ruling, but will also provide clarity on an issue that has divided district courts. Mandamus is appropriate where appellate guidance “is important to ‘proper judicial administration.’” *Micron*, 875 F.3d at 1095 (quotation omitted). Where district courts are “deeply split” on an issue, a mandamus ruling may provide clarity and “reduce widespread disparities in rulings on the fundamental legal standards.” *Id.* at 1095–96. The use of mandamus to further “supervisory or instructional goals” where “issues are unsettled and important” has long been recognized as appropriate. *BigCommerce*, 890 F.3d at 981 (quotation omitted). This is especially true where recent Supreme Court precedent introduces confusion as to the continued viability of old precedent. *See Micron*, 875 at 1095–96; *In re Cray Inc.*, 871 F.3d 1355, 1359–60 (Fed. Cir. 2017).

Those considerations favor issuing the writ here because, despite the clear instructions of *Lexmark*, *Lone Star*, and *Schwendimann*, old habits die hard, and district courts across the country have continued to diverge. Some district courts

have correctly applied *Lexmark*, *Lone Star*, and *Schwendimann* by separating the statutory question of exclusionary rights from the constitutional injury-in-fact requirement. See, e.g., *Focus Products Grp. Int'l, LLC v. Kartri Sales Co.*, 2021 WL 1946756, at \*2 (S.D.N.Y. May 14, 2021) (holding § 281 statutory requirements are not jurisdictional); *Baxalta Inc. v. Bayer Healthcare LLC*, 2021 WL 1063099, at \*3 (D. Del. Mar. 18, 2021); *AnywhereCommerce, Inc. v. Ingenico, Inc.*, 2021 WL 395566, at \*2 (D. Mass. Feb. 3, 2021); *Kenall Mfg. Co. v. Cooper Lighting, LLC*, 2020 WL 4015324, at \*2 (N.D. Ill. Jul. 16, 2020); *Midwest Energy Emissions Corp. v. Vistra Energy Corp.*, 2020 WL 3316056, at \*7 (D. Del. June 18, 2020); *Enventure Global Tech. Inc. v. Weatherford U.S.*, 2020 WL 6144620, at \*1 n.1 (S.D. Tex. June 11, 2020); see also, e.g., *Boston Sci. Corp. v. BioCardia, Inc.*, \_\_\_ F. Supp. 3d \_\_\_, 2021 WL 927267, at \*2 (N.D. Cal. Mar. 11, 2021).

But other district courts, as here, refuse to acknowledge the change brought by *Lexmark*, *Lone Star*, and *Schwendimann*. See, e.g., Appx52 n.3 (“*Lone Star* confirmed that the ‘constitutional threshold’ is the possession of exclusionary rights.”); *Pulse Elecs., Inc. v. U.D. Elec. Corp.*, 2021 WL 1378756, at \*7 (S.D. Cal. Apr. 12, 2021); *United Access Techs., LLC v. Verizon Internet Servs., Inc.*, 2021 WL 1200650, at \*7 n.9 (D. Del. Mar. 26, 2021); *Her Majesty the Queen in Right of Canada v. Van Well Nursery, Inc.*, 2021 WL 131261, at \*3 (E.D. Wash. Jan. 13, 2021); *Uniloc USA, Inc. v. Motorola Mobility, LLC*, 2020 WL 7771219, at \*5 (D.

Del. Dec. 30, 2020), *appeal docketed*, No. 21-1555 (Fed. Cir. Jan. 19, 2021); *Chromadex, Inc. v. Elysium Health, Inc.*, \_\_\_ F. Supp. 3d \_\_\_, 2020 WL 7360212, at \*2 (D. Del. Dec. 17, 2020); *Uniloc USA, Inc. v. Apple, Inc.*, at \*4 (N.D. Cal. Dec. 4, 2020), *appeal docketed*, No. 21-1572 (Fed. Cir. Jan. 25, 2021).

The disagreement among district courts as to the correct application of *Lexmark*, *Lone Star*, and *Schwendimann* is precisely the type of recurring, “fundamental legal question[] ... appropriate for mandamus.” *In re Google LLC*, 949 F.3d 1338, 1342–43 (Fed. Cir. 2020). Indeed, even the District Court acknowledged that the import of *Lexmark*, *Lone Star*, and *Schwendimann* for a case like this is the kind of controlling question that has divided the courts. Appx343. This issue has done more than just “percolate in the district courts.” *Google*, 949 F.3d at 1343 (quotation omitted). It has created a “significant number of district decisions” adopting “conflicting views on the basic legal issues presented in the case.” *Id.* at 1342.

Those conflicting views are complicating basic litigation decision-making. Every day, practitioners must decide who can bring patent claims to court (and whether to challenge a patent plaintiff’s authority to do so), when motions to dismiss must be filed, and whether alleged “standing” defects can be fixed after the complaint has been filed. But the answers to those questions differ from district court to district court. Providing clear guidance and a uniform answer to these

questions is essential to sensible judicial administration.

This case presents an ideal vehicle for resolving this important question. If exclusionary rights were necessary for Article III standing, then the District Court would have been correct to address this issue post-trial, even though it was not raised until the eve of trial and raised only as a non-correctable Article III issue. In reality, however, it is plain that Inc. cleared the Article III hurdle by a mile, and that the District Court was wrong to dismiss Inc. from the suit, wipe out the jury's verdict, and lock Inc. in a legal limbo for years. In short, mandamus relief here is not just appropriate, but critically important to clarify the District Court's jurisdiction, correct a manifest injustice, and further the administration of justice.

### **CONCLUSION**

For the foregoing reasons, this Court should grant mandamus and vacate the order dismissing Inc., overturning the jury verdict, and ordering a new trial.

Dated: June 11, 2021

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## CERTIFICATE OF COMPLIANCE

1. This petition complies with the type-volume limitations of Federal Rules of Appellate Procedure 21(d)(1) because it contains 7,717 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman 14-point font.

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## CERTIFICATE OF SERVICE

Pursuant to Federal Circuit Rule 21(a)(2), I hereby certify that on June 11, 2021, I dispatched a copy of the foregoing Petition and Appendix by Federal Express to be served on the district court judge at the address below and served a copy of the same on the below counsel of record via electronic mail:

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Miscellaneous Docket No.

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**United States Court of Appeals  
for the Federal Circuit**

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IN RE: CIRBA INC. (d/b/a DENSIFY)

*Petitioner.*

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*On Petition for a Writ of Mandamus to the  
United States District Court for the District of Delaware in  
Case No. 1:19-cv-00742-LPS  
Chief Judge Leonard P. Stark*

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**NONCONFIDENTIAL APPENDIX IN SUPPORT OF CIRBA INC'S  
PETITION FOR WRIT OF MANDAMUS**

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June 11, 2021

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### **STATEMENT REGARDING CONFIDENTIALITY**

Material omitted from this appendix includes confidential information relating to Petitioner’s and Defendant’s business practices and other commercially sensitive information. That material is subject to the District Court’s protective order (available at No. 19-742, ECF No. 111 and as Appx 1–36 in the Confidential Appendix). Specifically, the documents excluded from this appendix as confidential include the terms of confidential business agreements and business plans, internal slide presentations, and sensitive and strategic business information.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

---

CIRBA INC. (d/b/a DENSIFY)	:	
and CIRBA IP, INC.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 19-742-LPS
	:	<b><u>FILED UNDER SEAL</u></b>
VMWARE, INC.,	:	
	:	
Defendant.	:	

---

**MEMORANDUM ORDER**

On April 25, 2019, Plaintiffs Cirba Inc. and Cirba IP, Inc. (collectively, “Densify” or “Plaintiffs”) sued Defendant VMware, Inc. (“VMware” or “Defendant”) for (among other things) infringement of U.S. Patent Nos. 8,209,687 (the “‘687 patent”) and 9,654,367 (the “‘367 patent”) (the “patents-in-suit”). (D.I. 1) The Court denied Plaintiffs’ motion for a preliminary injunction on August 6, 2019. (D.I. 137) The Court then presided over an expedited, nine-day jury trial in January 2020. (*See* D.I. 587-97) On January 24, 2020, the jury returned a verdict finding VMware infringed both the ‘687 and ‘367 patents and awarding damages in the amount of \$235,724,765 and \$1,112,111, respectively. (D.I. 549)

The parties filed and briefed numerous post-trial motions. (*See, e.g.*, D.I. 601, 604) On May 15, 2020, the Court heard oral argument on all pending motions. (*See* Transcript (“Tr.”)) Thereafter, Densify requested leave to file additional briefing (*see* D.I. 745), which VMware opposes (*see* D.I. 747).

Having considered all of the parties’ filings and arguments, and for the reasons stated below, IT IS HEREBY ORDERED that:

1. VMware's Motion to Dismiss Cirba Inc. for Lack of Standing (D.I. 601) ("Standing Motion") is GRANTED.
2. Cirba Inc. is DISMISSED as a party to this action.
3. The parties shall file supplemental briefing consistent with the directions provided at the conclusion of this Order.

The Standing Motion is just one of many disputes the parties have put before the Court following trial. The Court has determined that the most reasonable and appropriate manner of proceeding is to resolve this single motion and then obtain the parties' further views as to the impact of that resolution on the still-pending issues.

By its Standing Motion, VMware contends that Cirba Inc. must be dismissed as a plaintiff because it is a "bare licensee" to the patents-in-suit and, therefore, lacks standing to sue. Plaintiffs counter that Cirba Inc. is, instead, an "exclusive licensee" to the patents-in-suit and, thus, has standing to sue as a co-plaintiff with the patents' owner, Cirba IP, Inc. The Court has determined that application of the legal standards provided by the Federal Circuit to the agreements executed by Cirba Inc. and Cirba IP, Inc. leads to the conclusion that Cirba Inc. is a bare licensee which lacks standing to sue and must be dismissed.

"Standing is a constitutional requirement pursuant to Article III and it is a threshold jurisdictional issue." *Abraxis Bioscience, Inc. v. Navinta LLC*, 625 F.3d 1359, 1363 (Fed. Cir. 2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).<sup>1</sup> A plaintiff bears the burden of persuasion to show it has standing. *See Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991); *Sicom Sys., Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971, 976 (Fed.

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<sup>1</sup> Standing is "comprised of both constitutional and prudential components," *Oxford Assocs. v. Waste Sys. Auth. of E. Montgomery Cty.*, 271 F.3d 140, 145 (3d Cir. 2001), but the Standing Motion here relates only to constitutional standing.

Cir. 2005). “Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal of a complaint for lack of jurisdiction over the subject matter, or if the plaintiff lacks standing to bring his claim.” *Samsung Elecs. Co., Ltd. v. ON Semiconductor Corp.*, 541 F. Supp. 2d 645, 648 (D. Del. 2008); *see also Ballentine v. United States*, 486 F.3d 806 (3d Cir. 2007) (“A motion to dismiss for want of standing is . . . properly brought pursuant to Rule 12(b)(1), because standing is a jurisdictional matter.”).

“[T]he touchstone of constitutional standing in a patent infringement suit is whether a party can establish that it has an exclusionary right in a patent that, if violated by another, would cause the party holding the exclusionary right to suffer legal injury.” *WiAV Sols. LLC v. Motorola, Inc.*, 631 F.3d 1257, 1265 (Fed. Cir. 2010). The owner of a patent has standing to enforce its right to exclude others from practicing its patent without its consent. *See* 35 U.S.C. § 281 (providing “patentee” has right to initiate “civil action for infringement of [its] patent”); 35 U.S.C. § 100(d) (“The word ‘patentee’ includes not only the patentee to whom the patent was issued but also the successors in title to the patentee.”); *see also Sicom Sys., Ltd. v. Agilent Techs., Inc.*, 427 F.3d 971, 976 (Fed. Cir. 2005) (“[I]f the patentee transfers all substantial rights under the patent, it amounts to an assignment and the assignee may be deemed the effective patentee under 35 U.S.C. § 281 for purposes of holding constitutional standing to sue another for patent infringement in its own name.”).

Likewise, an exclusive licensee – that is, a party which “hold[s] exclusionary rights and interests created by patent statutes” even if it does not enjoy “all substantial rights to the patent” – also has standing to sue for infringement of any patent to which it has an exclusive license. *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1340 (Fed. Cir. 2007); *see also Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1553 (Fed. Cir. 1995) (characterizing exclusive licensee as one who

“shar[es] the property rights represented by a patent”) (internal quotation marks omitted). “[A]n exclusive licensee having fewer than all substantial patent rights . . . that seeks to enforce its rights in a patent generally must sue jointly with the patent owner.” *Intellectual Prop. Dev., Inc. v. TCI Cablevision of Cal., Inc.*, 248 F.3d 1333, 1347-48 (Fed. Cir. 2001).

“By contrast, a bare licensee, i.e., a party with only a covenant from the patentee that it will not be sued for infringing the patent rights, lacks standing to sue third parties for infringement of the patent.” *Propat Int’l Corp. v. RPost, Inc.*, 473 F.3d 1187, 1193 (Fed. Cir. 2007). “A bare licensee cannot cure its lack of standing by joining the patentee as a party.” *Id.* at 1193-94.

Because a licensee’s standing to sue for patent infringement turns on whether the licensee enjoys an exclusive license or is merely a bare licensee, determining which type of license a plaintiff holds is dispositive. When faced with a dispute over the type of license involved, the Federal Circuit has directed that courts engage in the following analysis:

Determining whether a licensee is an exclusive licensee or a bare licensee is a question of ascertaining the intent of the parties to the license as manifested by the terms of their agreement and examining the substance of the grant. ***The use of the word “exclusive” is not controlling***; what matters is the substance of the arrangement. Because patent rights are rights to “exclude others,” *see* 35 U.S.C. § 154(a)(1), ***a licensee is an exclusive licensee only if the patentee has promised, expressly or impliedly, that “others shall be excluded from practicing the invention”*** within the field covered by the license. Put another way, an exclusive license is a license to practice the invention . . . accompanied by the patent owner’s promise that others shall be excluded from practicing it within the field of use wherein the licensee is given leave. Thus, ***if a patentee-licensor is free to grant licenses to others, licensees under that patent are not exclusive licensees.***

*Textile Prods. v. Mead Corp.*, 134 F.3d 1481, 1484 (Fed. Cir. 1998) (internal citations and quotation marks omitted; internal ellipses in original; emphasis added); *see also Molon Motor*

*and Coil Corp. v. Nidec Motor Corp.*, 946 F.3d 1354, 1361 (Fed. Cir. 2020) (quoting *Textile Prods.*, 134 F.3d at 1484, and reiterating that “an exclusive license is a license to practice the patented invention ‘accompanied by the patent owner’s promise that others shall be excluded from practicing it within the field of use wherein the licensee is given leave’”).

Hence, if a party “has not received an express or implied promise of exclusivity under the patent, *i.e.*, the right to exclude others from making, using, or selling the patented invention,” the licensee has a bare license, as it “has received only the patentee’s promise that that party will not be sued for infringement.” *Rite-Hite*, 56 F.3d at 1552 (internal citations omitted). Such a party, lacking exclusionary rights, also lacks standing to sue for patent infringement.

Having set out the governing legal standards, the Court turns to the specific dispute before it. Two agreements govern the pertinent relationships between the two Plaintiffs, Cirba IP, Inc. (hereinafter, “IP”) and Cirba Inc. (hereinafter “Inc.”).

On March 21, 2016, Inc. transferred all of its rights in certain patents (including, without dispute, the patents-in-suit) to IP. (*See* D.I. 603 Ex. 2) (“Assignment Agreement”) The pertinent provisions of this Assignment Agreement are as follows:

- Inc., the “Assignor,” “is the owner of the inventions as described in the patents and patent applications listed in Schedule A attached hereto, hereinafter collectively referred to as the ‘Patents,’” which include the patents-in-suit;
- IP, the “Assignee,” “desires to acquire the Assignor’s entire right, title and interest in and to the inventions and the Patents;” and
- Inc. “does hereby sell, assign, transfer and set over to the Assignee [*i.e.*, IP] . . . its entire right, title, interest, property and benefit, in and to the Patents, . . . including . . . all rights of enforcement thereto, including all rights to sue or recover for the past

infringement thereof, . . . the same to be held and enjoyed as fully and exclusively as they would have been by [Inc.] had this assignment and transfer not been made.”

(D.I. 603 Ex. 2 at 1)

Also on March 21, 2016, IP, identified as the “Corporation,” and Inc., the “Licensee,” executed a License Agreement. (PTX-1249)<sup>2</sup> Under the License Agreement, IP granted a license back to Inc. That license included “the patents described in ‘Schedule A,’” which indisputably include the patents-in-suit. The pertinent provisions of the License Agreement are as follows:

- “Subject to the terms and conditions specified in this [License] Agreement, the Corporation [IP] hereby grants, and the Licensee [Inc.] hereby accepts, an *exclusive*, transferable, worldwide license to use the Products,” which is defined to include the patents-in-suit;<sup>3</sup>
- “The Licensee [Inc.] acknowledges that, between the Licensee [Inc.] and the Corporation [IP], *the Corporation [IP] is the exclusive owner of all proprietary rights*, including rights based upon trade secret, *patent* and copyright laws, in and to the Products and the Documentation and information thereof, and agrees to recognize the same and to abide by the terms thereof. *This Agreement gives the Licensee [Inc.] no rights in such proprietary rights.*”

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<sup>2</sup> The License Agreement includes a choice-of-law provision designating the law of Canada and of the Province of Ontario as governing its interpretation. (PTX-1249 at 3) No party has made any argument – either in its briefing or during oral argument – that this provision has any impact on the Standing Motion. (*See, e.g.*, Tr. at 102; D.I. 672 at 25; D.I. 685 at 12; D.I. 712 at 25)

<sup>3</sup> “The term ‘**Products**’ means all of the Software, as such term is defined below, and all intellectual property rights thereto, including the patents described in Schedule ‘A’ attached hereto, used in or necessary for the Licensee to undertake the provision and sale of licenses of the Software to its customers . . . .” (PTX-1249 at 1)

(PTX-1249 at 1-3) (emphasis added)

Together, the Assignment Agreement and License Agreement render Inc. no more than a bare licensee.

The Assignment Agreement resulted in **IP** having the “entire right, title, interest, property and benefit, in and to the Patents,” including all “rights of enforcement” and “all rights to sue or recover for the past infringement thereof.” (D.I. 603 Ex. 2 at 1) So the Assignment Agreement left **Inc.** with no rights whatsoever in the patents-in-suit. The only rights Inc. enjoys with respect to those patents are those rights granted to Inc. by IP in the License Agreement.

In turn, the License Agreement grants Inc. what is described as “an exclusive, transferable, worldwide license to use” the patents-in-suit (among other intellectual property). (PTX-1249 at 1) But the License Agreement also expressly states that **IP** remains “the *exclusive owner of all proprietary rights*, including rights based upon . . . *patent* . . . laws,” and expressly adds that it “*gives the Licensee [Inc.] no rights in such proprietary rights.*” (PTX-1249 at 2-3) (emphasis added) The end result is that while **Inc. is free to practice** the patents-in-suit as it wishes, **IP is free to enforce (or not enforce) its exclusionary rights** in connection with the patents-in-suit as it, IP, wishes. Hence, Inc. lacks any right to exclude; it is, then, a bare licensee, and not an exclusive licensee. *See Ortho Pharm. Corp. v. Genetics Inst., Inc.*, 52 F.3d 1026, 1031 (Fed. Cir. 1995) (“[T]he patent owner may freely license (others, or may tolerate infringers, and in either case no right of the patent licensee is violated. Practice of the invention by others may indeed cause him pecuniary loss, but it does him no legal injury.”) (internal quotation marks omitted).

Plaintiffs argue that “no rights are reserved in the License Agreement to license another entity.” (D.I. 672 at 25) It is true that there is no express reservation of such rights by IP.



***Crucially, however, there is also no prohibition, restriction, or limitation of any kind on IP's rights to license other entities in addition to Inc.***

Plaintiff concedes, as it must, that the License Agreement contains no such express provision. (*See* Tr. at 97) Plaintiff suggests that IP implicitly agreed to limit its ability to license others as this is the intent of the License Agreement, as reflected in that agreement's express characterization of the license being granted to Inc. as "an exclusive . . . license." (*Id.*; *see also* D.I. 672 at 25 (contending that License Agreement "makes clear that the intent of the parties was to exclude others")) The law is clear, however, that distinguishing between an exclusive license and a bare license does not turn on the language the parties use to describe the license. *See Textile Prods.*, 134 F.3d at 1484 ("The use of the word 'exclusive' is not controlling; what matters is the substance of the arrangement."); *Ortho Pharm. Corp.*, 52 F.3d at 1032 (explaining "it is the licensee's beneficial ownership of a right to prevent others from making, using or selling the patented technology" that determines if it is exclusive licensee, "not simply that the word 'exclusive' may or may not appear in the license"); *see also generally Vaupel Textilmaschinen KG v. Meccanica Euro Italia SPA*, 944 F.2d 870, 875 (Fed. Cir. 1991) ("[T]he use of the term 'exclusive license' . . . is not dispositive; what the documents in fact recite is dispositive."). The "substance" of the License Agreement is that IP is the sole owner of the patents-in-suit and no provision of that Agreement imposes any legally-binding limitation on IP's ability to grant licenses. Thus, any license IP grants – including the license to Inc. (which is the only license it has granted) – is a nonexclusive license, regardless of what the parties to the license choose to call it.

At best for Plaintiffs, the License Agreement made IP the sole licensee to the patents-in-suit on March 21, 2016, but it did nothing to deprive Inc. of its lawful ability to grant another

license to another party at any subsequent time. The result is that IP is not an exclusive licensee under the law. As VMware correctly points out, “[t]hat no one else has been licensed does not show Cirba IP *cannot* grant more licenses.” (D.I. 715 at 12) (citing *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 956 (Fed. Cir. 2006))

Ultimately, Plaintiffs have failed to demonstrate that IP expressly or even impliedly promised not to grant a license to the patents-in-suit to any entity other than Inc. “To qualify as an exclusive license, an agreement must clearly manifest the patentee’s promise to refrain from granting to anyone else a license in the area of exclusivity.” *Textile Prod.*, 134 F.3d at 1484. The Assignment Agreement and License Agreement do not clearly manifest any such promise. Accordingly, Inc. is a bare licensee, lacks standing to sue, and must be dismissed.

VMware further argues that Inc.’s lack of standing warrants a new trial, as allegations of harm to Inc. – which does business as “Densify” – were “central to [Densify’s] trial presentation and VMware’s rebuttal.” (D.I. 712 at 25) At this time, however, the Court will not grant a new trial based on dismissal of Inc. (although neither is the Court denying that request at this point).

Instead, the Court is not yet sure of the impact of today’s decision on the jury verdict and the parties’ still-pending requests for relief, including VMware’s motions for judgment as a matter of law and/or a new trial. The parties will be given an opportunity to provide additional briefing on these points. The Court is especially interested in understanding the parties’ positions on how the January trial would have looked different had IP been the sole Plaintiff and whether there is any likelihood that the outcome of that trial would have differed if Inc. had not been in the case.<sup>4</sup>

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<sup>4</sup> As best as the Court can discern or recollect, the earliest reference VMware made to its argument that Plaintiff Inc. must be dismissed from the case for lack of standing was in the proposed final pretrial order, which was filed on January 2, 2020, just 11 days before trial. (D.I.

At the same time, the Court will also benefit from additional briefing focused on one of VMware's non-infringement arguments: that Plaintiffs failed to present sufficient evidence at trial to permit the jury reasonably to have found infringement of the '687 patent, given a purported failure of proof on the "virtualized environment" limitation of the claims. VMware presented this as one of multiple bases for judgment of non-infringement (or alternatively for a new trial on infringement) in its post-trial briefing and focused on it during oral argument. Plaintiffs were asked repeated questions during argument about Defendant's position and the Court would benefit from having Plaintiffs' most careful response before determining whether the verdict of infringement can stand.

Accordingly, the parties shall provide further briefing as follows:

A. Simultaneous letter briefs, not to exceed seven (7) pages per side, due on June 11, addressing the following issues:

(i) the impact, if any, that the Court's ruling on standing (a) would have had on the January trial, had the Court dismissed Inc. prior to trial, and (b) has on any motion or request for relief pending before the Court; and

(ii) whether the '687 patent's limitations were met within a particular virtualized environment.

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439) Even at that time, VMware did not request an opportunity to brief the standing issue prior to trial, stating merely that "[t]o the extent that the Court wants to resolve this issue pre-trial, VMware proposes [a] short briefing schedule." (D.I. 439 at 33-34; *see also id.* Ex. 3 at 2 n.2 (noting VMware's proposed briefing schedule "should the Court wish to resolve this issue prior to trial")) The Court decided the day before the pretrial conference that it would defer consideration of standing until after trial, as Plaintiffs had requested. (*See* D.I. 460 at 7)

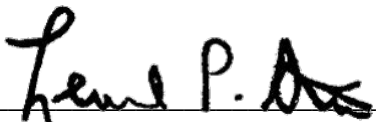
The Court recognizes that the issue of subject matter jurisdiction can be raised at any time. *See, e.g., Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884) (holding that challenge to subject matter jurisdiction may be raised at any time during proceedings, including by court *sua sponte*). Nevertheless, the parties should include in their forthcoming briefing any argument they have as to whether the timing by which the standing issue was raised should affect what (if any) additional relief is warranted due to the dismissal of Inc. as a party.

B. Simultaneous answering letter briefs, not to exceed five (5) pages per side, due on June 19.

C. Simultaneous reply letter briefs, not to exceed three (3) pages per side, due on June 24.

IT IS FURTHER ORDERED that because this Memorandum Order has been issued under seal, the parties shall meet and confer and, no later than tomorrow, **June 4 at 12:00 p.m.**, advise the Court whether any party is requesting any redactions. The Court's present belief is that nothing in this Order needs to be redacted and that the analysis of the standing issue cannot be meaningfully understood without knowing the specific language of the agreements quoted. Nonetheless, should any party believe it can meet the legal standards for any redactions, it shall submit a proposed redacted version of this Order, along with a supporting memorandum containing argument and citation to authority, by the deadline noted above. Thereafter, the Court will release a public version of this Order.

June 3, 2020  
Wilmington, Delaware

  
\_\_\_\_\_  
HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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CIRBA INC. (d/b/a/ DENSIFY)	:	
and CIRBA IP, INC.,	:	
	:	
Plaintiffs/Counter-Defendants,	:	
	:	
v.	:	C.A. No. 19-742-LPS
	:	
VMWARE, INC.,	:	
	:	
Defendant/Counter-Plaintiff.	:	

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VMWARE, INC.,	:	
	:	
Plaintiff/Counter-Defendant,	:	
	:	
v.	:	C.A. No. 20-272-LPS
	:	
CIRBA INC. (d/b/a/ DENSIFY),	:	
	:	
Defendant/Counter-Plaintiff.	:	

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**MEMORANDUM ORDER**

In this Order, the Court addresses all pending motions, including the parties’ post-trial motions, and orders a new, consolidated trial to be held (on a date to be determined) not before 2022.

*A Brief Description of Relevant Case History*

This is a patent infringement suit between competitors in the field of computer infrastructure optimization, including virtual machines. (See C.A. No. 19-742 D.I. 1)<sup>1</sup> On April

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<sup>1</sup>All references to the docket index (“D.I.”) are to C.A. No. 19-742, unless otherwise noted.

25, 2019, Plaintiffs Cirba, Inc. (“Inc.”) and Cirba IP, Inc. (“IP” and, together with Inc., hereinafter “Plaintiffs” or “Densify”) sued VMWARE, Inc. (“VMWARE” or “Defendant”) for infringing U.S. Patent Nos. 8,209,687 (“’687 patent”) and 9,654,367 (“’367 patent”) and for unfair competition in violation of the Lanham Act, 15 U.S.C. § 1125(a), deceptive trade practices under Delaware law, and common law trademark infringement (the latter three claims relating to VMWARE’s alleged misuse of the “Densify Marks,” i.e., “DENSIFY,” “DENSIFICATION,” and “DENSIFYING”). (*Id.*) On May 6, 2019, Plaintiffs moved for a preliminary injunction (D.I. 11), which the Court denied on August 6, 2019 following an all-day hearing (D.I. 137; *see also* D.I. 138). Although the Court found a lack of irreparable harm, the Court agreed to hold an expedited trial, to reduce whatever risk there may have been that VMWARE’s alleged infringement would cause Plaintiffs further harm before the case could be decided on the merits. (*See* D.I. 138 at 196-200) Accordingly, the Court presided over a nine-day jury trial in January 2020, which resulted in a verdict largely in favor of Plaintiffs. (*See* D.I. 550; *see also* D.I. 587-97) Specifically, the jury found: VMWARE willfully infringed the ’687 and ’367 patents; the ’687 patent’s claims were not invalid; and VMWARE owed Plaintiffs \$235,724,765 in damages for infringement of the ’687 patent and \$1,112,111 in damages for infringement of the ’367 patent. (D.I. 550) The jury found that VMWARE was not liable for trademark infringement or for violating the Delaware Deceptive Trade Practices Act. (*Id.*)

In the meantime, VMWARE filed counterclaims in the 19-742 case (i.e., the case that went to trial on Plaintiffs’ patent and trademark allegations in January 2020). (*See* D.I. 150) In its counterclaims, VMWARE alleges that Inc. infringes four VMWARE patents: U.S. Patent Nos. 8,875,266; 10,069,752; 8,336,049; and 9,521,151. (*Id.*)

VMWARE also brought a new suit against Inc. in the Eastern District of Virginia, asserting infringement of four other VMWARE patents: U.S. Patent Nos. 9,379,995; 9,766,945; 10,025,638; and 10,261,842. (*See* C.A. No. 20-272 D.I. 1) In February 2020, the Virginia case was transferred to the District of Delaware. (*See id.* D.I. 64) In March 2020, Inc. answered and asserted a counterclaim for infringement of its U.S. Patent No. 10,523,492 (“492 patent”). (*Id.* D.I. 75)

In the case that had gone to trial in January, both Densify and VMWARE filed post-trial motions, which were argued to the Court on May 15, 2020. (*See* D.I. 758) (“May 15 Tr.”) On June 3, the Court granted a portion of one of Defendant’s motions, finding that Inc. must be dismissed as a plaintiff in C.A. No. 19-742 based on lack of standing. (D.I. 752) The Court then ordered supplemental briefing relating to the impact of the dismissal of Inc. on the remaining motions, seeking the parties’ views “on how the January trial would have looked different had IP been the sole Plaintiff and whether there is any likelihood that the outcome of that trial would have differed if Inc. had not been in the case.” (*Id.* at 10) The parties subsequently provided that briefing. (*See* D.I. 754-55, 761-62, 766-67) IP also moved for reargument and reconsideration of the Court’s order dismissing Inc. for lack of standing. (D.I. 756)

*IP’s Motion for Reargument and Reconsideration*

The Court will deny IP’s motion for reargument and reconsideration, for three independent reasons.<sup>2</sup>

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<sup>2</sup> The purpose of a motion for reconsideration is to “correct manifest errors of law or fact or to present newly discovered evidence.” *Max’s Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). Such a motion is not an opportunity to “accomplish repetition of arguments that were or should have been presented to the court previously.” *Karr v. Castle*, 768 F. Supp. 1087, 1093 (D. Del. 1991). “A proper Rule 59(e)

First, IP has waived the arguments on which its motion is based. The motion is based on *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065, 1072 (Fed. Cir. 2020), which the Federal Circuit issued on May 13, 2020, two days before the Court heard argument on VMWARE’s motion to dismiss. Nearly three more weeks passed before this Court issued its order on the standing motion – but at no point did Plaintiffs bring *Schwendimann* to this Court’s attention or, of course, make any argument based on it. When IP failed to raise its arguments prior to this Court’s decision, it waived its right to make those arguments now. *See Golden Bridge Tech. v. Apple Inc.*, 758 F.3d 1362, 1369 (Fed. Cir. 2014) (stating that argument first raised on “motion for reconsideration comes too late and is ordinarily deemed waived”).

Second, the timing of the issuance of *Schwendimann* means it does not constitute an intervening change in the law sufficient to warrant reconsideration. Even if one were to assume that *Schwendimann* changed the law, it did not change law *after* this Court’s decision. Instead, because *Schwendimann* was issued first, *Schwendimann* did whatever it did before this Court dismissed Inc. Plaintiffs had the opportunity to raise *Schwendimann* with the Court prior to, during, or even after the May 15 oral argument, but they did not do so. “The availability of” a decision “before the Court ruled on the earlier motion means” it “cannot be a change in the controlling law” to support reconsideration. *Search & Soc. Media Partners v. Facebook*, 2019 WL 581616, at \*7 (D. Del. Feb. 13, 2019).

Third, *Schwendimann* addresses a different issue than the one on which the Court’s

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motion . . . must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.” *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010) (internal citation omitted).



standing decision rested. *Schwendimann* considered an issue that arose in light of the Federal Circuit’s opinion in *Lone Star Silicon Innovations LLC v. Nanya Technology Corp.*, 925 F.3d 1225 (Fed. Cir. 2019), which had distinguished between constitutional and statutory standing requirements, and held that allegations of exclusionary rights and infringement are all that is required to meet the threshold for Article III standing, regardless of whether the elements of statutory standing have been met.<sup>3</sup> *Lone Star*, 925 F.3d at 1234-36 (explaining that statutory standing defects are not jurisdictional and “although [plaintiff] does not possess all substantial rights in the asserted patents its allegations still satisfy Article III”). *Schwendimann* did not decide an issue of constitutional standing. See 959 F.3d at 1071 (“[T]here is no ‘standing’ issue to be decided in this appeal.”). As *Schwendimann* expressly states, “whether a party possesses all substantial rights in a patent does *not* implicate standing or subject-matter jurisdiction.” *Id.* at 1071 (emphasis added). Because this Court’s decision to dismiss Inc. *was* based entirely on Inc.’s *lack of constitutional standing* (see D.I. 752), IP’s citation to *Schwendimann* provides no basis for the Court to alter the outcome on the motion to dismiss.

IP’s additional arguments for reconsideration likewise fail. IP contends that Inc.’s corporate relationship with IP confers Article III standing on Inc. (See D.I. 756 at 8) (“Inc. owns

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<sup>3</sup>Plaintiffs never cited *Lone Star* before their motion for reconsideration. Nor would it have helped them had they done so. *Lone Star* found that a plaintiff’s allegations were sufficient to satisfy the requirements of Article III where the plaintiff alleged “that it possess[ed] the sort of exclusionary rights that confer Article III standing” – and in *Lone Star* the agreement between the plaintiff and the patentee “suggest[ed] as much.” 925 F.3d at 1234-36. *Lone Star* confirmed that the “constitutional threshold” is the possession of exclusionary rights. *Id.* at 1234-35. Here, by contrast, Plaintiffs do not allege that Inc. has exclusionary rights, nor could they. (See, e.g., D.I. 752 at 8) (“[W]hile *Inc. is free to practice* the patents-in-suit as it wishes, *IP is free to enforce (or not enforce) its exclusionary rights* in connection with the patents-in-suit as it, IP, wishes. Hence, Inc. lacks any right to exclude . . . .”)

all of IP, shares the same officers as IP, shares the same address as IP, maintains the patents-at-issue with the PTO for IP, directs every act IP takes (including its licensing policy), has not (and would not [have]) allowed IP to license the patents-at-issue to anyone other than Inc., and has always acted as the sole and exclusive licensee responsible for enforcement of the patents.”) But Inc.’s corporate relationship to IP does not automatically confer Article III standing. *See, e.g., Spine Sols., Inc. v. Medtronic Sofamor Danek USA, Inc.*, 620 F.3d 1305, 1317-18 (Fed. Cir. 2010) (nonexclusive-licensee parent lacked standing). Rather, Article III standing hinges on exclusionary rights, *see, e.g., Lone Star*, 925 F.3d at 1234-35, which Inc. lacks (*see* D.I. 752 at 8).

IP also argues that Inc. could have been joined in the 19-742 action through permissive intervention – without needing to establish its own Article III standing – because of the Court’s subject matter jurisdiction over IP’s patent claims. (D.I. 756 at 7-9) The Court disagrees. As VMWARE observes, Plaintiffs together seek relief beyond what IP as a sole plaintiff could obtain: equitable relief based on Inc.’s status as a competitor of VMWARE, and a permanent injunction based on competitive harm to Inc. Where, as here, intervention by Inc. could broaden the consequences for VMWARE’s actions, permissive intervention (without independent Article III standing) would not be appropriate. *See Town of Chester v. Laroe Ests., Inc.*, 137 S. Ct. 1645, 1651 (2017) (intervenor-plaintiff “must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing”).

Thus, the Court will deny the motion for reconsideration or reargument. Inc. remains dismissed as a plaintiff in the 19-742 action.

*New Trial on IP's Patent Infringement Allegations*

The Court must next confront whether to order a new trial on IP's claims that VMWARE infringes IP's '687 and '367 patents. The Court concludes that the best exercise of its discretion is to do so. Had Inc. been dismissed in advance of the January trial, that trial would have looked so materially different that it is quite probable the outcome would also have been different. *See generally GN Netcom, Inc. v. Plantronics, Inc.*, 930 F.3d 76, 88-89 (3d Cir. 2019) (granting new trial on remand where evidentiary error at first trial was not harmless, resulting in appellate court lacking "sure conviction that the error did not prejudice" party that lost at trial). Under the totality of the circumstances, the Court concludes it would be against the interests of justice to permit the verdict to stand. *See generally Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1352-53 (3d Cir. 1991) (recognizing new trial may be granted where "a miscarriage of justice would result if the verdict were to stand").

Federal Rule of Civil Procedure 59(a)(1)(A) provides that a new trial may be granted "for any reason for which a new trial has heretofore been granted in an action at law in federal court." Among the most common reasons for granting a new trial are: (1) the jury's verdict is against the clear weight of the evidence and a new trial must be granted to prevent a miscarriage of justice, *see Roebuck v. Drexel Univ.*, 852 F.2d 715, 717 (3d Cir. 1988); (2) newly discovered evidence exists that would likely alter the outcome of the trial, *see Bohus v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991); (3) improper conduct by an attorney or the court unfairly influenced the verdict, *see Greenleaf v. Garlock, Inc.*, 174 F.3d 352, 363 (3d Cir. 1999); or (4) the jury's verdict was facially inconsistent, *see Mosley v. Wilson*, 102 F.3d 85, 90 (3d Cir. 1996). A new trial on the basis that the verdict was against the weight of the evidence should be granted only where "a

miscarriage of justice would result if the verdict were to stand,” the verdict “cries out to be overturned,” or the verdict “shocks [the] conscience.” *Williamson*, 926 F.2d at 1352-53. The decision to grant or deny a new trial is committed to the sound discretion of the district court. *See Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 36 (1980); *Olefins Trading, Inc., v. Han Yang Chem. Corp.*, 9 F.3d 282, 289 (3d Cir. 1993) (reviewing district court’s grant or denial of new trial motion under deferential abuse of discretion standard).

VMWARE persuasively articulates various ways in which the January trial would have looked quite different had Inc. been dismissed prior to trial. Most importantly, Densify’s overarching theme – that it was successfully competing with the much larger VMWARE, prompting VMWARE to try to buy Densify and (when that failed) ultimately to copy and steal Densify’s better technology, a gambit that if not corrected by the jury would drive Densify out of business – would almost certainly not have been permitted, had IP been the sole plaintiff at trial.

IP does not sell or offer for sale products and services. (*See, e.g.*, Trial Transcript (“TT”) at 1014) (“Cirba, Inc., which is effectively the operating company of Densify . . . [is] the one that sold the products[;] it’s the one that developed and maintained the software.”) It is Inc., not IP, that competes in the marketplace with VMWARE. (*See, e.g., id.*; D.I. 754 at 1-2) Accordingly, it would have been difficult (if even possible) for IP to have fairly portrayed itself as a competitor of VMWARE. The overall framework of IP’s case necessarily would have been very different, as IP would have had to articulate the harm it suffered as a non-competitor rather than as a competitor. VMWARE’s responsive case, too, would have changed.

Consequently, much if not all of the evidence “Densify” was permitted to present at the January trial about competition and harm would likely have been excluded. If Inc. had not been a

party to the January trial, and IP had been the sole plaintiff, IP would likely not have been permitted to attempt to prove and argue that VMWARE unfairly focuses on taking out its competitors (*see, e.g.*, TT at 185-86, 1760-61, 1784-85); that “Densify” was “scared to death” about “get[ting] rolled over by the 800-pound gorilla [VMWARE]” in the marketplace (*id.* at 179, 185); or that “Densify” was motivated to assert its patent rights and litigate in an effort to compete and survive (*see, e.g., id.* at 162 (“The evidence will show that [Densify] had to protect its patents or perish.”), 180-81, 184-86, 187 (“We came into the spring of 2019, it was either file a lawsuit or the company wasn’t going to make it.”), 1756 (“Densify is here fighting for its life.”), 1792-93 (“[T]he jury [will] decide[] the fate of the company . . .”), 1886, 1888-91). These were themes that Plaintiffs emphasized right from their opening statement. (*See, e.g., id.* at 179 (“VMWARE calls itself the 800-pound gorilla, and no one wants to pick a fight with the 800-pound gorilla. Nobody wanted to sue. [Densify] wanted to work with them, figure out a way to compete. And, you know, they were scared . . .”), 181 (stating Densify was “scared about getting crushed.”)) With only a non-practicing IP as the sole plaintiff at trial, it is likely that the minimal probative value of much of this type of “competitive evidence” would have been substantially outweighed by its unfairly prejudicial, potentially misleading, and confusing nature; it would also likely have looked to the Court as if admitting this evidence could easily “waste” time by making trial substantially longer than was necessary. *See* Federal Rule of Evidence 403.

IP’s arguments to the contrary are unpersuasive. According to IP, the Court would have admitted all the same evidence even if Inc. had been dismissed because Inc. owned the ’687 and ’367 patents during the 2007 discussions between the parties, during VMWARE’s 2015 contemplated acquisition of Densify, and into 2016 – as IP did not even exist until March 2016.

(D.I. 761 at 1) To Plaintiffs, the hypothetical negotiation in 2012 (the date of alleged first infringement) would have been the same as what was presented at the January trial, since, again, Inc. owned the patents-in-suit at that date. (*See id.*) The Court lacks IP's confidence that it would have agreed to allow all the same evidence and argument had Inc. not been part of the trial. Plaintiffs' damages expert, Mr. Bergman, did not distinguish between Inc. and IP when analyzing the hypothetical negotiations. (*See* D.I. 762 at 1; TT at 930) Had Inc.'s lack of standing been determined before trial, the parties' damages presentations would have focused on damages suffered by the sole plaintiff, IP. It is unclear whether IP could have been permitted also to present evidence and argument based on damages that had previously been suffered by Inc. (*See generally* D.I. 439 at 31) (VMWARE stating in proposed pretrial order: "as a matter of law, Cirba IP, Inc. may not recover any alleged lost profits sustained by Cirba Inc.") In short, the Court's present belief is that the evidence admitted and arguments allowed at trial would have been materially different had Inc. been dismissed prior to trial.<sup>4</sup>

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<sup>4</sup>Plaintiffs argue that VMWARE waited too long to raise its challenge to Inc.'s standing. (*See, e.g.*, D.I. 755 at 1-2) The Court disagrees. A challenge to constitutional standing goes to the Court's subject matter jurisdiction and may be raised at any time. *See, e.g., Frett-Smith v. Vanterpool*, 511 F.3d 396, 398 n.3 (3d Cir. 2008) ("A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action. . . .") (internal quotation marks omitted). In any event, given how quickly this case was litigated (at Plaintiffs' request), the Court is persuaded that VMWARE's reference to the standing dispute in the proposed pretrial order (*see* D.I. 439 at 4-5, 33-34) – which was filed, according to the schedule set by the Court, on January 2, 2020, 11 days before trial began and only eight months after the case had been filed (*see* D.I. 439, 440; *see also* D.I. 373 (schedule for exchange of pretrial submissions); D.I. 407 (revising pretrial order deadline)) – was sufficiently timely. It is also worth noting that Densify has consistently objected to the Court focusing on the standing issue, prior to and even after trial. (*See, e.g.*, D.I. 439 at 5 ("Cirba Inc.'s position is that it has standing, and that challenge to standing on the eve of trial has no basis."); *id.* at 34 ("Given that VMWARE has waited until this point to raise the issue with the Court, Densify suggests that it be addressed post-trial if helpful to the Court given Densify's limited resources."); D.I. 739 at 1 (Densify complaining "VMWARE insisted that the Court prioritize resolution of its argument that Cirba Inc. lacks standing before

Based on these conclusions, the Court has further decided that it should grant VMWARE's request for a new trial. For the reasons already stated, Densify's case theory and trial presentation would have required a significant shift had Inc. – the party competing in the marketplace with VMWARE – been dismissed pretrial. In that instance, the outcome of the case could very well have been different. There is, in the Court's view, too great a chance that the jury's assessment of the infringement and invalidity evidence was swayed by evidence and argument that – with the clarity of hindsight – should not have been permitted to allow the verdict to stand. Fundamentally, there is a “high probability” that the outcome of the January trial would have been different if the Court had ruled on the standing issue prior to trial, which leaves the Court without a “sure conviction” that the error of allowing Inc. to be a plaintiff at that trial “did not prejudice” VMWARE. *GN Netcom*, 930 F.3d at 88-89.<sup>5</sup>

Contributing to this conclusion is the fact that Plaintiffs' evidence of infringement was, at best, weak. Given the Court's decision to grant a new trial, the Court is not deciding whether

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any other post-trial briefing could be completed”))

<sup>5</sup>The Court's decision to grant a new trial is based on all of the reasons discussed throughout this section of this Memorandum Order, not just application of the *GN Netcom* standard. VMWARE cited *GN Netcom* as support for its new trial request in its supplemental opening letter brief (*see* D.I. 754 at 1) as well as its supplemental opposition and reply letter briefs (*see* D.I. 762 at 1; D.I. 767 at 1), while Densify did not address *GN Netcom* in any of its supplemental submissions (*see* D.I. 755, 761, 766). Based on arguments VMWARE made from its opening post-trial brief (*see, e.g.*, D.I. 712 at 25) (arguing that Inc.'s lack of standing warranted new trial, as allegations of harm to Inc. were central to Densify's trial presentation and to VMware's rebuttal), the Court has been consistently interested in the parties' views on whether the outcome of the January trial could have been influenced by the improper presence of Inc. (*see, e.g.*, May 15 Tr. at 100-02; D.I. 752 at 10 (directing supplemental briefing on “whether there is any likelihood that the outcome of that [January] trial would have differed if Inc. had not been in the case”)). At no point has Densify suggested that it is wrong for the Court to have this concern and to factor it into its analysis of the new trial motion.

Plaintiffs presented sufficient evidence at the January trial to sustain the jury's verdicts of infringement. Instead, the portions of VMWARE's motion seeking judgment of non-infringement as a matter of law will be denied without prejudice. Nevertheless, the Court has carefully considered Plaintiffs' repeated efforts to explain how the trial record contains sufficient evidence (consistent with the Court's claim constructions) to support the infringement verdicts (*see, e.g.*, D.I. 672, 755, 761, 766; *see also* May 15 Tr. at 31-42) and can only say it remains skeptical. But rather than make a final determination on this point, the Court believes the best exercise of its discretion is to require a new trial (for all of the reasons stated).<sup>6</sup>

The Court finds further support for its conclusion in what occurred during closing arguments. The main point of VMWARE's closing argument seemed to be that Densify never really thought VMWARE infringed its patents but was manipulated by greedy investors to sue its successful rival in a desperate attempt to allow those investors to realize a profit. (*See, e.g.*, TT at 1824, 1829, 1853) (VMWARE's counsel arguing this "lawsuit is a fabrication" by disappointed investors, "manufactured by lawyers," and accusing Plaintiffs of "playing the lottery" by "pay[ing] lawyers \$2 million maybe . . . and . . . ask[ing a jury] for \$230 million," concluding "that is not what our justice system is for") In its rebuttal argument, Densify responded by telling the jury that VMWARE knew that Densify had long ago investigated infringement by VMWARE (*see id.* at 1879-80) – an assertion that lacked an evidentiary basis and potentially undermined the credibility of everything VMWARE had told the jury throughout

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<sup>6</sup>The Court recognizes that its uncertainty on this point, and decision not to decide the sufficiency of the evidence question, may lead to further disputes as the parties prepare for the new trial. This is a regrettable, but potentially inevitable, consequence of the Court's discretionary decision to order a new trial.



trial. (See, e.g., D.I. 712 at 23) (VMWARE: “A key theme of VMWARE’s closing was to ask why no pre-suit communications raised infringement concerns. In rebuttal, [Plaintiffs] represented to the jury that VMWARE ‘knew darn well why there’s no documents of a[] [pre-suit] investigation. Because it is with lawyers and it is privileged. . . .’ [Plaintiffs’] assertion left the jurors with . . . misimpressions [including that] VMWARE repeatedly lied to the jurors about a key defense theme.”) (internal citations to trial transcript omitted) The Court has not been persuaded to grant a new trial solely on the basis of Densify’s rebuttal, as VMWARE requested as alternative relief (*see id.* at 23-24), but the Court is sufficiently troubled by **both sides’ closing arguments** that it, again, finds it most appropriate (in connection with all the other issues identified) to order a new trial.

Other occurrences at the January trial provide still further support for the Court’s decision. For instance, Densify, somewhat oddly, told the jury it brought its trademark claims because it was “insult[ed]” by VMWARE. (TT at 1786-87) (“Densify asked us to bring this trademark claim against VMWARE not for a bunch of money, it’s really up to you if you want to award any money, it was because it was insulting.”) For its part, VMWARE confusingly asked the jury to rule **against it** on its invalidity defenses. (*Id.* at 1846 (“We don’t want you to find their patent invalid. We don’t. . . . We don’t want you to invalidate their patent. We just think you ought to say no to everything on the verdict form. We don’t infringe. Their patent is valid. We go home and we compete.”); *see also id.* at 1870-71) Both sides, then, seemed to be telling the jury (through these comments and others) that the trial was about something other than the merits of the claims they were pressing.

Every trial has its share of surprises and twists that speed by before any party (or the

Court) objects or intervenes. The Court's decision today is not based on any singular event at the January trial. Instead, it is the accumulation of events, as described in this Memorandum Order, that persuade the Court a new trial is warranted.

In sum, and considering the totality of the circumstances, the Court concludes that the most appropriate exercise of its discretion is to order a new trial. *See generally McMillan v. Weeks Marine, Inc.*, 478 F. Supp. 2d 651, 658-60 (D. Del. 2007) (granting new trial where evidence should have been excluded at trial yet was admitted and relied on by jury in rendering verdict); *Intellectual Ventures I, LLC v. Canon, Inc.*, 104 F. Supp. 3d 629, 659 (D. Del. 2015) (same based on improper statements in closing argument).

*The Court Will Hold a Single, Consolidated Trial on All the Parties' Patent Disputes*

Densify has moved pursuant to Federal Rule of Civil Procedure 42(a) to consolidate Civil Actions 19-742 (i.e., the case in which the January trial was held) and 20-272 (i.e., the transferred Virginia action). (D.I. 639) "The purpose of consolidation is to streamline and economize pretrial proceedings so as to avoid duplication of effort, and to prevent conflicting outcomes in cases involving similar legal and factual issues." *In re TMI Litig.*, 193 F.3d 613, 724 (3d Cir. 1999) (internal quotation marks omitted). The Court has broad discretion to determine whether to consolidate cases. *See In re Mock*, 398 F. App'x 716, 718 (3d Cir. 2010); *see also Abbott Diabetes Care, Inc. v. Dexcom, Inc.*, 2007 WL 2892707, at \*3 (D. Del. Sept. 30, 2007) (stating determination requires balancing considerations of "efficiency, expenses, and fairness").

The Court agrees with Densify that "[t]he two cases involve the same parties, many of the same accused products, and the same underlying technology. As a natural consequence, the cases will involve many of the same witnesses, documents, and source code." (D.I. 640 at 1)

Additionally, given the unfortunate effect of the ongoing coronavirus pandemic on the Court's docket, finding time on the Court's calendar for trials (once jury trials restart in this District, which has not yet occurred) presents an extraordinary challenge. *See generally Guardant Health, Inc. v. Found. Med., Inc.*, 2020 WL 6120186, at \*1 (D. Del. Oct. 16, 2020) ("There are at least 200 civil jury trials scheduled for 2021 in the District of Delaware (a count which does not include criminal trials, which must take priority, and also does not include civil trials that have been continued and are still awaiting a new trial date), and due to current restrictions only one jury trial can proceed at a time."). The Court now finds it will be most efficient for discovery and motions practice (to the extent these are not already concluded) to be completed with respect to all patents asserted by both sides together, culminating in a single, consolidated trial.

The interests of judicial economy strongly favor consolidation, to permit a single trial on IP's allegations of infringement of its '687 and '367 patents (i.e., the retrial), VMWARE's validity challenges, and damages for any infringement that may be proven of a valid claim; all issues relating to IP's '492 patent, which it asserted as a counterclaim in 20-272; and the eight patents VMWARE has asserted as counterclaims in 19-742 and as claims in 20-272.

Consolidation will not unfairly prejudice VMWARE. The Court expedited trial on IP's '687 and '367 patents for reasons that do not apply to VMWARE, so any suggestion that VMWARE is entitled to trial sooner than Plaintiffs should be permitted to try (or retry) their infringement claims is unavailing. (*See, e.g., generally* D.I. 937) (VMWARE's Dec. 16, 2020 letter opposing move of September 2021 trial date "particularly as VMWARE's counterclaims have been pending since August 2019") The Court recently extended the discovery period in relation to VMWARE's four asserted patents in the 19-742 action. (*See* D.I. 927; *see also* D.I.

937) It is no longer realistic to believe a trial on those patents can reasonably be accomplished in September 2021, for reasons specific to this case as well as the general challenges confronting the Court's calendar. Hence, the Court's consolidation decision is not depriving VMWARE of anything that the Court could otherwise realistically give it (e.g., a separate trial on only its patents in 2021).

The Court recognizes that the consolidated 11-patent trial will be challenging for the parties, the Court, and especially the jury. But, having presided over a trial with these parties (and their large trial teams) once before, the Court is confident that – with sufficient time for pretrial proceedings and preparation – the challenges posed by a case of this scale and complexity can and will be met.

*Motion for Summary Judgment of No Willful Infringement*

The Court advised the parties after trial, by letter dated February 10, 2020, that it was not inclined to enhance damages, as “it does not seem to me that VMWARE has been shown to have acted egregiously.” (D.I. 575 at 1) Having carefully reviewed the parties' briefs and heard argument, it remains the Court's strong inclination that it would not enhance damages, even if the jury's verdict of willful infringement were being upheld (which it isn't, as the Court is instead granting a new trial). Moreover, given the Court's dismissal of Inc. – which the Court expects will eliminate much of the evidence and themes Densify was permitted to present at the January 2020 trial – it seems inevitable that IP's evidence of willfulness, and egregiousness, with respect to the '687 and '367 patents will be even weaker than what is currently in the record. Accordingly, it might be appropriate for the Court to make a decision prior to the new trial whether it would exercise its discretion to enhance damages – and, if it would not, to then grant

summary judgment to VMWARE and not retry willfulness. *See, e.g., Greatbatch Ltd. v. AVX Corp.*, 2018 WL 1568872, at \*6-7 (D. Del. Mar. 30, 2018).

The Court will permit VMWARE to press a motion seeking such relief should it wish to do so.

*Other Motions and Schedule for Going Forward*

The other motions not already addressed in this Order, as well as certain portions of the motions already addressed, present disputes that are either mooted by the Court's rulings or relate to issues on which the Court will be willing to hear from the parties following the new trial. The disposition of each motion is listed below.

The parties will be directed to meet and confer and to submit a proposed consolidated schedule, to complete whatever discovery remains to be conducted with respect to any patent asserted by either side, to brief whatever motions are appropriate, and to propose a time frame for a consolidated trial (to be held sometime in 2022 or beyond). After considering the parties' proposal(s), the Court will issue a schedule.

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Accordingly, for the reasons stated above, IT IS HEREBY ORDERED that:

1. VMWARE's motion for judgment as a matter of law, for a new trial, and remittitur (D.I. 601) is GRANTED as it relates to the request for a new trial and DENIED WITHOUT PREJUDICE in all other respects.<sup>7</sup>
2. Plaintiffs' motion for post-trial relief (D.I. 604) is DENIED WITHOUT

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<sup>7</sup>Today's Order in no way modifies the Court's previous grant of the portion of VMWARE's motion that sought to dismiss Cirba Inc. for lack of standing. (*See* D.I. 752)

PREJUDICE.

3. Plaintiffs' motion to consolidate cases (D.I. 639) is GRANTED.

4. Plaintiffs' motion for leave to file a sur-reply brief (D.I. 703) is DENIED AS

MOOT.

5. VMWARE's motion for leave to file a sur-reply (D.I. 704) is DENIED AS

MOOT.

5. VMWARE's motion to strike (D.I. 731) is DENIED WITHOUT PREJUDICE.

6. Densify's motion for reargument and reconsideration (D.I. 756) is DENIED.

7. VMWARE's motion to redact transcript (D.I. 785) is GRANTED.

8. Cirba IP, Inc.'s motion to redact transcript (D.I. 890) is GRANTED.

9. The parties shall meet and confer and, no later than January 8, 2021, submit a proposed schedule, consistent with the rulings in this Order, leading to a consolidated trial in 2022 or thereafter, and including all necessary interim obligations and deadlines.

December 21, 2020  
Wilmington, Delaware



HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT COURT

6/10/2021

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**U.S. District Court  
District of Delaware (Wilmington)  
CIVIL DOCKET FOR CASE #: 1:19-cv-00742-LPS**

Cirba Inc. et al v. VMware, Inc.  
Assigned to: Judge Leonard P. Stark  
Related Cases: [1:20-cv-00480-LPS](#)  
[1:20-cv-00272-LPS](#)  
Cause: 35:1 Patent Infringement

Date Filed: 04/25/2019  
Jury Demand: Plaintiff  
Nature of Suit: 830 Patent  
Jurisdiction: Federal Question

**Special Master**  
**John W. Shaw**

**Plaintiff**

**Cirba Inc.**  
*(d/b/a Densify)*  
*TERMINATED: 06/03/2020*

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V.

**Counter Defendant**

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**Counter Defendant**

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(d/b/a Densify)  
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**Counter Claimant**

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Date Filed	#	Docket Text
04/25/2019	<a href="#">1</a>	COMPLAINT FOR PATENT INFRINGEMENT - filed with Jury Demand against VMware, Inc. - Magistrate Consent Notice to Pltf. (Filing fee \$ 400, receipt number 0311-2627802) - filed by Cirba Inc. and Cirba IP, Inc. (Attachments: # <a href="#">1</a> Exhibits 1-36, # <a href="#">2</a> Civil Cover Sheet)(amf) Modified on 4/25/2019 (amf). (Entered: 04/25/2019)
04/25/2019	<a href="#">2</a>	Notice, Consent and Referral forms re: U.S. Magistrate Judge jurisdiction. (amf) (Entered: 04/25/2019)
04/25/2019	<a href="#">3</a>	Report to the Commissioner of Patents and Trademarks for Patent/Trademark Number(s) 8,209,687 B2 and 9,654,367 B2. (amf) (Entered: 04/25/2019)
04/25/2019	<a href="#">4</a>	Disclosure Statement pursuant to Rule 7.1: identifying Corporate Parent Cirba Inc. for Cirba IP, Inc. - filed by Cirba IP, Inc. and Cirba Inc. (amf) Modified on 4/25/2019 (amf). (Entered: 04/25/2019)
04/25/2019	<a href="#">5</a>	NOTICE of filing the following non-paper material(s) in multi media format: DVD containing videos cited in Plaintiffs' Complaint as Exhibits 31-36, which correspond to Exhibits 1-3, 7, 11, 15, 29, and 30. Original non-paper material(s) to be filed with the Clerk's Office. Notice filed by Kenneth Laurence Dorsney on behalf of Cirba IP, Inc. and Cirba Inc. (amf) (Entered: 04/25/2019)
04/25/2019		Summons Issued with Magistrate Consent Notice attached as to VMware, Inc. on 4/25/2019. Requesting party or attorney should pick up issued summons at the Help Desk, Room 4209, or call 302-573-6170 and ask the Clerk to mail the summons to them. (amf) (Entered: 04/25/2019)
04/26/2019	<a href="#">6</a>	SUMMONS Returned Executed by Cirba Inc., Cirba IP, Inc.. VMware, Inc. served on 4/26/2019, answer due 5/17/2019. (Dorsney, Kenneth) (Entered: 04/26/2019)
05/01/2019		Case Assigned to Judge Leonard P. Stark. Please include the initials of the Judge (LPS) after the case number on all documents filed. (rjb) (Entered: 05/01/2019)
05/02/2019	<a href="#">7</a>	MULTI MEDIA DOCUMENT filed by Cirba IP, Inc., Cirba Inc. in the form of a DVD. Filing related to <a href="#">5</a> Notice of Filing Multi Media Materials, <a href="#">1</a> Complaint. (Media on file in Clerk's Office). (ntl) (Entered: 05/02/2019)
05/03/2019	<a href="#">8</a>	MOTION for Pro Hac Vice Appearance of Attorney Courtland L. Reichman, Attorney Sarah O. Jorgensen, Attorney Christine E. Lehman, Attorney Shawna L. Ballard, Attorney Jennifer Estremera, Attorney Phillip Lee, Attorney Michael G. Flanigan, Attorney Joachim B. Steinberg, and Attorney Jaime F. Cardenas-Navia - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/03/2019)
05/06/2019	<a href="#">9</a>	MOTION for Leave to File Under Seal - filed by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> 7.1.1 Certification, # <a href="#">2</a> Text of Proposed Order)(Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">10</a>	MOTION and [Proposed] Order for Page Limit Extension - filed by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> 7.1.1 Certification) (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">11</a>	MOTION for Preliminary Injunction - filed by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> 7.1.1 Certification, # <a href="#">2</a> Text of Proposed Order)(Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">12</a>	[SEALED] OPENING BRIEF in Support re <a href="#">11</a> MOTION for Preliminary Injunction filed by Cirba IP, Inc., Cirba Inc.. Answering Brief/Response due date per Local Rules is 5/20/2019. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">13</a>	DECLARATION re <a href="#">12</a> Opening Brief in Support of Plaintiffs' Motion for Preliminary Injunction (executed by Dr. Vijay Madiseti) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/06/2019)

6/10/2021

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05/06/2019	<a href="#">14</a>	[SEALED] DECLARATION re <a href="#">12</a> Opening Brief in Support of Plaintiffs' Motion for Preliminary Injunction (executed by Andrew Hillier) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">15</a>	[SEALED] DECLARATION re <a href="#">12</a> Opening Brief in Support of Plaintiffs' Motion for Preliminary Injunction (executed by Riyaz Somani) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">16</a>	MOTION for Hearing and Expedited Discovery - filed by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> 7.1.1 Certification, # <a href="#">2</a> Text of Proposed Order)(Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">17</a>	[SEALED] OPENING BRIEF in Support re <a href="#">16</a> MOTION for Hearing and Expedited Discovery filed by Cirba IP, Inc., Cirba Inc.. Answering Brief/Response due date per Local Rules is 5/20/2019. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">18</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: Certain Exhibits referenced in the Declarations of Mr. Andrew Hillier and Dr. Vijay Madiseti in support of Plaintiffs' Motion for Preliminary Injunction. Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Kenneth Laurence Dorsney on behalf of Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">19</a>	NOTICE of Appearance by Anne Shea Gaza on behalf of VMware, Inc. (Gaza, Anne) (Entered: 05/06/2019)
05/06/2019	<a href="#">20</a>	NOTICE of Appearance by Samantha G. Wilson on behalf of VMware, Inc. (Wilson, Samantha) (Entered: 05/06/2019)
05/06/2019	<a href="#">21</a>	REDACTED VERSION of <a href="#">12</a> Opening Brief in Support of Motion for Preliminary Injunction by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">22</a>	REDACTED VERSION of <a href="#">14</a> Declaration of Andrew Hillier by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">23</a>	MOTION for Pro Hac Vice Appearance of Attorney Michael A. Jacobs and Attorney Christopher J. Wiener - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 05/06/2019)
05/06/2019	<a href="#">24</a>	REDACTED VERSION of <a href="#">15</a> Declaration of Riyaz Somani by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">25</a>	REDACTED VERSION of <a href="#">17</a> Opening Brief in Support of Motion for Hearing and Expedited Discovery by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/06/2019)
05/06/2019	<a href="#">26</a>	MOTION for Pro Hac Vice Appearance of Attorney Richard S. J. Hung - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 05/06/2019)
05/06/2019	<a href="#">27</a>	MOTION for Pro Hac Vice Appearance of Attorney Jennifer Luh - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 05/06/2019)
05/06/2019	<a href="#">28</a>	MOTION for Pro Hac Vice Appearance of Attorney Bitra Rahebi - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 05/06/2019)
05/07/2019		SO ORDERED, re <a href="#">26</a> MOTION for Pro Hac Vice Appearance of Attorney Richard S. J. Hung filed by VMware, Inc., <a href="#">23</a> MOTION for Pro Hac Vice Appearance of Attorney Michael A. Jacobs and Attorney Christopher J. Wiener filed by VMware, Inc., <a href="#">8</a> MOTION for Pro Hac Vice Appearance of Attorney Courtland L. Reichman, Attorney Sarah O. Jorgensen, Attorney Christine E. Lehman, Attorney Shawna L. Ballard, Attorney Jennifer Estremera, Attorney Phillip Lee, Attorney Michael G. Flanigan, Attorney Joachi filed by Cirba Inc., Cirba IP, Inc., <a href="#">27</a> MOTION for Pro Hac Vice Appearance of Attorney Jennifer Luh filed by VMware, Inc., <a href="#">28</a> MOTION for Pro Hac Vice Appearance of Attorney Bitra Rahebi filed by VMware, Inc. Signed by Judge Leonard P. Stark on 5/7/19. (ntl) (Entered: 05/07/2019)
05/07/2019	<a href="#">29</a>	MOTION for Pro Hac Vice Appearance of Attorney Scott F. Llewellyn - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 05/07/2019)
05/08/2019		Pro Hac Vice Attorneys Courtland L. Reichman, Sarah O. Jorgensen, Shawna L. Ballard, Jennifer Estremera, Phillip Lee, Michael G. Flanigan, Joachim B. Steinberg, and Jaime F Cardenas-Navia for Cirba IP, Inc. and Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (amf) (Entered: 05/08/2019)
05/08/2019		Pro Hac Vice Attorney Christine E. Lehman for Cirba IP, Inc., for Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (myr) (Entered: 05/08/2019)
05/09/2019		Pro Hac Vice Attorney Christopher J. Wiener for VMware, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (amf) (Entered: 05/09/2019)
05/09/2019	<a href="#">30</a>	ORDER re <a href="#">9</a> MOTION for Leave to File Under Seal filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 5/8/19. (ntl) (Entered: 05/09/2019)
05/09/2019		SO ORDERED, re <a href="#">10</a> MOTION and [Proposed] Order for Page Limit Extension filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 5/8/19. (ntl) (Entered: 05/09/2019)
05/09/2019	<a href="#">31</a>	MULTI MEDIA DOCUMENT filed by Cirba IP, Inc., Cirba Inc. in the form of a DVD. Filing related to <a href="#">11</a> MOTION for Preliminary Injunction , <a href="#">12</a> Opening Brief in Support, <a href="#">13</a> Declaration, <a href="#">14</a> Declaration, <a href="#">18</a> Notice of Filing Multi Media Materials. (Media on file in Clerk's Office). (ntl) (Entered: 05/09/2019)
05/09/2019		SO ORDERED, re <a href="#">29</a> MOTION for Pro Hac Vice Appearance of Attorney Scott F. Llewellyn filed by VMware, Inc. Signed by Judge Leonard P. Stark on 5/9/19. (ntl) (Entered: 05/09/2019)
05/10/2019	<a href="#">32</a>	ORAL ORDER: Having reviewed Plaintiff's motions and related materials (see D.I. 11-17), IT IS HEREBY ORDERED that: (i) no later than Wednesday, May 15, Defendants shall file their response to Plaintiff's motion for expedited discovery and their proposal for how this case should proceed; and (ii) no later than Friday, May 17, Plaintiff shall file a reply. The Court will determine thereafter whether a teleconference or other proceeding is required. ORDERED by Judge Leonard P. Stark on 5/10/19. (ntl) (Entered: 05/10/2019)
05/10/2019	<a href="#">33</a>	Joint STIPULATION TO EXTEND TIME for Defendant to move against, answer, or otherwise plead in response to Plaintiffs' Complaint to June 17, 2019 - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 05/10/2019)
05/14/2019		SO ORDERED, re <a href="#">33</a> Joint STIPULATION TO EXTEND TIME for Defendant to move against, answer, or otherwise plead in response to Plaintiffs' Complaint to June 17, 2019 filed by VMware, Inc. Signed by Judge Leonard P. Stark on 5/14/19. (ntl) (Entered: 05/14/2019)
05/15/2019	<a href="#">34</a>	RESPONSE to Motion re <a href="#">16</a> MOTION for Hearing and Expedited Discovery filed by VMware, Inc.. (Gaza, Anne) (Entered: 05/15/2019)

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		05/15/2019)
05/17/2019	<a href="#">35</a>	STIPULATION and [Proposed] Order extending VMwares deadline to file an opposition to Cirbas Motion for a Preliminary Injunction to May 30, 2019, or such other date that the Court may order by VMware, Inc.. (Wilson, Samantha) (Entered: 05/17/2019)
05/17/2019	<a href="#">36</a>	MOTION to File Reply Brief in support of Plaintiffs' Motion for Expedited Discovery Under Seal - filed by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Dorsney, Kenneth) (Entered: 05/17/2019)
05/17/2019	<a href="#">37</a>	[SEALED] REPLY BRIEF re <a href="#">16</a> MOTION for Hearing and Expedited Discovery filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/17/2019)
05/21/2019		SO ORDERED, re <a href="#">35</a> Stipulation and Order filed by VMware, Inc. Signed by Judge Leonard P. Stark on 5/20/19. (ntl) (Entered: 05/21/2019)
05/22/2019	<a href="#">38</a>	ORAL ORDER: Having reviewed the parties' briefing (D.I. 16, 17, 34, 37), IT IS HEREBY ORDERED that Defendant shall, no later than June 7, file a brief in response to the motion for preliminary injunction (D.I. 11), sufficient to allow the parties and the Court to understand what disputes may need to be resolved in connection with Plaintiffs' motion. IT IS FURTHER ORDERED that Plaintiffs' Motion for Hearing and Expedited Discovery (D.I. 16) is GRANTED. Accordingly, the parties shall: (1) conduct expedited discovery from June 10 to July 17, which shall include: (i) written discovery, with responses due 14 days after service, (ii) one Rule 30(b)(6) deposition each, and (iii) depositions of the other party's declarants (as well as Ajay Singh) and/or other relevant third parties; (2) no later than July 24, simultaneously submit post-discovery supplemental briefing not to exceed 10 pages (double spaced); and (3) no later than July 29, simultaneously submit reply briefing not to exceed 5 pages (double spaced). If Defendant files its proposed motion to dismiss, briefing shall proceed in accordance with the local rules, and in that event Defendant's motion will be argued at the same hearing as Plaintiff's motion. The Court will hold a hearing on Tuesday, August 6 at 10:00 a.m. Each side will be allocated two (2) hours for its presentation. ORDERED by Judge Leonard P. Stark on 5/22/19. (ntl) (Entered: 05/22/2019)
05/24/2019	<a href="#">39</a>	REDACTED VERSION of <a href="#">37</a> Reply Brief <i>In support of motion for hearing and expedited discovery</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/24/2019)
05/28/2019	<a href="#">40</a>	ORDER re <a href="#">36</a> MOTION to File Reply Brief in support of Plaintiffs' Motion for Expedited Discovery Under Seal filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 5/28/19. (ntl) (Entered: 05/28/2019)
05/29/2019	<a href="#">41</a>	MOTION for Pro Hac Vice Appearance of Attorney Elizabeth Ann Patterson - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 05/29/2019)
06/04/2019	<a href="#">42</a>	NOTICE requesting Clerk to remove Christopher J. Wiener as co-counsel.. (Wilson, Samantha) (Entered: 06/04/2019)
06/04/2019		SO ORDERED, re <a href="#">41</a> MOTION for Pro Hac Vice Appearance of Attorney Elizabeth Ann Patterson filed by VMware, Inc. Signed by Judge Leonard P. Stark on 6/4/19. (ntl) (Entered: 06/04/2019)
06/04/2019		Pro Hac Vice Attorney Elizabeth Ann Patterson for VMware, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (myr) (Entered: 06/04/2019)
06/07/2019	<a href="#">43</a>	STIPULATION to Extend Page Limit for VMware's Response to Plaintiffs' Motion for a Preliminary Injunction and for Leave to File Under Seal by VMware, Inc.. (Wilson, Samantha) (Entered: 06/07/2019)
06/07/2019	<a href="#">44</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding rescheduling of the August 6th hearing - re 38 Order,,,,, Set Hearings,,,,, (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 06/07/2019)
06/07/2019	<a href="#">45</a>	DECLARATION re <a href="#">44</a> Letter // <i>DECLARATION of Brooks M. Beard in Support of VMware's Letter to The Honorable Leonard P. Stark Regarding Rescheduling August 6 Hearing</i> by VMware, Inc. (Gaza, Anne) (Main Document 45 replaced on 6/7/2019) (ntl). (Entered: 06/07/2019)
06/07/2019		CORRECTING ENTRY: Corrected document added to D.I. 45 per request of counsel. (ntl) (Entered: 06/07/2019)
06/07/2019	<a href="#">46</a>	MOTION to Dismiss for Failure to State a Claim <i>and Pursuant to 35 U.S.C. § 101 as to Claim 1 of the Complaint</i> - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Gaza, Anne) (Entered: 06/07/2019)
06/07/2019	<a href="#">47</a>	OPENING BRIEF in Support re <a href="#">46</a> MOTION to Dismiss for Failure to State a Claim <i>and Pursuant to 35 U.S.C. § 101 as to Claim 1 of the Complaint</i> filed by VMware, Inc.. Answering Brief/Response due date per Local Rules is 6/21/2019. (Attachments: # <a href="#">1</a> Exhibit A-C) (Gaza, Anne) (Entered: 06/07/2019)
06/07/2019	<a href="#">48</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">11</a> MOTION for Preliminary Injunction filed by VMware, Inc.. Reply Brief due date per Local Rules is 6/14/2019. (Gaza, Anne) (Entered: 06/07/2019)
06/07/2019	<a href="#">49</a>	[SEALED] DECLARATION re <a href="#">48</a> Answering Brief in Opposition - <i>Declaration of Jennifer Luh</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-10, # <a href="#">2</a> Exhibit 11-24)(Gaza, Anne) (Entered: 06/07/2019)
06/07/2019	<a href="#">50</a>	DECLARATION re <a href="#">48</a> Answering Brief in Opposition - <i>Declaration of Dr. Jason Nieh</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Table of Exhibits, # <a href="#">2</a> Exhibit 1-10, # <a href="#">3</a> Exhibit 11-20, # <a href="#">4</a> Exhibit 21-30, # <a href="#">5</a> Exhibit 31-38)(Gaza, Anne) (Entered: 06/07/2019)
06/07/2019	<a href="#">51</a>	[SEALED] DECLARATION re <a href="#">48</a> Answering Brief in Opposition - <i>Declaration of Chandra Prathuri</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1)(Gaza, Anne) (Entered: 06/07/2019)
06/07/2019	<a href="#">52</a>	[SEALED] DECLARATION re <a href="#">48</a> Answering Brief in Opposition - <i>Declaration of Ajay Singh</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 06/07/2019)
06/10/2019	<a href="#">53</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's June 7, 2019 letter requesting rescheduling of August 6 hearing. (Dorsney, Kenneth) (Entered: 06/10/2019)
06/10/2019	<a href="#">54</a>	NOTICE to Take Deposition of VMware, Inc. filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/10/2019)
06/10/2019	<a href="#">55</a>	NOTICE OF SERVICE of (1) First Set of Interrogatories and (2) First Set of Requests for Production filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 06/10/2019)
06/10/2019	<a href="#">56</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's withdrawal of request to reschedule the August 6 hearing - re <a href="#">53</a> Letter, <a href="#">44</a> Letter. (Gaza, Anne) (Entered: 06/10/2019)



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06/11/2019	<a href="#">57</a>	NOTICE OF SERVICE of 1) Defendant VMware, Inc.'s First Set of Requests for Production (Preliminary Injunction) to Plaintiffs Nos. 1-50, and 2) Defendant VMware, Inc.'s First Set of Interrogatories (Preliminary Injunction) to Plaintiffs Nos. 1-15 filed by VMware, Inc.. (Wilson, Samantha) (Entered: 06/11/2019)
06/11/2019	<a href="#">58</a>	MOTION for Pro Hac Vice Appearance of Attorney Kate Falkenstien - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 06/11/2019)
06/12/2019		SO ORDERED, re <a href="#">43</a> STIPULATION to Extend Page Limit for VMware's Response to Plaintiffs' Motion for a Preliminary Injunction and for Leave to File Under Seal filed by VMware, Inc. Signed by Judge Leonard P. Stark on 6/12/19. (ntl) (Entered: 06/12/2019)
06/12/2019		SO ORDERED, re <a href="#">58</a> MOTION for Pro Hac Vice Appearance of Attorney Kate Falkenstien filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 6/12/19. (ntl) (Entered: 06/12/2019)
06/13/2019	<a href="#">59</a>	NOTICE to Take Deposition of Ajay Singh filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/13/2019)
06/13/2019	<a href="#">60</a>	NOTICE to Take Deposition of Chandra Prathuri filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/13/2019)
06/13/2019	<a href="#">61</a>	NOTICE to Take Deposition of Jason Nieh filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/13/2019)
06/13/2019	<a href="#">62</a>	NOTICE OF SERVICE of 1) Defendant VMware, Inc.'s Second Set of Requests for Production (Preliminary Injunction) to Plaintiffs Nos. 51-71; 2) Defendant VMware, Inc.'s Notice of 30(b)(6) Deposition (Preliminary Injunction); 3) Defendant VMware, Inc.'s Notice of Deposition of Riyaz Somani (Preliminary Injunction); 4) Defendant VMware, Inc.'s Notice of Deposition of Andrew Hillier (Preliminary Injunction); and 5) Defendant VMware, Inc.'s Notice of Deposition of Vijay Madiseti (Preliminary Injunction) filed by VMware, Inc.. (Wilson, Samantha) (Entered: 06/13/2019)
06/14/2019	<a href="#">63</a>	REDACTED VERSION of <a href="#">48</a> Answering Brief in Opposition by VMware, Inc.. (Gaza, Anne) (Entered: 06/14/2019)
06/14/2019	<a href="#">64</a>	REDACTED VERSION of <a href="#">51</a> Declaration of Chandra Prathuri by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1)(Gaza, Anne) (Entered: 06/14/2019)
06/14/2019	<a href="#">65</a>	REDACTED VERSION of <a href="#">52</a> Declaration of Ajay Singh by VMware, Inc.. (Gaza, Anne) (Entered: 06/14/2019)
06/14/2019	<a href="#">66</a>	REDACTED VERSION of <a href="#">49</a> Declaration of Jennifer Luh by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-10, # <a href="#">2</a> Exhibit 11-24)(Gaza, Anne) (Entered: 06/14/2019)
06/17/2019	<a href="#">67</a>	MOTION for Pro Hac Vice Appearance of Attorney Wesley Lanier White - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 06/17/2019)
06/18/2019		Pro Hac Vice Attorney Kate M. Falkenstien for Cirba IP, Inc. and Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (ceg) (Entered: 06/18/2019)
06/18/2019		SO ORDERED, re <a href="#">67</a> MOTION for Pro Hac Vice Appearance of Attorney Wesley Lanier White filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 6/18/19. (ntl) (Entered: 06/18/2019)
06/18/2019	<a href="#">68</a>	First AMENDED COMPLAINT against All Defendants - filed by Cirba Inc., Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 06/18/2019)
06/18/2019	<a href="#">69</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: DVD containing videos cited in Plaintiffs' Complaint as Exhibits 31-36. Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Kenneth Laurence Dorsney on behalf of All Plaintiffs (Dorsney, Kenneth) (Entered: 06/18/2019)
06/19/2019	<a href="#">70</a>	MULTI MEDIA DOCUMENT filed by Cirba IP, Inc., Cirba Inc. in the form of a DVD. Filing related to <a href="#">68</a> Amended Complaint, <a href="#">69</a> Notice of Filing Multi Media Materials. (Media on file in Clerk's Office). (ntl) (Entered: 06/20/2019)
06/20/2019		Pro Hac Vice Attorney Wesley Lanier White for Cirba IP, Inc., for Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (myr) (Entered: 06/20/2019)
06/24/2019	<a href="#">71</a>	NOTICE OF SERVICE of (1) Densify's responses to Defendant's First Set of Interrogatories (Preliminary Injunction) Nos. 1-15; and (2) Densify's responses to Defendant's First Set of Requests for Production (Preliminary Injunction) Nos. 1-50) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/24/2019)
06/25/2019	<a href="#">72</a>	NOTICE OF SERVICE of Plaintiffs' Objections and Responses to VMware, Inc.'s 30(b)(6) Deposition Notice to Plaintiffs filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/25/2019)
06/25/2019	<a href="#">73</a>	Disclosure Statement pursuant to Rule 7.1: identifying Other Affiliate EMC Corporation, Other Affiliate Dell Inc., Other Affiliate Denali Intermediate Inc., Other Affiliate Dell Technologies Inc., Other Affiliate VWM Holdco LLC for VMware, Inc. filed by VMware, Inc.. (Wilson, Samantha) (Entered: 06/25/2019)
06/25/2019	<a href="#">74</a>	NOTICE OF SERVICE of 1) VMware, Inc.'s Responses to Plaintiffs' Requests for Production of Documents and Things to Defendant (Nos. 1-21), and 2) VMware, Inc.'s Responses to Plaintiffs' First Set of Interrogatories to Defendant (Nos. 1-10) filed by VMware, Inc.. (Wilson, Samantha) (Entered: 06/25/2019)
06/26/2019	<a href="#">75</a>	NOTICE OF SERVICE of Plaintiffs' responses to VMware, Inc.'s Second Set of Requests for Production (Preliminary Injunction) (Nos. 51-71) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/26/2019)
06/27/2019	<a href="#">76</a>	NOTICE OF SERVICE of (1) Plaintiffs' Second Set of Interrogatories to VMware (Nos. 11-15); and (2) Plaintiffs' Second Set of Requests for Production to VMware (Nos. 22-27) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/27/2019)
06/27/2019	<a href="#">77</a>	NOTICE of Deposition and Subpoena of Erik Wrobel by Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 06/27/2019)
06/28/2019	<a href="#">78</a>	NOTICE OF SERVICE of Plaintiffs' Amended 30(b)(6) Deposition Notice of VMware, Inc. filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 06/28/2019)
07/02/2019	<a href="#">79</a>	MOTION to Dismiss for Failure to State a Claim and Pursuant to 35 U.S.C. § 101 as to Claim 1 of the First Amended Complaint - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Gaza, Anne) (Entered: 07/02/2019)
07/02/2019	<a href="#">80</a>	OPENING BRIEF in Support re <a href="#">79</a> MOTION to Dismiss for Failure to State a Claim and Pursuant to 35 U.S.C. § 101 as to Claim 1 of the First Amended Complaint filed by VMware, Inc..Answering Brief/Response due date per Local Rules is 7/16/2019. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 07/02/2019)

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07/03/2019	<a href="#">81</a>	NOTICE to Take Deposition of Riyaz Somani on July 9, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/03/2019)
07/03/2019	<a href="#">82</a>	NOTICE to Take Deposition of Vijay Madiseti on July 12, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/03/2019)
07/03/2019	<a href="#">83</a>	NOTICE to Take Deposition of Andrew Hillier on July 17, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/03/2019)
07/08/2019	<a href="#">84</a>	MOTION for Pro Hac Vice Appearance of Attorney Jayson L. Cohen, Diek O. Van Nort, Daniel C. Hubin, and Justin Jeffery Sorensen - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 07/08/2019)
07/08/2019		SO ORDERED, re <a href="#">84</a> MOTION for Pro Hac Vice Appearance of Attorney Jayson L. Cohen, Diek O. Van Nort, Daniel C. Hubin, and Justin Jeffery Sorensen filed by VMware, Inc. Signed by Judge Leonard P. Stark on 7/8/19. (ntl) (Entered: 07/08/2019)
07/09/2019	<a href="#">85</a>	NOTICE OF SERVICE of (1) Plaintiffs' Amended 30(b)(6) Deposition Notice of VMware; (2) Plaintiffs' Amended Notice to Take Deposition of Ajay Singh; (3) Plaintiffs' Amended Notice to Take Deposition of Chandra Prathuri; (4) Plaintiffs' Amended Notice to Take Deposition of Erik Wrobel; and (5) Plaintiffs' Amended Notice to Take Deposition of Jason Nieh filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/09/2019)
07/10/2019	<a href="#">86</a>	NOTICE OF SERVICE of VMware, Inc.'s Response to Plaintiffs' Amended Notice of Deposition to Defendant filed by VMware, Inc.. (Wilson, Samantha) (Entered: 07/10/2019)
07/11/2019	<a href="#">87</a>	NOTICE OF SERVICE of 1) VMware, Inc.'s Responses to Plaintiffs' Second Set of Interrogatories to VMware (Nos. 11-15), and 2) VMware, Inc.'s Responses to Plaintiffs' Second Set of Requests for Production of Documents and Things to VMware (Nos. 22-27) filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/11/2019)
07/12/2019	<a href="#">88</a>	MOTION for Pro Hac Vice Appearance of Attorney Ariel C. Green - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/12/2019)
07/12/2019	<a href="#">89</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding request for the scheduling of a discovery teleconference. (Dorsney, Kenneth) (Entered: 07/12/2019)
07/15/2019	<a href="#">90</a>	NOTICE OF SERVICE of Plaintiffs' Amended and Supplemental Responses to Defendant's First Set of Interrogatories (Preliminary Injunction) to Plaintiffs (Nos. 1-15) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 07/15/2019)
07/16/2019		SO ORDERED, re <a href="#">88</a> MOTION for Pro Hac Vice Appearance of Attorney Ariel C. Green filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 7/16/19. (ntl) (Entered: 07/16/2019)
07/16/2019	<a href="#">91</a>	ANSWERING BRIEF in Opposition re <a href="#">79</a> MOTION to Dismiss for Failure to State a Claim <i>and Pursuant to 35 U.S.C. § 101 as to Claim 1 of the First Amended Complaint</i> filed by Cirba IP, Inc., Cirba Inc..Reply Brief due date per Local Rules is 7/23/2019. (Dorsney, Kenneth) (Entered: 07/16/2019)
07/17/2019	<a href="#">92</a>	ORAL ORDER: After having been advised by Plaintiff(s) and Defendant(s) of their inability to resolve a discovery matter (D.I. 89), IT IS HEREBY ORDERED that not later than July 18, 2019, any party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. Not later than July 19, 2019, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition. Each party shall submit to the Court two (2) courtesy copies of its discovery letter and any attachments. After reviewing the letter submissions, the Court may schedule a teleconference. ORDERED by Judge Leonard P. Stark on 7/17/19. (ntl) (Entered: 07/17/2019)
07/17/2019	<a href="#">93</a>	NOTICE OF SERVICE of VMware, Inc.'s First Amended Responses to Plaintiffs' First Set of Interrogatories to Defendant (Nos. 1-10) filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/17/2019)
07/17/2019	<a href="#">94</a>	NOTICE OF SERVICE of Erik Wrobel's Responses to Plaintiff's Requests for Production of Documents and Things (Nos. 1-13) filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/17/2019)
07/17/2019	<a href="#">95</a>	NOTICE OF SERVICE of 1) VMware, Inc.'s Second Amended Responses to Plaintiffs' First Set of Interrogatories to Defendant (Nos. 1-10); 2) VMware, Inc.'s First Amended Responses to Plaintiffs' Second Set of Interrogatories to VMware (Nos. 11-15), and 3) the accompanying Verification filed by VMware, Inc..(Gaza, Anne) (Entered: 07/17/2019)
07/18/2019	<a href="#">96</a>	MOTION for Pro Hac Vice Appearance of Attorney Gary J. Toman - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/18/2019)
07/18/2019	<a href="#">97</a>	NOTICE of Change of Address by Kenneth Laurence Dorsney (Dorsney, Kenneth) (Entered: 07/18/2019)
07/18/2019	<a href="#">98</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Plaintiffs' initial dispute letter for source code printouts and protective order. (Dorsney, Kenneth) (Entered: 07/18/2019)
07/18/2019	<a href="#">99</a>	NOTICE OF SERVICE of Plaintiffs' Second Amended and Supplemental Responses to Defendant's First Set of Interrogatories (Preliminary Injunction) Nos. 1-15 filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 07/18/2019)
07/19/2019		SO ORDERED, re <a href="#">96</a> MOTION for Pro Hac Vice Appearance of Attorney Gary J. Toman filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 7/19/19. (ntl) (Entered: 07/19/2019)
07/19/2019	<a href="#">100</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Defendant's response to Plaintiffs' July 18, 2019 letter - re <a href="#">98</a> Letter. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 07/19/2019)
07/23/2019	<a href="#">101</a>	REPLY BRIEF re <a href="#">79</a> MOTION to Dismiss for Failure to State a Claim <i>and Pursuant to 35 U.S.C. § 101 as to Claim 1 of the First Amended Complaint</i> filed by VMware, Inc.. (Gaza, Anne) (Entered: 07/23/2019)
07/24/2019	<a href="#">102</a>	STIPULATION and [Proposed] Order for Leave to File Under Seal by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/24/2019)
07/24/2019	<a href="#">103</a>	[SEALED] RESPONSE to Order re 38 Order,,,,, Set Hearings,,,,, <i>Plaintiffs' Pre-Hearing Brief in support of its Motion for Preliminary Injunction (Post-Discovery Supplemental Brief)</i> filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/24/2019)
07/24/2019	<a href="#">104</a>	[SEALED] DECLARATION re <a href="#">103</a> Response to Order, <i>Declaration of Phillip Lee in support of Plaintiffs' Pre-Hearing Brief in support</i>

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		<i>of its Motion for Preliminary Injunction (Vol. I)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 1 - 64, # <a href="#">2</a> Exhibits 65 - 71) (Dorsney, Kenneth) (Entered: 07/24/2019)
07/24/2019	<a href="#">105</a>	[SEALED] DECLARATION re <a href="#">103</a> Response to Order, <i>Declaration of Phillip Lee in support of Plaintiffs' Pre-Hearing Brief in support of its Motion for Preliminary Injunction (Vol. II)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 72 - 98)(Dorsney, Kenneth) (Entered: 07/24/2019)
07/24/2019	<a href="#">106</a>	[SEALED] DECLARATION re <a href="#">103</a> Response to Order, <i>Supplemental Declaration of Dr. Vijay Madiseti (Vol. I)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 1 - 4, # <a href="#">2</a> Exhibit 5, # <a href="#">3</a> Exhibits 6 - 7)(Dorsney, Kenneth) (Entered: 07/24/2019)
07/24/2019	<a href="#">107</a>	[SEALED] DECLARATION re <a href="#">103</a> Response to Order, <i>Supplemental Declaration of Dr. Vijay Madiseti (Vol. II)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 8 - 34)(Dorsney, Kenneth) (Entered: 07/24/2019)
07/24/2019	<a href="#">108</a>	[SEALED] Supplemental ANSWERING BRIEF in Opposition re <a href="#">11</a> MOTION for Preliminary Injunction filed by VMware, Inc..Reply Brief due date per Local Rules is 7/31/2019. (Gaza, Anne) (Entered: 07/24/2019)
07/24/2019	<a href="#">109</a>	[SEALED] Supplemental DECLARATION re <a href="#">108</a> Answering Brief in Opposition - <i>Declaration of Jennifer Luh</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 25-30, # <a href="#">2</a> Exhibit 31-38, # <a href="#">3</a> Exhibit 39, # <a href="#">4</a> Exhibit 40-47)(Gaza, Anne) (Entered: 07/24/2019)
07/25/2019	110	ORAL ORDER: Having reviewed the parties' filings regarding the disputed provision in the proposed protective order (D.I. 98, 100), IT IS HEREBY ORDERED that: (i) each party shall, if requested, provide up to two printouts of portions of sourcecode, subject to all of the other limitations and restrictions already agreed to by the parties; and (ii) the parties shall, no later than July 26 at 10:00 a.m., file a revised proposed protective order consistent with today's ruling. The Court finds that Densify's proposal of two printouts of sourcecode is more reasonable than VMware's proposal of just one copy, particularly as this will aid the parties' preparation (and therefore the Court) for the upcoming preliminary injunction hearing and does not unduly threaten the security of sourcecode given the totality of precautions to which the parties have agreed. ORDERED by Judge Leonard P. Stark on 7/25/19. (ntl) (Entered: 07/25/2019)
07/26/2019	<a href="#">111</a>	PROPOSED ORDER - Proposed Protective Order by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/26/2019)
07/26/2019		SO ORDERED, re <a href="#">102</a> Stipulation and Order for Leave to File Under Seal filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 7/26/19. (ntl) (Entered: 07/26/2019)
07/29/2019	<a href="#">112</a>	NOTICE OF SERVICE of VMware, Inc.'s First Supplemental Responses to Plaintiffs' First Set of Interrogatories to Defendant (Nos. 1-10) filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/29/2019)
07/29/2019	<a href="#">113</a>	MOTION to Strike <a href="#">107</a> Declaration, <a href="#">106</a> Declaration - <i>Supplemental Declaration of Dr. Vijay Madiseti</i> - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> VMware's D. Del. LR 7.1.1 Certification, # <a href="#">2</a> Text of Proposed Order)(Gaza, Anne) (Entered: 07/29/2019)
07/29/2019		Pro Hac Vice Attorney Gary J. Toman for Cirba IP, Inc., for Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (myr) (Entered: 07/29/2019)
07/29/2019	<a href="#">114</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Opening Letter Brief in Support of VMware's Motion to Strike - re <a href="#">113</a> MOTION to Strike <a href="#">107</a> Declaration, <a href="#">106</a> Declaration - <i>Supplemental Declaration of Dr. Vijay Madiseti</i> . (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 07/29/2019)
07/29/2019	<a href="#">115</a>	[SEALED] Supplemental REPLY BRIEF re <a href="#">11</a> MOTION for Preliminary Injunction - <i>Reply Brief in Opposition</i> - filed by VMware, Inc.. (Gaza, Anne) (Entered: 07/29/2019)
07/29/2019	<a href="#">116</a>	[SEALED] Second DECLARATION re <a href="#">115</a> Reply Brief - <i>Declaration of Chandra Prathuri</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 07/29/2019)
07/29/2019	<a href="#">117</a>	[SEALED] DECLARATION re <a href="#">115</a> Reply Brief - <i>Declaration of Richard S.J. Hung</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 - 11)(Gaza, Anne) (Entered: 07/29/2019)
07/29/2019	<a href="#">118</a>	[SEALED] RESPONSE to Order re 38 Order,,,,,, Set Hearings,,,,, ( <i>Response to VMware's supplemental brief</i> ). (Dorsney, Kenneth) (Entered: 07/29/2019)
07/29/2019	<a href="#">119</a>	[SEALED] DECLARATION re <a href="#">118</a> Response to Order ( <i>Declaration of Phillip Lee</i> ) by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit A-J, # <a href="#">2</a> Exhibit K-N)(Dorsney, Kenneth) (Entered: 07/29/2019)
07/31/2019	120	ORAL ORDER: IT IS HEREBY ORDERED that the hearing on August 6 will begin at 9:00 a.m. ORDERED by Judge Leonard P. Stark on 7/31/19. (ntl) (Entered: 07/31/2019)
07/31/2019		Pro Hac Vice Attorney Ariel Green for Cirba IP, Inc. and Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (kmd) (Entered: 07/31/2019)
07/31/2019	<a href="#">121</a>	REDACTED VERSION of <a href="#">104</a> Declaration, ( <i>redacted declaration of Phillip Lee Vol. I</i> ) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/31/2019)
07/31/2019	<a href="#">122</a>	REDACTED VERSION of <a href="#">105</a> Declaration, ( <i>Redacted Declaration of Phillip Lee Vol. II</i> ) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/31/2019)
07/31/2019	<a href="#">123</a>	REDACTED VERSION of <a href="#">103</a> Response to Order, <i>Plaintiffs' Opening Pre-Hearing Brief in support of Motion for Preliminary Injunction</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/31/2019)
07/31/2019	<a href="#">124</a>	REDACTED VERSION of <a href="#">106</a> Declaration of <i>Vijay Madiseti Vol. I</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-6, # <a href="#">2</a> Exhibit 7)(Dorsney, Kenneth) (Entered: 07/31/2019)
07/31/2019	<a href="#">125</a>	REDACTED VERSION of <a href="#">107</a> Declaration of <i>Vijay Madiseti Vol. II</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 07/31/2019)
07/31/2019	<a href="#">126</a>	REDACTED VERSION of <a href="#">108</a> Answering Brief in Opposition by VMware, Inc.. (Gaza, Anne) (Entered: 07/31/2019)
07/31/2019	<a href="#">127</a>	REDACTED VERSION of <a href="#">109</a> Declaration by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 25-47)(Gaza, Anne) (Entered: 07/31/2019)
08/01/2019		SO ORDERED, re <a href="#">111</a> Stipulated Protective Order. Signed by Judge Leonard P. Stark on 8/1/19. (ntl) (Entered: 08/01/2019)
08/05/2019	<a href="#">128</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Motion to Strike - re <a href="#">114</a> Letter,. (Dorsney,

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		Kenneth) (Entered: 08/05/2019)
08/05/2019	<a href="#">129</a>	[SEALED] DECLARATION re <a href="#">128</a> Letter ( <i>Declaration of Jennifer Estremera</i> ) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/05/2019)
08/05/2019	<a href="#">130</a>	REDACTED VERSION of <a href="#">118</a> Response to Order by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/05/2019)
08/05/2019	<a href="#">131</a>	REDACTED VERSION of <a href="#">119</a> Declaration of <i>Phillip Lee</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/05/2019)
08/05/2019	<a href="#">132</a>	REDACTED VERSION of <a href="#">114</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 08/05/2019)
08/05/2019	<a href="#">133</a>	REDACTED VERSION of <a href="#">115</a> Reply Brief by VMware, Inc.. (Gaza, Anne) (Entered: 08/05/2019)
08/05/2019	<a href="#">134</a>	REDACTED VERSION of <a href="#">116</a> Declaration by VMware, Inc.. (Gaza, Anne) (Entered: 08/05/2019)
08/05/2019	<a href="#">135</a>	REDACTED VERSION of <a href="#">117</a> Declaration by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-11)(Gaza, Anne) (Entered: 08/05/2019)
08/06/2019	<a href="#">136</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Reply Letter in Support of VMware's Motion to Strike Supplemental Declaration of Dr. Vijay Madiseti - re <a href="#">113</a> MOTION to Strike <a href="#">107</a> Declaration, <a href="#">106</a> Declaration - <i>Supplemental Declaration of Dr. Vijay Madiseti</i> . (Attachments: # <a href="#">1</a> Exhibits 1 through 6)(Gaza, Anne) (Entered: 08/06/2019)
08/06/2019		Minute Entry for proceedings held before Judge Leonard P. Stark - Motion Hearing held on 8/6/2019 (Court Reporter B. Gaffigan.) (ntl) (Entered: 08/08/2019)
08/07/2019	<a href="#">137</a>	ORAL ORDER: For the reasons stated in Court at the conclusion of the hearing yesterday, IT IS HEREBY ORDERED that: (i) Plaintiffs' Motion for Preliminary Injunction (D.I. 11) is DENIED, (ii) Defendant's Motion to Dismiss Claim I of the First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) and 35 U.S.C. § 101 (D.I. 79) is DENIED, and (iii) Defendant's Motion to Strike Plaintiffs' Supplemental Declaration of Dr. Vijay Madiseti (D.I. 113) is DENIED. Defendant's Motion to Dismiss Claim I of the Complaint (D.I. 46) is DENIED AS MOOT in light of Plaintiffs' filing of the First Amended Complaint. (D.I. 68) The parties shall meet and confer and, no later than August 9, submit a proposed schedule, which shall include the following: pretrial order due December 23, 2019; pretrial conference on January 3, 2020 at 11:00 a.m.; and trial to occur between January 13 and 24, 2020 (the parties shall include their requested number of trial days in the proposed schedule). ORDERED by Judge Leonard P. Stark on 8/7/19. (ntl) (Entered: 08/07/2019)
08/09/2019	<a href="#">138</a>	[SEALED] Official Transcript of Preliminary Injunction Hearing held on August 6, 2019 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Telephone number (302) 573-6360. (bpg) Modified on 2/11/2020 (ntl). (Entered: 08/09/2019)
08/09/2019	<a href="#">139</a>	PROPOSED ORDER Scheduling Order by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/09/2019)
08/12/2019	<a href="#">140</a>	REDACTED VERSION of <a href="#">128</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's letter brief regarding motion to strike</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/12/2019)
08/12/2019	<a href="#">141</a>	REDACTED VERSION of <a href="#">129</a> Declaration of <i>Jennifer Estremera</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/12/2019)
08/13/2019	<a href="#">142</a>	NOTICE requesting Clerk to remove Phillip Lee as co-counsel.. (Dorsney, Kenneth) (Entered: 08/13/2019)
08/13/2019	<a href="#">143</a>	REDACTED VERSION of <a href="#">136</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-6)(Gaza, Anne) (Entered: 08/13/2019)
08/14/2019	<a href="#">144</a>	NOTICE OF SERVICE of (1) Plaintiffs' First Set of Post-Preliminary Injunction Hearing Interrogatories to VMware (Nos. 1-15); and (2) Plaintiffs' First Set of Post-Preliminary Injunction Hearing Requests for Production to VMware (Nos. 1-56) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 08/14/2019)
08/16/2019	<a href="#">145</a>	NOTICE OF SERVICE of Initial Disclosures Pursuant to F.R.C.P. 26(a)(1) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 08/16/2019)
08/16/2019	<a href="#">146</a>	NOTICE OF SERVICE of Defendant VMware, Inc.'s Rule 26(a)(1) Initial Disclosures filed by VMware, Inc..(Wilson, Samantha) (Entered: 08/16/2019)
08/19/2019	<a href="#">147</a>	NOTICE OF SERVICE of Paragraph 4a Disclosures - Initial Identification of Patents Products and Damages Model filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 08/19/2019)
08/19/2019	<a href="#">148</a>	[SEALED] NOTICE of Lodging by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Gaza, Anne) (Entered: 08/19/2019)
08/19/2019	<a href="#">149</a>	REDACTED VERSION of <a href="#">148</a> Notice (Other) - <i>Notice of Lodging</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Gaza, Anne) (Entered: 08/19/2019)
08/20/2019	<a href="#">150</a>	ANSWER to Amended Complaint, re: <a href="#">68</a> Amended Complaint with Jury Demand , COUNTERCLAIM against Cirba IP, Inc., Cirba Inc. by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-15, # <a href="#">2</a> Exhibit 16-30, # <a href="#">3</a> Exhibit 31-45, # <a href="#">4</a> Exhibit 46-60)(Gaza, Anne) (Entered: 08/20/2019)
08/20/2019	<a href="#">151</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: Exhibits 9, 22, 28, 29, 36 and 42 to VMware's Answer and Counterclaims to Cirba's First Amended Complaint (D.I. 150). Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Anne Shea Gaza on behalf of VMware, Inc. (Gaza, Anne) (Entered: 08/20/2019)
08/20/2019	<a href="#">152</a>	Report to the Commissioner of Patents and Trademarks for Patent/Trademark Number(s) US 8,875,266 B2 ;US 10,069,752 B2 ;US 8,336,049 B2 ;US 9,521,151 B2 . (Gaza, Anne) (Entered: 08/20/2019)
08/20/2019	<a href="#">153</a>	NOTICE OF SERVICE of 1) Defendant VMware, Inc.'s First Set of Post-Preliminary Injunction Hearing Requests for Production to Plaintiffs Nos. 1-110; 2) Defendant VMware, Inc.'s First Set of Post-Preliminary Injunction Hearing Interrogatories to Plaintiffs Nos. 1-11; and 3) VMware, Inc.'s Identification of Asserted Patents, Accused Products, Damages Model, and Prosecution File Histories filed by VMware, Inc..(Wilson, Samantha) (Entered: 08/20/2019)
08/21/2019	<a href="#">154</a>	MULTI MEDIA DOCUMENT filed by VMware, Inc. in the form of a DVD. Filing related to <a href="#">150</a> Answer to Amended Complaint, <a href="#">151</a> Notice of Filing Multi Media Materials. (Media on file in Clerk's Office). (ntl) (Entered: 08/22/2019)
08/27/2019	<a href="#">155</a>	MOTION to Sever <i>Defendants' Patent Infringement Counterclaims</i> - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/27/2019)

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		08/27/2019)
08/27/2019	<a href="#">156</a>	OPENING BRIEF in Support re <a href="#">155</a> MOTION to Sever <i>Defendants' Patent Infringement Counterclaims</i> filed by Cirba IP, Inc., Cirba Inc.. Answering Brief/Response due date per Local Rules is 9/10/2019. (Dorsney, Kenneth) (Entered: 08/27/2019)
08/27/2019	<a href="#">157</a>	MOTION to Expedite <i>briefing on motion to sever</i> - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/27/2019)
08/27/2019	<a href="#">158</a>	NOTICE OF SERVICE of VMware's production pursuant to Paragraph 8(c) of [Proposed] Scheduling Order filed by VMware, Inc.. (Wilson, Samantha) (Entered: 08/27/2019)
08/28/2019	<a href="#">159</a>	ORAL ORDER: In light of the expedited trial schedule in this matter, IT IS HEREBY ORDERED that Defendant shall file any response to Plaintiffs' Motion to Expedite Briefing on Their Motion to Sever (D.I. 157) no later than August 29 at 9:00 a.m. Plaintiffs shall file any reply no later than August 29 at 12:00 p.m. ORDERED by Judge Leonard P. Stark on 8/28/19. (ntl) (Entered: 08/28/2019)
08/28/2019	<a href="#">160</a>	STIPULATION and [Proposed] Order to Set Briefing Schedule re 159 Order, <a href="#">157</a> MOTION to Expedite <i>briefing on motion to sever</i> by VMware, Inc.. (Gaza, Anne) (Entered: 08/28/2019)
08/29/2019		SO ORDERED, re <a href="#">160</a> Stipulation and Order to Set Briefing Schedule -- Motion terminated: <a href="#">157</a> MOTION to Expedite briefing on motion to sever. Signed by Judge Leonard P. Stark on 8/29/19. (ntl) (Entered: 08/29/2019)
08/30/2019	<a href="#">161</a>	[SEALED] MOTION to Redact <a href="#">138</a> Transcript,, - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/30/2019)
08/30/2019	<a href="#">162</a>	NOTICE of by VMware, Inc. re <a href="#">138</a> Transcript,, <a href="#">161</a> MOTION to Redact <a href="#">138</a> Transcript,, <i>Notice of Intent to Oppose Motion for Redaction</i> (Wilson, Samantha) (Entered: 08/30/2019)
09/03/2019	<a href="#">163</a>	NOTICE OF SERVICE of (1) Densify's responses to VMware's First Set of Post-Preliminary Injunction Hearing Interrogatories; and (2) Densify's responses to VMware's First Set of Post-Preliminary Injunction Hearing Requets for Production filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/03/2019)
09/03/2019	<a href="#">164</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">155</a> MOTION to Sever <i>Defendants' Patent Infringement Counterclaims</i> filed by VMware, Inc..Reply Brief due date per Local Rules is 9/10/2019. (Gaza, Anne) (Entered: 09/03/2019)
09/03/2019	<a href="#">165</a>	[SEALED] DECLARATION re <a href="#">164</a> Answering Brief in Opposition - <i>Declaration of Richard S.J. Hung</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-9)(Gaza, Anne) (Entered: 09/03/2019)
09/05/2019	<a href="#">166</a>	NOTICE OF SERVICE of 1) Defendant's Response to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 1-15) and 2) VMware Inc.'s Response to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Requests for Production of Documents and Things (Nos. 1-56) filed by VMware, Inc..(Gaza, Anne) (Entered: 09/05/2019)
09/05/2019	<a href="#">167</a>	NOTICE requesting Clerk to remove Jennifer Luh as co-counsel.. (Gaza, Anne) (Entered: 09/05/2019)
09/06/2019	<a href="#">168</a>	REDACTED VERSION of <a href="#">161</a> MOTION to Redact <a href="#">138</a> Transcript,, by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/06/2019)
09/06/2019	<a href="#">169</a>	REPLY BRIEF re <a href="#">155</a> MOTION to Sever <i>Defendants' Patent Infringement Counterclaims</i> filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/06/2019)
09/06/2019	<a href="#">170</a>	NOTICE OF SERVICE of (1)AMENDED INITIAL RULE 26(a)(1) DISCLOSURES (2) PARAGRAPH 3 DISCLOSURES (3) INITIAL INFRINGEMENT CONTENTIONS filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/06/2019)
09/06/2019	<a href="#">171</a>	NOTICE OF SERVICE of Defendant VMware's Disclosures Pursuant to Section 3 of the Default Standard for Discovery filed by VMware, Inc..(Vrana, Robert) (Entered: 09/06/2019)
09/06/2019	<a href="#">172</a>	NOTICE OF SERVICE of VMware, Inc.'s Initial Infringement Claim Charts filed by VMware, Inc..(Vrana, Robert) (Entered: 09/06/2019)
09/06/2019	<a href="#">173</a>	NOTICE OF SERVICE of 1) VMware, Inc.'s Second Set of Post-Preliminary Injunction Hearing Requests for Production to Plaintiffs/Counter-Defendants Nos. 112-168, and 2) VMware, Inc.'s Second Set of Post-Preliminary Injunction Hearing Interrogatories to Plaintiffs/Counter-Defendants Nos. 12-16 filed by VMware, Inc..(Vrana, Robert) (Entered: 09/06/2019)
09/09/2019	<a href="#">174</a>	SCHEDULING ORDER: Case referred to the Magistrate Judge for the purpose of exploring ADR. Fact Discovery completed by 11/6/2019. Status Report due by 9/11/2019. A Markman Hearing is set for 11/1/2019 at 04:00 PM in Courtroom 6B before Judge Leonard P. Stark. Proposed Pretrial Order due by 12/23/2019. A Final Pretrial Conference is set for 1/3/2020 at 11:00 AM in Courtroom 6B before Judge Leonard P. Stark. A 10-day Jury Trial is set for 1/13/2020 at 09:00 AM in Courtroom 6B before Judge Leonard P. Stark. Signed by Judge Leonard P. Stark on 9/6/19. (ntl) (Entered: 09/09/2019)
09/09/2019		CASE REFERRED to Chief Magistrate Judge Mary Pat Thyng for Mediation. Please see Standing Order dated January 20, 2016, regarding disclosure of confidential ADR communications. A link to the standing order is provided here for your convenience at <a href="http://www.ded.uscourts.gov/general-orders/magistrate-judges-standing-order-adr-mediation">http://www.ded.uscourts.gov/general-orders/magistrate-judges-standing-order-adr-mediation</a> (cak) (Entered: 09/09/2019)
09/10/2019	<a href="#">175</a>	REDACTED VERSION of <a href="#">164</a> Answering Brief in Opposition by VMware, Inc.. (Gaza, Anne) (Entered: 09/10/2019)
09/10/2019	<a href="#">176</a>	REDACTED VERSION of <a href="#">165</a> Declaration by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-9)(Gaza, Anne) (Entered: 09/10/2019)
09/11/2019	<a href="#">177</a>	STATUS REPORT by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 09/11/2019)
09/12/2019	<a href="#">178</a>	ORAL ORDER: Having reviewed the parties' Joint Status Report (D.I. 177), IT IS HEREBY ORDERED that not later than September 16, 2019, any party seeking relief on a ripe discovery matter shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. Not later than September 17, 2019, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition. Each party shall submit to the Court two (2) courtesy copies of its discovery letter and any attachments. IT IS FURTHER ORDERED that a teleconference is set for Thursday, September 19 at 3:30 p.m. to hear argument on any such discovery disputes and on Plaintiffs' Motion to Sever (D.I. 155). Counsel for Plaintiffs shall initiate the call to (302) 573-4571. ORDERED by Judge Leonard P. Stark on 9/12/19. (ntl) (Entered: 09/12/2019)
09/12/2019	<a href="#">179</a>	NOTICE OF SERVICE of VMware, Inc.'s Notice of 30(b)(6) Deposition to Cirba (Post-Preliminary Injunction) filed by VMware, Inc.. (Wilson, Samantha) (Entered: 09/12/2019)
09/13/2019	<a href="#">180</a>	NOTICE to Take Deposition of Tom Silangan Yuyitung on a mutually agreeable date to be determined filed by VMware, Inc..(Wilson,

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		Samantha) (Entered: 09/13/2019)
09/13/2019	<a href="#">181</a>	[SEALED] RESPONSE to Motion re <a href="#">161</a> MOTION to Redact <a href="#">138</a> Transcript,, filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1) (Gaza, Anne) (Entered: 09/13/2019)
09/16/2019	<a href="#">182</a>	ANSWER to <a href="#">150</a> Answer to Amended Complaint,, Counterclaim, by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/16/2019)
09/16/2019	<a href="#">183</a>	NOTICE OF SERVICE of Plaintiffs' Production of Core Technical Documents and Sales Figures related to the Accused Products filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/16/2019)
09/16/2019	<a href="#">184</a>	Letter to The Honorable Leonard P. Stark from Samantha G. Wilson regarding Opening Dispute Letter - re 178 Order Setting Teleconference,,,. (Attachments: # <a href="#">1</a> Exhibit A - C)(Wilson, Samantha) (Entered: 09/16/2019)
09/16/2019	<a href="#">185</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery Dispute - re 178 Order Setting Teleconference,,,. (Dorsney, Kenneth) (Entered: 09/16/2019)
09/17/2019	<a href="#">186</a>	NOTICE OF SERVICE of Supplemental Infringement Contentions filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/17/2019)
09/17/2019	<a href="#">187</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Source Code - re <a href="#">184</a> Letter. (Dorsney, Kenneth) (Entered: 09/17/2019)
09/17/2019	<a href="#">188</a>	PROPOSED ORDER STIPULATED ORDER FOR DISCOVERY, INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION (ESI) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/17/2019)
09/17/2019	<a href="#">189</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware, Inc.'s Response to Plaintiffs' September 16, 2019 Letter - re <a href="#">185</a> Letter. (Attachments: # <a href="#">1</a> Exhibit 1-8)(Gaza, Anne) (Entered: 09/17/2019)
09/18/2019	<a href="#">190</a>	NOTICE OF SERVICE of Densify's Corrected Supplemental Initial Infringement Contentions to VMware filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/18/2019)
09/18/2019	<a href="#">191</a>	NOTICE OF SERVICE of Second Set of Requests for Production (Nos. 57-151) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/18/2019)
09/19/2019		SO ORDERED, re <a href="#">188</a> STIPULATED ORDER FOR DISCOVERY, INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION (ESI). Signed by Judge Leonard P. Stark on 9/19/19. (ntl) (Entered: 09/19/2019)
09/19/2019	<a href="#">192</a>	[SEALED] REPLY BRIEF re <a href="#">161</a> MOTION to Redact <a href="#">138</a> Transcript,, filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/19/2019)
09/19/2019		Minute Entry for proceedings held before Judge Leonard P. Stark - Teleconference held on 9/19/2019. (Court Reporter B. Gaffigan.) (ntl) (Entered: 09/19/2019)
09/19/2019	<a href="#">193</a>	NOTICE OF SERVICE of Third set of requests for production (Nos. 152-176) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/19/2019)
09/20/2019	<a href="#">194</a>	ORAL ORDER: For the reasons stated during the teleconference yesterday, IT IS HEREBY ORDERED that Plaintiffs' Motion to Sever (D.I. 155) is GRANTED. ORDERED by Judge Leonard P. Stark on 9/20/19. (ntl) (Entered: 09/20/2019)
09/20/2019	<a href="#">195</a>	REDACTED VERSION of <a href="#">181</a> Response to Motion by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1)(Gaza, Anne) (Entered: 09/20/2019)
09/20/2019	<a href="#">196</a>	NOTICE OF SERVICE of (1) Plaintiffs' responses to VMware's Second Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 12-16); and (2) Plaintiffs' responses to VMware's Second Set of Post-Preliminary Injunction Hearing Requests for Production (Nos. 112-168) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/20/2019)
09/20/2019	<a href="#">197</a>	NOTICE OF SERVICE of VMware, Inc.'s Third Set of Post-Preliminary Injunction Hearing Requests for Production to Plaintiffs/Counter-Defendants Nos. 169-191 filed by VMware, Inc..(Wilson, Samantha) (Entered: 09/20/2019)
09/23/2019	<a href="#">198</a>	NOTICE OF SERVICE of Plaintiffs' Claim Terms and Phrases for Construction and Proposed Claim Construction of Terms and Phrases filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/23/2019)
09/23/2019	<a href="#">199</a>	NOTICE OF SERVICE of VMware's Preliminary Identification of Claim Terms and Proposed Constructions filed by VMware, Inc.. (Wilson, Samantha) (Entered: 09/23/2019)
09/24/2019	<a href="#">200</a>	Official Transcript of Telephone Conference held on September 19, 2019 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Telephone number (302) 573-6360. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 10/15/2019. Redacted Transcript Deadline set for 10/25/2019. Release of Transcript Restriction set for 12/23/2019. (bpg) (Entered: 09/24/2019)
09/24/2019	<a href="#">201</a>	MOTION for Pro Hac Vice Appearance of Attorney Khue V. Hoang - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/24/2019)
09/24/2019	<a href="#">202</a>	REDACTED VERSION of <a href="#">189</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-8)(Gaza, Anne) (Entered: 09/24/2019)
09/25/2019	<a href="#">203</a>	MOTION for Pro Hac Vice Appearance of Attorney Peter J. Ayers - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/25/2019)
09/25/2019		SO ORDERED, re <a href="#">203</a> MOTION for Pro Hac Vice Appearance of Attorney Peter J. Ayers filed by Cirba Inc., Cirba IP, Inc., <a href="#">201</a> MOTION for Pro Hac Vice Appearance of Attorney Khue V. Hoang filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 9/25/19. (ntl) (Entered: 09/25/2019)
09/26/2019	<a href="#">204</a>	NOTICE OF SERVICE of Notice of 30(b)(6) Deposition to VMWare, Inc. filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 09/26/2019)
09/26/2019	<a href="#">205</a>	REDACTED VERSION of <a href="#">192</a> Reply Brief in support of Motion to Redact Portions of the Preliminary Injunction Hearing Transcript by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/26/2019)

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09/26/2019	<a href="#">206</a>	NOTICE OF SERVICE of VMware, Inc.'s Supplemental Notice of 30(b)(6) Deposition to Cirba (Post-Preliminary Injunction) filed by VMware, Inc..(Wilson, Samantha) (Entered: 09/26/2019)
09/26/2019	<a href="#">207</a>	NOTICE OF SERVICE of Defendant VMware's Initial Invalidity Contentions filed by VMware, Inc..(Wilson, Samantha) (Entered: 09/26/2019)
09/27/2019	<a href="#">208</a>	CLAIM Construction Chart by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 09/27/2019)
10/01/2019	<a href="#">209</a>	STIPULATION to Amend Scheduling Order by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/01/2019)
10/02/2019		Pro Hac Vice Attorneys Peter J. Ayers and Khue V. Hoang for Cirba IP, Inc. and Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (kmd) (Entered: 10/02/2019)
10/02/2019		Pro Hac Vice Attorney Khue V. Hoang, Peter J. Ayers for Cirba IP, Inc. and for Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (sam) (Entered: 10/02/2019)
10/02/2019	<a href="#">210</a>	NOTICE OF SERVICE of VMware, Inc.'s Responses to Cirba Inc. and Cirba IP, Inc.'s Second Set of Post-Preliminary Injunction Hearing Requests for Production of Documents and Things (Nos. 57-151) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/02/2019)
10/03/2019	<a href="#">211</a>	NOTICE OF SERVICE of VMware, Inc.'s Responses to Cirba Inc. and Cirba IP, Inc.'s Third Set of Post-Preliminary Injunction Hearing Requests for Production of Documents and Things (Nos. 152-176) filed by VMware, Inc..(Vrana, Robert) (Entered: 10/03/2019)
10/04/2019	<a href="#">212</a>	NOTICE OF SERVICE of Responses to third set of requests for production filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/04/2019)
10/07/2019		SO ORDERED, re <a href="#">209</a> STIPULATION to Amend Scheduling Order by Cirba IP, Inc., Cirba Inc. Signed by Judge Leonard P. Stark on 10/07/2019. (etg) (Entered: 10/07/2019)
10/07/2019	<a href="#">213</a>	NOTICE OF SERVICE of 1) Defendant's First Amended and Supplemental Responses to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 1-15); 2) VMware, Inc.'s First Amended Responses to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Requests for Production of Documents and Things (Nos. 1-56), and 3) Defendant VMware's Amended Disclosures Pursuant to Section 3 of the Default Standard for Discovery filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/07/2019)
10/08/2019	<a href="#">214</a>	NOTICE OF SERVICE of Defendant VMware's Supplemental Initial Invalidity Contentions filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/08/2019)
10/08/2019	<a href="#">215</a>	MOTION for Pro Hac Vice Appearance of Attorney Nathan B. Sabri - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 10/08/2019)
10/09/2019	<a href="#">216</a>	PROPOSED ORDER - VMware's Proposed Scheduling Order - by VMware, Inc.. (Gaza, Anne) (Entered: 10/09/2019)
10/09/2019	<a href="#">217</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Proposed Scheduling Order - re <a href="#">216</a> Proposed Order. (Attachments: # <a href="#">1</a> Exhibit 1)(Gaza, Anne) (Entered: 10/09/2019)
10/10/2019	<a href="#">218</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding VMWare's proposed schedule - re <a href="#">217</a> Letter. (Dorsney, Kenneth) (Entered: 10/10/2019)
10/10/2019		SO ORDERED, re <a href="#">215</a> MOTION for Pro Hac Vice Appearance of Attorney Nathan B. Sabri filed by VMware, Inc.. Signed by Judge Leonard P. Stark on 10/10/2019. (etg) (Entered: 10/10/2019)
10/10/2019	<a href="#">219</a>	NOTICE to Take Deposition of Dave Overbeek filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/10/2019)
10/10/2019	<a href="#">220</a>	NOTICE to Take Deposition of Sunny Dua filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/10/2019)
10/11/2019	<a href="#">221</a>	NOTICE to Take Deposition of Monica Sharma filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/11/2019)
10/14/2019	<a href="#">222</a>	NOTICE to Take Deposition of Niels Hagoort filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/14/2019)
10/14/2019	<a href="#">223</a>	NOTICE to Take Deposition of Patrick Gelsingier filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/14/2019)
10/14/2019	<a href="#">224</a>	NOTICE to Take Deposition of Raghu Raghuram filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/14/2019)
10/15/2019	225	ORAL ORDER: IT IS HEREBY ORDERED that the parties shall meet and confer at a time sufficient to enable them to provide the Court with a joint proposed scheduling order to govern VMware's patent infringement counterclaims by no later than December 13. VMware's unilaterally proposed schedule, which would impose deadlines beginning as early as October 15, is not warranted and is inconsistent with the Court's decision to sever VMware's counterclaims from the highly expedited trial of Cirba's claims. ORDERED by Judge Leonard P. Stark on 10/15/19. (ntl) (Entered: 10/15/2019)
10/15/2019	<a href="#">226</a>	NOTICE OF SERVICE of Plaintiffs' First Amended and Supplemental Responses to Defendant's First Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 1-11) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/15/2019)
10/15/2019	<a href="#">227</a>	NOTICE to Take Deposition of Tom Silangan Yuyitung on October 18, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">228</a>	NOTICE to Take Deposition of Andrew Hillier on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">229</a>	NOTICE to Take Deposition of Riyaz Somani on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">230</a>	NOTICE to Take Deposition of Gerry Smith on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">231</a>	NOTICE to Take Deposition of Scott Browne on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">232</a>	NOTICE to Take Deposition of Yama Habibzai on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson,

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		Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">233</a>	NOTICE to Take Deposition of Ben Fathi on November 7, 2019 and Notice of Service of Subpoenas filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Wilson, Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">234</a>	Joint STIPULATION and [Proposed] Order to Take Third Party Deposition Out of Time by VMware, Inc.. (Wilson, Samantha) (Entered: 10/15/2019)
10/15/2019	<a href="#">235</a>	NOTICE OF SERVICE of 1) VMware's Opening Claim Construction Brief; 2) VMware, Inc.'s Response to Cirba's Notice of Deposition of VMware, and 3) Defendant VMware's Rule 26(a)(1) Amended and Supplemental Initial Disclosures filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/15/2019)
10/16/2019	<a href="#">236</a>	NOTICE OF SERVICE of Notice of Subpoenas for TD Bank NA and ExxonMobil Corp. filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/16/2019)
10/16/2019	<a href="#">237</a>	NOTICE OF SERVICE of VMware, Inc.'s Third Set of Post-Preliminary Injunction Hearing Interrogatories to Plaintiffs/Counter-Defendants No. 12 filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/16/2019)
10/16/2019	<a href="#">238</a>	STIPULATION TO EXTEND TIME Interim status report to October 17, 2019 - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/16/2019)
10/16/2019	<a href="#">239</a>	NOTICE OF SERVICE of VMware, Inc.'s Requests for Admission to Plaintiffs/Counter-Defendants Nos. 1-20 filed by VMware, Inc.. (Wilson, Samantha) (Entered: 10/16/2019)
10/16/2019	<a href="#">240</a>	MOTION for Pro Hac Vice Appearance of Attorney Matthew I. Kreeger - filed by VMware, Inc.. (Gaza, Anne) (Entered: 10/16/2019)
10/17/2019		SO ORDERED, re <a href="#">238</a> STIPULATION TO EXTEND TIME Interim status report to October 17, 2019 filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 10/17/19. (ntl) (Entered: 10/17/2019)
10/17/2019		SO ORDERED re <a href="#">240</a> MOTION for Pro Hac Vice Appearance of Attorney Matthew I. Kreeger filed by VMware, Inc.. Signed by Judge Leonard P. Stark on 10/17/2019. (etg) (Entered: 10/17/2019)
10/17/2019	<a href="#">241</a>	NOTICE OF SERVICE of Defendant VMware's Second Supplemental Initial Invalidity Contentions filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/17/2019)
10/17/2019	<a href="#">242</a>	[SEALED] STATUS REPORT by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/17/2019)
10/17/2019	<a href="#">243</a>	NOTICE OF SERVICE of VMware, Inc.'s Fourth Set of Post-Preliminary Injunction Hearing Interrogatories to Plaintiffs/Counter-Defendants (Nos. 13-24) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/17/2019)
10/18/2019	<a href="#">244</a>	NOTICE of Appearance by Robert M. Vrana on behalf of VMware, Inc. (Vrana, Robert) (Entered: 10/18/2019)
10/18/2019	<a href="#">245</a>	Letter to The Honorable Leonard P. Stark from Robert M. Vrana regarding VMware, Inc.'s Technology Tutorial. (Vrana, Robert) (Entered: 10/18/2019)
10/18/2019	<a href="#">246</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Enclosing copies of Technology Tutorial. (Dorsney, Kenneth) (Entered: 10/18/2019)
10/18/2019	<a href="#">247</a>	NOTICE OF SERVICE of Identification of accused products filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/18/2019)
10/18/2019	<a href="#">248</a>	NOTICE OF SERVICE of 1) Defendant VMware's Third Supplemental Initial Invalidity Contentions; 2) Defendant VMware's Rule 26(a)(1) Second Supplemental and Amended Initial Disclosures; 3) VMware, Inc.'s Fifth Set of Post-Preliminary Injunction Hearing Interrogatories to Plaintiffs/Counter-Defendants (No. 25), and 4) Defendant's Second Amended and Supplemental Responses to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 1-15) filed by VMware, Inc..(Gaza, Anne) (Entered: 10/18/2019)
10/21/2019	<a href="#">249</a>	NOTICE of Change of Address by Kenneth Laurence Dorsney (Dorsney, Kenneth) (Entered: 10/21/2019)
10/21/2019	<a href="#">250</a>	NOTICE to Take Deposition of Greg Lavender filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/21/2019)
10/21/2019	<a href="#">251</a>	MOTION for Pro Hac Vice Appearance of Attorney Arturo J. Gonzalez - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 10/21/2019)
10/22/2019		SO ORDERED, re <a href="#">251</a> MOTION for Pro Hac Vice Appearance of Attorney Arturo J. Gonzalez filed by VMware, Inc. Signed by Judge Leonard P. Stark on 10/22/19. (ntl) (Entered: 10/22/2019)
10/22/2019	<a href="#">252</a>	NOTICE to Take Deposition of Chuck Tatham on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/22/2019)
10/22/2019	<a href="#">253</a>	NOTICE to Take Deposition of Jeff Pauze on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/22/2019)
10/22/2019	<a href="#">254</a>	NOTICE to Take Deposition of Ray Boots on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/22/2019)
10/22/2019	<a href="#">255</a>	NOTICE OF SERVICE of Defendant VMware's Rule 26(a)(1) Third Supplemental and Amended Initial Disclosures filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/22/2019)
10/22/2019	<a href="#">256</a>	NOTICE OF SERVICE of VMware, Inc.'s Second Amended Responses to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Requests for Production of Documents and Things (Nos. 1-56) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/22/2019)
10/22/2019	<a href="#">257</a>	NOTICE OF SERVICE of (1)SECOND AMENDED AND SUPPLEMENTAL INITIAL DISCLOSURES; (2) FIRST SET OF REQUESTS FOR ADMISSION; (3) FOURTH SET OF POST-PRELIMINARY INJUNCTION REQUESTS FOR PRODUCTION and (4) SECOND SET OF POST-PRELIMINARY INJUNCTION INTERROGATORIES filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/22/2019)
10/22/2019	<a href="#">258</a>	MOTION for Pro Hac Vice Appearance of Attorney Mark R.S. Foster - filed by VMware, Inc.. (Gaza, Anne) (Entered: 10/22/2019)
10/22/2019	<a href="#">259</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Related litigation. (Dorsney, Kenneth)



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		(Entered: 10/22/2019)
10/23/2019	<a href="#">260</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Markman Hearing. (Dorsney, Kenneth) (Entered: 10/23/2019)
10/23/2019	<a href="#">261</a>	STATEMENT re <a href="#">245</a> Letter <i>Comments to Technology Tutorial</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/23/2019)
10/23/2019	<a href="#">262</a>	NOTICE OF SERVICE of (1) Densify's Firth Set of Post-Preliminary Injunction Requests for Production (Nos. 196-201); and (2) Densify's Second Set of Requests for Admission to VMware (Nos. 20-23) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/23/2019)
10/23/2019	<a href="#">263</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware, Inc.'s Response to Cirba's Technology Tutorial - re <a href="#">246</a> Letter. (Gaza, Anne) (Entered: 10/23/2019)
10/23/2019	<a href="#">264</a>	NOTICE OF SERVICE of VMware's Responsive Claim Construction Brief filed by VMware, Inc..(Vrana, Robert) (Entered: 10/23/2019)
10/23/2019	<a href="#">265</a>	NOTICE OF SERVICE of VMware, Inc.'s Fourth Set of Post-Preliminary Injunction Hearing Requests for Production to Plaintiffs/Counter-Defendants (Nos. 192-204) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/23/2019)
10/23/2019	<a href="#">266</a>	NOTICE to Take Deposition of Gerry Smith on October 25, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/23/2019)
10/24/2019	<a href="#">267</a>	REDACTED VERSION of <a href="#">242</a> Status Report by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/24/2019)
10/24/2019		SO ORDERED, re <a href="#">258</a> MOTION for Pro Hac Vice Appearance of Attorney Mark R.S. Foster filed by VMware, Inc. Signed by Judge Leonard P. Stark on 10/24/19. (ntl) (Entered: 10/24/2019)
10/24/2019	<a href="#">268</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Request for Discovery Teleconference. (Dorsney, Kenneth) (Entered: 10/24/2019)
10/24/2019	<a href="#">269</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Expedited teleconference - re <a href="#">268</a> Letter. (Dorsney, Kenneth) (Entered: 10/24/2019)
10/24/2019	<a href="#">270</a>	STATEMENT - <i>Joint Claim Construction Brief</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/24/2019)
10/24/2019	<a href="#">271</a>	Joint APPENDIX re <a href="#">270</a> Statement - <i>Joint Claim Construction Brief</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/24/2019)
10/25/2019	<a href="#">272</a>	NOTICE OF SERVICE of (1) Densify's Amended Responses to Defendant's First Set of Post-Preliminary Injunction Requests for Production (Nos. 1-111); (2) Densify's Amended Responses to Defendant's Second Set of Post-Preliminary Injunction Requests for Production (Nos. 112-168); and (3) Densify's Amended Responses to Defendant's Third Set of Post-Preliminary Injunction Requests for Production (Nos. 169-191) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/25/2019)
10/25/2019	273	ORAL ORDER: IT IS HEREBY ORDERED that with respect to any issues to which the parties believe they have a ripe dispute (e.g., discovery disputes, see D.I. 268, 269), each side shall file letter briefs not to exceed a total of five and three pages, on October 28 and 29. That is, each side may file a total of 8 pages of letter briefing. The parties shall be prepared to address any of the briefed issues at the conclusion of the claim construction hearing on November 1. ORDERED by Judge Leonard P. Stark on 10/25/19. (ntl) (Entered: 10/25/2019)
10/25/2019	<a href="#">274</a>	MOTION for Pro Hac Vice Appearance of Attorney Rahul Sarkar - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/25/2019)
10/25/2019	<a href="#">275</a>	MOTION for Pro Hac Vice Appearance of Attorney Joyce Liou - filed by VMware, Inc.. (Vrana, Robert) (Entered: 10/25/2019)
10/28/2019		SO ORDERED, re <a href="#">234</a> Joint STIPULATION and [Proposed] Order to Take Third Party Deposition Out of Time filed by VMware, Inc. Signed by Judge Leonard P. Stark on 10/28/19. (ntl) (Entered: 10/28/2019)
10/28/2019	<a href="#">276</a>	NOTICE OF SERVICE of Subpoenas to TD Bank NA and Michael Hein filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/28/2019)
10/28/2019	<a href="#">277</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Robert M. Vrana regarding Discovery Disputes in Response to the Court's October 25, 2019 Order (D.I. 273) - re 273 Order,, (Attachments: # <a href="#">1</a> Exhibit 1-10, # <a href="#">2</a> Certificate of Service)(Vrana, Robert) (Entered: 10/28/2019)
10/28/2019	<a href="#">278</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery Dispute - re 273 Order,, (Dorsney, Kenneth) (Entered: 10/28/2019)
10/28/2019	<a href="#">279</a>	[SEALED] DECLARATION re <a href="#">278</a> Letter <i>Declaration of Ariel Green</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/28/2019)
10/28/2019	<a href="#">280</a>	NOTICE to Take Deposition of Yama Habibzai on October 30, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/28/2019)
10/28/2019	<a href="#">281</a>	NOTICE to Take Deposition of Andrew Hillier on October 31, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/28/2019)
10/28/2019	<a href="#">282</a>	NOTICE to Take Deposition of Scott Browne on November 5, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/28/2019)
10/28/2019	<a href="#">283</a>	NOTICE to Take Deposition of Riyaz Somani on November 6, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/28/2019)
10/29/2019	<a href="#">284</a>	NOTICE to Take Deposition of Dave Overbeek on October 30, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/29/2019)
10/29/2019		SO ORDERED, re <a href="#">275</a> MOTION for Pro Hac Vice Appearance of Attorney Joyce Liou filed by VMware, Inc., <a href="#">274</a> MOTION for Pro Hac Vice Appearance of Attorney Rahul Sarkar filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 10/29/19. (ntl) (Entered: 10/29/2019)

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10/29/2019	<a href="#">285</a>	REDACTED VERSION of <a href="#">259</a> Letter to <i>The Honorable Leonard P. Stark regarding related action</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/29/2019)
10/29/2019	<a href="#">286</a>	NOTICE OF SERVICE of Responses to third interrogatories (No. 12) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/29/2019)
10/29/2019	<a href="#">287</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery Dispute - re <a href="#">277</a> Letter.. (Dorsney, Kenneth) (Entered: 10/29/2019)
10/29/2019	<a href="#">288</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Response to Cirba's Letter of October 28, 2019 - re <a href="#">278</a> Letter. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit 1-5)(Gaza, Anne) (Entered: 10/29/2019)
10/29/2019	<a href="#">289</a>	[SEALED] DECLARATION re <a href="#">287</a> Letter <i>SECOND DECLARATION OF ARIEL C. GREEN</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 10/29/2019)
10/30/2019	<a href="#">290</a>	NOTICE to Take Deposition of Chuck Tatham on November 6, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 10/30/2019)
10/31/2019	<a href="#">291</a>	NOTICE OF SERVICE of (1) Plaintiffs' Response to VMware's First Set of Requests for Admission (Nos. 1-20); and (2) Plaintiffs' Third Amended and Supplemental Initial Disclosures filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/31/2019)
10/31/2019	<a href="#">292</a>	MOTION for Pro Hac Vice Appearance of Attorney Ryan J. Malloy - filed by VMware, Inc.. (Wilson, Samantha) (Entered: 10/31/2019)
10/31/2019	<a href="#">293</a>	ORAL ORDER: Having reviewed the parties' letter briefs regarding their discovery disputes (D.I. 277, 278, 287, 288), IT IS HEREBY ORDERED that (i) Plaintiff shall be permitted to depose the three VMware executives it seeks to depose, as Defendant has not met its burden to show that such depositions are not warranted or will be unduly burdensome, and the accelerated schedule imposed in this case does not permit the ordinary approach of resolving "apex deposition" disputes only after all other witnesses have been examined; and (ii) Plaintiff shall produce, by no later than Monday, November 4, 2019, a privilege log to Defendant regarding the thirty documents it clawed back on October 21, 2019. Regarding the remaining disputes, which all relate to document production, the Court agrees that some relief must be granted to Plaintiff and that a modification to the current scheduling order is warranted, without modifying the trial date. The Court disagrees, however, that the modifications to the schedule should be one-sided. Thus, IT IS FURTHER ORDERED that the parties shall meet and confer and jointly submit a proposed modified schedule by no later than tomorrow, November 1, at 2:00 p.m., which may be discussed further at the hearing tomorrow. ORDERED by Judge Leonard P. Stark on 10/31/19. (ntl) (Entered: 10/31/2019)
10/31/2019	<a href="#">294</a>	NOTICE OF SERVICE of responses to fourth set of interrogatories (Nos. 13-24) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 10/31/2019)
10/31/2019	<a href="#">295</a>	MOTION for Pro Hac Vice Appearance of Attorney R. Benjamin Nelson - filed by VMware, Inc.. (Vrana, Robert) (Entered: 10/31/2019)
10/31/2019	<a href="#">296</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Request for a Discovery Teleconference. (Gaza, Anne) (Main Document 296 replaced on 11/1/2019) (ntl). (Entered: 10/31/2019)
11/01/2019	<a href="#">297</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's October 31, 2019 letter. (Dorsney, Kenneth) (Entered: 11/01/2019)
11/01/2019		CORRECTING ENTRY: Corrected document added to D.I. 296 per request of counsel. (ntl) (Entered: 11/01/2019)
11/01/2019		SO ORDERED, re <a href="#">292</a> MOTION for Pro Hac Vice Appearance of Attorney Ryan J. Malloy filed by VMware, Inc., <a href="#">295</a> MOTION for Pro Hac Vice Appearance of Attorney R. Benjamin Nelson filed by VMware, Inc. Signed by Judge Leonard P. Stark on 11/1/19. (ntl) (Entered: 11/01/2019)
11/01/2019	<a href="#">298</a>	STIPULATION to Amend Scheduling Order by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 11/01/2019)
11/01/2019	<a href="#">299</a>	NOTICE OF SERVICE of Responses to Fifth Set of Interrogatories (No. 25) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/01/2019)
11/01/2019	<a href="#">300</a>	MOTION for Pro Hac Vice Appearance of Attorney Yue (lily) Li - filed by VMware, Inc.. (Vrana, Robert) (Entered: 11/01/2019)
11/01/2019	<a href="#">301</a>	NOTICE to Take Deposition of Ben Fathi on November 7, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 11/01/2019)
11/01/2019		Minute Entry for proceedings held before Judge Leonard P. Stark - Markman Hearing held on 11/1/2019. (Court Reporter B. Gaffigan.) (ntl) (Entered: 11/05/2019)
11/02/2019	<a href="#">302</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery. (Dorsney, Kenneth) (Entered: 11/02/2019)
11/03/2019	<a href="#">303</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery - re <a href="#">302</a> Letter. (Dorsney, Kenneth) (Entered: 11/03/2019)
11/03/2019	<a href="#">304</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware, Inc.'s Response to Plaintiffs' November 3, 2019 Letter - re <a href="#">303</a> Letter. (Gaza, Anne) (Entered: 11/03/2019)
11/03/2019	<a href="#">305</a>	[SEALED] EXHIBIT re <a href="#">304</a> Letter - <i>Exhibits 1-10</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 11/03/2019)
11/04/2019		SO ORDERED, re <a href="#">298</a> Stipulation to Amend Scheduling Order -- Proposed Pretrial Order due by 12/27/2019. Signed by Judge Leonard P. Stark on 11/4/19. (ntl) (Entered: 11/04/2019)
11/04/2019		SO ORDERED, re <a href="#">300</a> MOTION for Pro Hac Vice Appearance of Attorney Yue (lily) Li filed by VMware, Inc. Signed by Judge Leonard P. Stark on 11/4/19. (ntl) (Entered: 11/04/2019)
11/04/2019	<a href="#">306</a>	NOTICE of Lodging by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Vrana, Robert) (Entered: 11/04/2019)
11/04/2019	<a href="#">307</a>	REDACTED VERSION of <a href="#">277</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-10)(Vrana, Robert) (Entered: 11/04/2019)
11/04/2019	<a href="#">308</a>	REDACTED VERSION of <a href="#">278</a> Letter to <i>Judge Stark from Kenneth Dorsney</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 11/04/2019)
11/04/2019	<a href="#">309</a>	REDACTED VERSION of <a href="#">279</a> Declaration of <i>Ariel Green</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 11/04/2019)

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11/05/2019	<a href="#">310</a>	REDACTED VERSION of <a href="#">288</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit 1-5)(Gaza, Anne) (Entered: 11/05/2019)
11/05/2019	<a href="#">311</a>	REDACTED VERSION of <a href="#">287</a> Letter <i>The Honorable Leonard P. Stark responding to VMware's October 28, 2019 Letter</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 11/05/2019)
11/05/2019	<a href="#">312</a>	REDACTED VERSION of <a href="#">289</a> Declaration of <i>Ariel Green (Second Declaration)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 11/05/2019)
11/05/2019	<a href="#">313</a>	MEMORANDUM ORDER: A Discovery Conference is set for 11/19/2019 at 04:45 PM in Chambers. A Discovery Conference is set for 12/3/2019 at 04:45 PM in Chambers. A Discovery Conference is set for 12/17/2019 at 04:45 PM in Chambers. A Discovery Conference is set for 12/30/2019 at 04:45 PM in Chambers. Signed by Judge Leonard P. Stark on 11/5/19. (ntl) (Entered: 11/05/2019)
11/05/2019	<a href="#">314</a>	NOTICE OF SERVICE of Notice of Subpoenas to Monica Sharma filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/05/2019)
11/05/2019	<a href="#">315</a>	NOTICE OF SERVICE of 1) VMware's Responses to Plaintiffs' First and Second Set of Requests for Admission (Nos. 1-23); 2) VMware's Responses to Plaintiffs' Fourth Set of Post-Preliminary Injunction Requests for Production of Documents and Things (Nos. 177-195), and 3) VMware's Responses to Plaintiffs' Second Set of Post-Preliminary Injunction Interrogatories (Nos. 16-25) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/05/2019)
11/06/2019	<a href="#">316</a>	NOTICE to Take Deposition of Riyaz Somani on November 14, 2019 (Amended) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/06/2019)
11/06/2019	<a href="#">317</a>	NOTICE OF SERVICE of VMware's Responses to Plaintiffs' Fifth Set of Post-Preliminary Injunction Requests for Production of Documents and Things (Nos. 196-201) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/06/2019)
11/06/2019	<a href="#">318</a>	NOTICE to Take Deposition of Scott Browne on November 19, 2019 (Amended) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/06/2019)
11/06/2019	<a href="#">319</a>	NOTICE to Take Deposition of Ray Boots on November 22, 2019 filed by VMware, Inc..(Vrana, Robert) (Entered: 11/06/2019)
11/06/2019	<a href="#">320</a>	NOTICE OF SERVICE of Responses to fourth set of requests for production filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/06/2019)
11/07/2019	<a href="#">321</a>	[SEALED] NOTICE OF SERVICE of Notice of Subpoena filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Subpoena, # <a href="#">2</a> Certificate of Service)(Vrana, Robert) (Entered: 11/07/2019)
11/07/2019	<a href="#">322</a>	[SEALED] NOTICE of Amended Subpoena by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Wilson, Samantha) (Attachment 1 replaced on 11/7/2019) (ntl). (Entered: 11/07/2019)
11/07/2019		CORRECTING ENTRY: Corrected Exhibit A added to D.I. 322 per request of counsel. (ntl) (Entered: 11/07/2019)
11/07/2019	<a href="#">323</a>	NOTICE to Take Deposition of Jeff Pauze on November 22, 2019 (Amended) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/07/2019)
11/11/2019	<a href="#">324</a>	NOTICE OF SERVICE of Plaintiffs' Supplemental Response to VMware's Post-Preliminary Injunction Hearing Interrogatories (Nos. 3 and 12) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/11/2019)
11/11/2019	<a href="#">325</a>	NOTICE to Take Deposition of Greg Lavender on November 13, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/11/2019)
11/11/2019	<a href="#">326</a>	NOTICE to Take Deposition of Pat Gelsinger on November 25, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/11/2019)
11/11/2019	<a href="#">327</a>	NOTICE to Take Deposition of Raghu Raghuram on November 26, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/11/2019)
11/11/2019	<a href="#">328</a>	NOTICE OF SERVICE of Defendant's Third Amended and Supplemental Response to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 1-15) filed by VMware, Inc..(Wilson, Samantha) (Entered: 11/11/2019)
11/12/2019	<a href="#">329</a>	[SEALED] NOTICE of Subpoena and Deposition by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Vrana, Robert) (Entered: 11/12/2019)
11/12/2019	<a href="#">330</a>	REDACTED VERSION of <a href="#">305</a> Exhibit to a Document by VMware, Inc.. (Gaza, Anne) (Entered: 11/12/2019)
11/12/2019	<a href="#">331</a>	NOTICE of Deposition of VMware pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure by Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 11/12/2019)
11/12/2019	<a href="#">332</a>	NOTICE to Take Deposition of Sunny Dua on November 21, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/12/2019)
11/13/2019	<a href="#">333</a>	NOTICE to Take Deposition of Greg Lavender on November 13, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/13/2019)
11/13/2019	<a href="#">334</a>	NOTICE to Take Deposition of Pat Gelsinger on November 25, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/13/2019)
11/13/2019	<a href="#">335</a>	NOTICE to Take Deposition of Raghu Raghuram on November 26, 2019 (AMENDED) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/13/2019)
11/13/2019	<a href="#">336</a>	NOTICE OF SERVICE of Defendant VMware's Rule 26(a)(1) Fourth Supplemental and Amended Initial Disclosures filed by VMware, Inc..(Vrana, Robert) (Entered: 11/13/2019)
11/14/2019	<a href="#">337</a>	REDACTED VERSION of <a href="#">321</a> Notice of Service by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Vrana, Robert) (Entered: 11/14/2019)
11/14/2019	<a href="#">338</a>	REDACTED VERSION of <a href="#">322</a> Notice (Other) of <i>Amended Subpoena</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Wilson, Samantha) (Entered: 11/14/2019)
11/15/2019	<a href="#">339</a>	NOTICE OF SERVICE of Defendant's Fourth Amended and Supplemental Response to Plaintiffs' First Set of Post-Preliminary

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		Injunction Hearing Interrogatories (Nos. 1-15) and First Amended and Supplemental Responses to Plaintiffs' Second Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 16-25) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/15/2019)
11/15/2019	<a href="#">340</a>	NOTICE to Take Deposition of Monica Sharma on November 22, 2019 filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/15/2019)
11/16/2019	<a href="#">341</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Plaintiffs' Initial Discovery Dispute Letter. (Dorsney, Kenneth) (Entered: 11/16/2019)
11/17/2019	<a href="#">342</a>	Official Transcript of Claim Construction Hearing held on November 1, 2019 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. Transcript may be viewed at the court public terminal or ordered/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 12/9/2019. Redacted Transcript Deadline set for 12/18/2019. Release of Transcript Restriction set for 2/17/2020. (bpg) (Entered: 11/17/2019)
11/17/2019	<a href="#">343</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Response to Plaintiffs' November 16, 2019 Discovery Dispute Letter - re <a href="#">341</a> Letter. (Gaza, Anne) (Entered: 11/17/2019)
11/17/2019	<a href="#">344</a>	[SEALED] DECLARATION re <a href="#">343</a> Letter - <i>Declaration of Jim Dowell</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 11/17/2019)
11/18/2019	<a href="#">345</a>	NOTICE OF SERVICE of Plaintiffs' Final Infringement Contentions filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/18/2019)
11/18/2019	<a href="#">346</a>	REDACTED VERSION of <a href="#">329</a> Notice (Other) by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Vrana, Robert) (Entered: 11/18/2019)
11/19/2019	<a href="#">347</a>	MOTION for Pro Hac Vice Appearance of Attorney Shaun P. deLacy - filed by VMware, Inc.. (Vrana, Robert) (Entered: 11/19/2019)
11/19/2019	<a href="#">348</a>	NOTICE OF SERVICE of (1) Plaintiffs' Second Supplemental Response to VMware's Post-Preliminary Injunction Hearing Interrogatories (No. 12); and (2) Plaintiffs' Supplemental Final Infringement Contentions filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/19/2019)
11/19/2019		SO ORDERED, re <a href="#">347</a> MOTION for Pro Hac Vice Appearance of Attorney Shaun P. deLacy filed by VMware, Inc. Signed by Judge Leonard P. Stark on 11/19/19. (ntl) (Entered: 11/19/2019)
11/19/2019	<a href="#">349</a>	NOTICE OF SERVICE of Defendant VMware's Final Invalidity Contentions filed by VMware, Inc..(Vrana, Robert) (Entered: 11/19/2019)
11/19/2019		Minute Entry for proceedings held before Judge Leonard P. Stark - Discovery Conference held on 11/19/2019. (Court Reporter V. Gunning.) (ntl) (Entered: 11/20/2019)
11/20/2019	350	ORAL ORDER: IT IS HEREBY ORDERED that the November 5, 2019 Memorandum Order (D.I. 313) is amended such that any letter in opposition to an application for relief, which letter shall be filed two (2) days prior to each of the Standing Conferences, must be filed no later than 1:00 p.m. ORDERED by Judge Leonard P. Stark on 11/20/19. (ntl) (Entered: 11/20/2019)
11/21/2019	<a href="#">351</a>	NOTICE OF SERVICE of Supplemental Responses to Fifth Set of Interrogatories filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 11/21/2019)
11/22/2019	<a href="#">352</a>	NOTICE OF SERVICE of Defendant VMware's Rule 26(a)(1) Fifth Amended Initial Disclosures filed by VMware, Inc..(Vrana, Robert) (Entered: 11/22/2019)
11/25/2019	<a href="#">353</a>	REDACTED VERSION of <a href="#">341</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Plaintiffs' initial discovery dispute letter</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 11/25/2019)
11/25/2019	<a href="#">354</a>	NOTICE OF SERVICE of 1) Defendant's Fifth Amended and Supplemental Response to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 1, 9), and 2) Corrected Exhibit A-1 to VMware's Final Invalidity Contentions filed by VMware, Inc..(Vrana, Robert) (Entered: 11/25/2019)
11/26/2019		Remark: Case no longer referred to Chief Magistrate Judge Mary Pat Thyng for mediation. (cak) (Entered: 11/26/2019)
11/26/2019		CASE REFERRED to Magistrate Judge Christopher J. Burke for Mediation. Please see Standing Order dated January 20, 2016, regarding disclosure of confidential ADR communications. A link to the standing order is provided here for your convenience at <a href="https://www.ded.uscourts.gov/sites/ded/files/forms/StandingOrderforADR-Mediation.pdf">https://www.ded.uscourts.gov/sites/ded/files/forms/StandingOrderforADR-Mediation.pdf</a> (cak) (Entered: 11/26/2019)
11/26/2019	<a href="#">355</a>	ORDER Setting Mediation Conference: A Telephone Conference is set for 12/2/2019 at 10:45 AM before Judge Christopher J. Burke. Signed by Judge Christopher J. Burke on 11/26/2019. (dlb) (Entered: 11/26/2019)
11/26/2019	<a href="#">356</a>	MEMORANDUM OPINION re claim construction. Signed by Judge Leonard P. Stark on 11/26/19. (ntl) (Entered: 11/26/2019)
11/26/2019	<a href="#">357</a>	ORDER re <a href="#">356</a> Memorandum Opinion regarding claim construction. Signed by Judge Leonard P. Stark on 11/26/19. (ntl) (Entered: 11/26/2019)
11/26/2019	<a href="#">358</a>	Joint STIPULATION and [Proposed] Order to Take Third Party Deposition by VMware, Inc.. (Wilson, Samantha) (Entered: 11/26/2019)
11/27/2019	<a href="#">359</a>	REDACTED VERSION of <a href="#">343</a> Letter by VMware, Inc.. (Gaza, Anne) (Entered: 11/27/2019)
11/27/2019	<a href="#">360</a>	REDACTED VERSION of <a href="#">344</a> Declaration by VMware, Inc.. (Gaza, Anne) (Entered: 11/27/2019)
11/27/2019	<a href="#">361</a>	NOTICE OF SERVICE of Defendant's Sixth Amended and Supplemental Response to Plaintiffs' First Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 1-15) and Second Amended and Supplemental Response to Plaintiffs' Second Set of Post-Preliminary Injunction Hearing Interrogatories (Nos. 16-25) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/27/2019)
11/30/2019	<a href="#">362</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery Status - re <a href="#">313</a> Order,, Set Hearings,. (Dorsney, Kenneth) (Entered: 11/30/2019)
12/02/2019	363	ORAL ORDER: Having been advised that the parties have no ripe discovery disputes, IT IS HEREBY ORDERED that the discovery conference set for tomorrow, December 3, is CANCELLED. ORDERED by Judge Leonard P. Stark on 12/2/19. (ntl) (Entered: 12/02/2019)

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12/02/2019	<a href="#">364</a>	NOTICE OF SERVICE of (1) Plaintiffs' Opening Expert Report of Dr. Vijay Madiseti and (2) Plaintiffs' Opening Expert Report of Jim W. Bergman filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 12/02/2019)
12/02/2019		SO ORDERED, re <a href="#">358</a> Stipulation and Order to take third-party deposition filed by VMware, Inc. Signed by Judge Leonard P. Stark on 12/2/19. (ntl) (Entered: 12/02/2019)
12/03/2019	<a href="#">365</a>	NOTICE OF SERVICE of Expert Report of Dr. Jason Nieh Regarding Invalidity of U.S. Patent No. 8,209,687 and U.S. Patent No. 9,654,367 and Expert Report of Professor (Michel) Tuan Pham, Ph.D. filed by VMware, Inc..(Vrana, Robert) (Entered: 12/03/2019)
12/04/2019	<a href="#">366</a>	MOTION for Leave to File a <i>Motion for Summary Judgment</i> - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Certification Pursuant to D. Del. LR 7.1.1, # <a href="#">2</a> Text of Proposed Order)(Gaza, Anne) (Entered: 12/04/2019)
12/04/2019	<a href="#">367</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Defendant VMware, Inc.'s Motion for Leave to File a Motion for Summary Judgment - re <a href="#">366</a> MOTION for Leave to File a <i>Motion for Summary Judgment</i> . (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Gaza, Anne) (Entered: 12/04/2019)
12/05/2019	<a href="#">368</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Proposed Juror Questionnaire. (Attachments: # <a href="#">1</a> VMware's Proposed Juror Questionnaire)(Gaza, Anne) (Entered: 12/05/2019)
12/06/2019	<a href="#">369</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's December 5, 2019 Letter regarding juror questionnaire. (Dorsney, Kenneth) (Entered: 12/06/2019)
12/06/2019	<a href="#">370</a>	NOTICE to Take Deposition of (Michel) Tuan Pham on December 10, 2019 filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 12/06/2019)
12/09/2019	371	ORAL ORDER: Having reviewed the parties' letters (D.I. 368, 369), IT IS HEREBY ORDERED that Defendant's request to send out a jury questionnaire, which is opposed by Plaintiff, is DENIED. ORDERED by Judge Leonard P. Stark on 12/9/19. (ntl) (Entered: 12/09/2019)
12/09/2019	<a href="#">372</a>	ORDER Setting Mediation Conference: A Mediation Conference is set for 12/20/2019 at 10:00 AM in Courtroom 2A before Judge Christopher J. Burke. Signed by Judge Christopher J. Burke on 12/9/2019. (dlb) (Entered: 12/09/2019)
12/09/2019	<a href="#">373</a>	PROPOSED ORDER Pretrial exchanges by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 12/09/2019)
12/11/2019	<a href="#">374</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Summary Judgment - re <a href="#">367</a> Letter,. (Dorsney, Kenneth) (Entered: 12/11/2019)
12/11/2019	<a href="#">375</a>	Joint Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding request for teleconference on VMware's Motion for Leave to File Summary Judgment - re <a href="#">366</a> MOTION for Leave to File a <i>Motion for Summary Judgment</i> . (Gaza, Anne) (Entered: 12/11/2019)
12/11/2019	<a href="#">376</a>	REDACTED VERSION of <a href="#">367</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 12/11/2019)
12/12/2019	<a href="#">377</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware, Inc.'s request for leave to file reply letter brief - re <a href="#">374</a> Letter, <a href="#">366</a> MOTION for Leave to File a <i>Motion for Summary Judgment</i> . (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 12/12/2019)
12/12/2019	<a href="#">378</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's December 12, 2019 Letter requesting to file reply letter. (Dorsney, Kenneth) (Entered: 12/12/2019)
12/13/2019	<a href="#">379</a>	NOTICE OF SERVICE of Defendant VMware's Notice Pursuant to 35 U.S.C. § 282 filed by VMware, Inc..(Vrana, Robert) (Entered: 12/13/2019)
12/13/2019		SO ORDERED, re <a href="#">373</a> PROPOSED ORDER Pretrial exchanges by Cirba IP, Inc., Cirba Inc.. Signed by Judge Leonard P. Stark on 12/13/2019. (etg) (Entered: 12/13/2019)
12/13/2019	380	ORAL ORDER: Having reviewed various recent filings (see, e.g., D.I. 366, 367, 374, 375, 377, 378), IT IS HEREBY ORDERED that the parties shall be prepared to discuss Defendant's motion for leave to file a motion for summary judgment (D.I. 366) at the conference next Tuesday, December 17, at 4:45 p.m. No further written submissions with respect to summary judgment, leave to file summary judgment, or leave to file additional briefs regarding leave to file summary judgment shall be filed in advance of next weeks conference. Ordered by Judge Leonard P. Stark on 12/13/2019. (etg) (Entered: 12/13/2019)
12/13/2019	<a href="#">381</a>	NOTICE to Take Deposition of Jim W. Bergman on December 23, 2019 filed by VMware, Inc..(Wilson, Samantha) (Entered: 12/13/2019)
12/13/2019	<a href="#">382</a>	NOTICE to Take Deposition of Dr. Vijay Madiseti on a mutually agreeable date to be determined filed by VMware, Inc..(Wilson, Samantha) (Entered: 12/13/2019)
12/13/2019	<a href="#">383</a>	NOTICE to Take Deposition of Vincent Mayfield on a mutually agreeable date to be determined filed by VMware, Inc..(Wilson, Samantha) (Entered: 12/13/2019)
12/14/2019	<a href="#">384</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Parties' Proposed Scheduling Order on VMware's Patent Infringement Counterclaims - re 225 Order,. (Attachments: # <a href="#">1</a> Exhibit Proposed Scheduling Order on VMware's Patent Infringement Counterclaims, # <a href="#">2</a> Exhibit Chart of Proposed Scheduling Order Dates, # <a href="#">3</a> Exhibit Certificate of Service)(Gaza, Anne) (Entered: 12/14/2019)
12/14/2019	<a href="#">385</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery Dispute. (Attachments: # <a href="#">1</a> Exhibit A-N, # <a href="#">2</a> Exhibit COS)(Dorsney, Kenneth) (Entered: 12/14/2019)
12/15/2019	<a href="#">386</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Response to Plaintiffs' Letter of December 14, 2019 - re <a href="#">385</a> Letter. (Gaza, Anne) (Entered: 12/15/2019)
12/15/2019	<a href="#">387</a>	[SEALED] DECLARATION re <a href="#">386</a> Letter - <i>Declaration of Dan Hubin</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-10, # <a href="#">2</a> Exhibit 11-20, # <a href="#">3</a> Exhibit 21)(Gaza, Anne) (Entered: 12/15/2019)
12/15/2019	<a href="#">388</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: [SEALED] Exhibits 1 to 10 to [SEALED] DECLARATION of Dan Hubin (D.I. 387). Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Anne Shea

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		Gaza on behalf of VMware, Inc. (Gaza, Anne) (Entered: 12/15/2019)
12/17/2019	389	ORAL ORDER: IT IS HEREBY ORDERED that the in-chambers conference today will begin at 4:00 p.m. ORDERED by Judge Leonard P. Stark on 12/17/19. (ntl) (Entered: 12/17/2019)
12/17/2019		Minute Entry for proceedings held before Judge Leonard P. Stark - Discovery Conference held on 12/17/2019. (Court Reporter B. Gaffigan.) (ntl) (Entered: 12/18/2019)
12/18/2019	390	ORAL ORDER: IT IS HEREBY ORDERED that: (1) the pretrial conference set for January 3, 2020 is CANCELLED and will be RESCHEDULED after the Court reviews the parties' joint letter to be filed by no later than tomorrow, December 19, 2019; (2) a jury trial, of up to ten days, on VMware's counterclaims will begin on September 13, 2021; (3) the pretrial conference on those counterclaims will be held on August 27, 2021 at 11:30am; (4) the proposed pretrial order is due on August 20, 2021; and (5) the parties shall submit a revised proposed scheduling order, with all necessary dates and deadlines and reflecting the dates given in this Order, no later than seven days after the completion of the trial on Densify's claims in January 2020. ORDERED by Judge Leonard P. Stark on 12/18/19. (ntl) (Entered: 12/18/2019)
12/18/2019	<a href="#">391</a>	REDACTED VERSION of <a href="#">374</a> Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Summary Judgment by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 12/18/2019)
12/18/2019	<a href="#">392</a>	STIPULATION regarding Expert Discovery by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 12/18/2019)
12/18/2019	<a href="#">393</a>	NOTICE to Take Deposition of Dr. Vijay Madiseti on December 27, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 12/18/2019)
12/18/2019	<a href="#">394</a>	NOTICE to Take Deposition of Jim W. Bergman on December 28, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 12/18/2019)
12/18/2019	<a href="#">395</a>	NOTICE to Take Deposition of Vincent Mayfield on December 27, 2019 (Amended) filed by VMware, Inc..(Wilson, Samantha) (Entered: 12/18/2019)
12/19/2019	<a href="#">396</a>	NOTICE OF SERVICE of Rebuttal Expert Report of Vincent W. Mayfield filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 12/19/2019)
12/19/2019	<a href="#">397</a>	NOTICE to Take Deposition of Dr. Carl Waldspurger on December 20, 2019 filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 12/19/2019)
12/19/2019	<a href="#">398</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding additional briefing and pretrial issues. (Dorsney, Kenneth) (Entered: 12/19/2019)
12/20/2019		SO ORDERED, re <a href="#">392</a> Stipulation and Order Regarding Expert Discovery filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 12/20/19. (ntl) (Entered: 12/20/2019)
12/20/2019	<a href="#">399</a>	REDACTED VERSION of <a href="#">384</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Proposed Scheduling Order, # <a href="#">2</a> Chart of Proposed Scheduling Order Dates)(Vrana, Robert) (Entered: 12/20/2019)
12/23/2019	400	ORAL ORDER: Having reviewed the parties' joint letter of December 19 (D.I. 398), IT IS HEREBY ORDERED that: (1) the pretrial conference will be held on January 7, 2020 at a time to be determined; (2) Daubert briefing shall be completed on the following dates: December 27, December 31, and January 3; (3) the additional briefing ordered at the December 17 hearing shall address the following issues: (i) in light of the Court's existing claim construction decision, what is the proper construction of the term "virtualized environment" in the context of the claim construction of "evaluating each virtual guest against each virtual host and other virtual guests," in the context of claims 3 and 7; and (ii) whether, in light of the Court's existing claim construction decision and the proper construction of the term "virtualized environment," VMware is entitled to summary judgment of non-infringement; and (4) the parties shall disclose to one another their proposed constructions for "virtualized environment" no later than December 24, 2019. Ordered by Judge Leonard P. Stark on 12/23/2019. (etg) (Entered: 12/23/2019)
12/23/2019	<a href="#">401</a>	NOTICE OF SERVICE of Rebuttal Expert Report of Dr. Vijay Madiseti filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 12/23/2019)
12/23/2019	<a href="#">402</a>	NOTICE to Take Deposition of Paul Meyer on December 30, 2019 filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 12/23/2019)
12/23/2019	<a href="#">403</a>	NOTICE to Take Deposition of Dr. Jason Nieh on January 6, 2020 filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 12/23/2019)
12/23/2019	<a href="#">404</a>	NOTICE OF SERVICE of 1) Rebuttal Expert Report of Dr. Jason Nieh Regarding Non-Infringement of U.S. Patent Nos. 8,209,687 and 9,654,367 and 2) Rebuttal Expert Report of Professor Paul K. Meyer Regarding Damages filed by VMware, Inc..(Vrana, Robert) (Entered: 12/23/2019)
12/24/2019	<a href="#">405</a>	REDACTED VERSION of <a href="#">385</a> Letter Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Discovery Dispute. by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 12/24/2019)
12/26/2019	406	ORAL ORDER: IT IS HEREBY ORDERED that: (1) the pretrial conference will be held on January 7, 2020 beginning at 4:00 p.m.; and (2) trial will be held at some or all of the following times, subject to the overall time limits the Court will provide each side for its trial presentation (which the Court anticipates will be no more than 14-17 hours per side): (i) Monday, January 13: 8:30 a.m. - 5:00 p.m.; (ii) Tuesday, January 14: 8:30 a.m. - 5:00 p.m.; (iii) Wednesday, January 15: 8:30 a.m. - 3:00 p.m.; (iv) Thursday, January 16: 8:30 a.m. - 3:00 p.m.; (v) Friday, January 17: 10:30 a.m. - 4:30 p.m.; (vi) no trial on Monday, January 20; (vii) Tuesday, January 21: 8:30 a.m. - 5:00 p.m.; (viii) Wednesday, January 22: 8:30 a.m. - 12:00 p.m.; (ix) Thursday, January 23: 8:30 a.m. - 3:00 p.m.; and (x) Friday, January 24: 10:00 a.m. - 5:00 p.m. Ordered by Judge Leonard P. Stark on 12/26/2019. (etg) (Entered: 12/26/2019)
12/27/2019	<a href="#">407</a>	STIPULATION TO EXTEND TIME [Motion in Limine Briefs and Pre-Trial Order] to [See Stipulation] - filed by VMware, Inc.. (Vrana, Robert) (Entered: 12/27/2019)
12/27/2019	<a href="#">408</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding DISCOVERY DISPUTES IN RESPONSE TO THE COURT'S NOVEMBER 5, 2019 ORDER (D. I. 313) - re <a href="#">313</a> Order, Set Hearings,. (Attachments: # <a href="#">1</a> Exhibit 1 Part 1 of 2, # <a href="#">2</a> Exhibit 1 Part 2 of 2, # <a href="#">3</a> Exhibit 2)(Gaza, Anne) (Entered: 12/27/2019)

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12/27/2019		SO ORDERED, re <a href="#">407</a> STIPULATION TO EXTEND TIME [Motion in Limine Briefs and Pre-Trial Order] to [See Stipulation] filed by VMware, Inc.. Signed by Judge Leonard P. Stark on 12/27/2019. (etg) (Entered: 12/27/2019)
12/27/2019	<a href="#">409</a>	REDACTED VERSION of <a href="#">386</a> Letter by VMware, Inc.. (Vrana, Robert) (Entered: 12/27/2019)
12/27/2019	<a href="#">410</a>	REDACTED VERSION of <a href="#">387</a> Declaration by VMware, Inc.. (Vrana, Robert) (Entered: 12/27/2019)
12/27/2019	<a href="#">411</a>	MOTION to Preclude <i>Motion to exclude certain expert testimony of Paul Meyer and M.T. Pham</i> - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 12/27/2019)
12/27/2019	<a href="#">412</a>	[SEALED] OPENING BRIEF in Support re <a href="#">411</a> MOTION to Preclude <i>Motion to exclude certain expert testimony of Paul Meyer and M.T. Pham</i> filed by Cirba IP, Inc., Cirba Inc.. Answering Brief/Response due date per Local Rules is 1/10/2020. (Dorsney, Kenneth) (Entered: 12/27/2019)
12/27/2019	<a href="#">413</a>	[SEALED] DECLARATION re <a href="#">412</a> Opening Brief in Support, <i>Declaration of Sarah Jorgensen</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit A-F, # <a href="#">2</a> Exhibit G-H)(Dorsney, Kenneth) (Entered: 12/27/2019)
12/27/2019	<a href="#">414</a>	MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF JIM BERGMAN] - filed by VMware, Inc.. (Vrana, Robert) (Entered: 12/27/2019)
12/27/2019	<a href="#">415</a>	MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VIJAY MADISETTI] - filed by VMware, Inc.. (Vrana, Robert) (Entered: 12/27/2019)
12/27/2019	<a href="#">416</a>	MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VINCENT MAYFIELD] - filed by VMware, Inc.. (Vrana, Robert) (Entered: 12/27/2019)
12/27/2019	<a href="#">417</a>	[SEALED] OPENING BRIEF in Support re <a href="#">414</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF JIM BERGMAN], <a href="#">415</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VIJAY MADISETTI], <a href="#">416</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VINCENT MAYFIELD] filed by VMware, Inc.. Answering Brief/Response due date per Local Rules is 1/10/2020. (Vrana, Robert) (Main Document 417 replaced on 12/30/2019) (ntl). (Entered: 12/27/2019)
12/27/2019	<a href="#">418</a>	[SEALED] DECLARATION re <a href="#">414</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF JIM BERGMAN], <a href="#">415</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VIJAY MADISETTI], <a href="#">416</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VINCENT MAYFIELD] [ <i>DECLARATION OF YUE LI</i> ] by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K)(Vrana, Robert) (Entered: 12/27/2019)
12/28/2019	<a href="#">419</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Response to December 27, 2019 Letter - re <a href="#">408</a> Letter.. (Dorsney, Kenneth) (Entered: 12/28/2019)
12/30/2019		CORRECTING ENTRY: Corrected document added to D.I. 417 per request of counsel. (ntl) (Entered: 12/30/2019)
12/30/2019	420	ORAL ORDER: Having reviewed the parties' letters and related materials regarding their latest disputes (D.I. 408, 419), IT IS HEREBY ORDERED that VMware's request to strike portions of Mr. Mayfield's report and to preclude related testimony at trial is DENIED. Opinions disclosed in a rebuttal expert report are proper "if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party." Fed. R. Civ. P. 26(a)(2)(D)(ii). Such reports "may cite new evidence and data so long as the new evidence and data is offered to directly contradict or rebut the opposing party's expert." <i>Withrow v. Spears</i> , 967 F. Supp. 2d 982, 1002 (D. Del. 2013). The Court is persuaded that Mr. Mayfield's opinions in all three categories challenged by VMware are properly offered to contradict or rebut the opinions of Dr. Pham. Mr. Mayfield's (i) secondary meaning opinions directly rebut Dr. Pham's opinions on factors relating to distinctiveness and lack of secondary meaning (see generally VMware's Daubert motion (D.I. 417 at 3-4) (noting that "Dr. Pham opines as to the... lack of 'secondary meaning' for [Densify's] marks"); (ii) opinions on online search engines, bias, and optimization directly rebut Dr. Pham's assumptions about the pertinent field and how Dr. Pham's search methodology and results are flawed; and (iii) opinions on specific search results directly rebut Dr. Pham's single-word searching and whether such searches provide sufficient context to yield pertinent results. Densify's service of the Mayfield report was timely and exclusion is not warranted. IT IS FURTHER ORDERED that the discovery conference set for Monday, December 30, is CANCELLED. ORDERED by Judge Leonard P. Stark on 12/30/19. (ntl) (Entered: 12/30/2019)
12/30/2019	<a href="#">421</a>	VERDICT SHEET by Cirba IP, Inc., Cirba Inc. <i>Plaintiffs' Proposed Verdict Form</i> . (Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">422</a>	Proposed Voir Dire by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">423</a>	VERDICT SHEET by VMware, Inc. [ <i>Proposed</i> ]. (Vrana, Robert) (Entered: 12/30/2019)
12/30/2019	<a href="#">424</a>	Proposed Voir Dire by VMware, Inc.. (Vrana, Robert) (Entered: 12/30/2019)
12/30/2019	<a href="#">425</a>	[SEALED] RESPONSE to Order re 400 Oral Order,,,, <i>OPENING BRIEF AS TO THE CONSTRUCTION OF VIRTUALIZED ENVIRONMENT AND SUMMARY JUDGMENT</i> . (Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">426</a>	[SEALED] RESPONSE to Order re 400 Oral Order,,,, [ <i>VMWARE'S OPENING BRIEF ON THE CONSTRUCTION OF "VIRTUALIZED ENVIRONMENT" AND WHY SUMMARY JUDGMENT IS WARRANTED</i> ] filed by VMware, Inc.. (Gaza, Anne) (Entered: 12/30/2019)
12/30/2019	<a href="#">427</a>	[SEALED] DECLARATION re <a href="#">426</a> Response to Order [ <i>DECLARATION OF YUE LI</i> ] by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8, # <a href="#">9</a> Exhibit 9, # <a href="#">10</a> Exhibit 10, # <a href="#">11</a> Exhibit 11)(Vrana, Robert) (Entered: 12/30/2019)
12/30/2019	<a href="#">428</a>	[SEALED] DECLARATION re <a href="#">425</a> Response to Order <i>Declaration of Vijay Madiseti Volume I</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-10, # <a href="#">2</a> Exhibit 11, # <a href="#">3</a> Exhibit 12, # <a href="#">4</a> Exhibit 13, # <a href="#">5</a> Exhibit 14)(Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">429</a>	[SEALED] DECLARATION re <a href="#">425</a> Response to Order <i>Declaration of Vijay Madiseti Volume II</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit 15, # <a href="#">2</a> Exhibit 16, # <a href="#">3</a> Exhibit 17, # <a href="#">4</a> Exhibit 19)(Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">430</a>	[SEALED] DECLARATION re <a href="#">425</a> Response to Order <i>Declaration of Vijay Madiseti Volume III</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit 19 A -1, # <a href="#">2</a> Exhibit 19 A -2, # <a href="#">3</a> Exhibit 19 A -3, # <a href="#">4</a> Exhibit 19 A -4, # <a href="#">5</a> Exhibit 19 A -5)(Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">431</a>	[SEALED] DECLARATION re <a href="#">425</a> Response to Order <i>Declaration of Vijay Madiseti Volume IV</i> by Cirba IP, Inc., Cirba Inc..

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		(Attachments: # <a href="#">1</a> Exhibit 19 B -1, # <a href="#">2</a> Exhibit 19 B-2, # <a href="#">3</a> Exhibit 19 B-3, # <a href="#">4</a> Exhibit 19 B-4, # <a href="#">5</a> Exhibit 19 B-5, # <a href="#">6</a> Exhibit 19 B-6, # <a href="#">7</a> Exhibit 19 B-7)(Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">432</a>	[SEALED] DECLARATION re <a href="#">425</a> Response to Order <i>Declaration of Vijay Madiseti Volume V</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit 20-23, # <a href="#">2</a> Exhibit 24, # <a href="#">3</a> Exhibit 25, # <a href="#">4</a> Exhibit 26)(Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">433</a>	Proposed Jury Instructions by Cirba IP, Inc., Cirba Inc. <i>Joint Proposed Preliminary Jury Instructions</i> . (Dorsney, Kenneth) (Entered: 12/30/2019)
12/30/2019	<a href="#">434</a>	Proposed Jury Instructions by Cirba IP, Inc., Cirba Inc. <i>Joint Proposed Final Jury Instructions</i> . (Dorsney, Kenneth) (Entered: 12/30/2019)
12/31/2019	<a href="#">435</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">411</a> MOTION to Preclude <i>Motion to exclude certain expert testimony of Paul Meyer and M.T. Pham</i> filed by VMware, Inc..Reply Brief due date per Local Rules is 1/7/2020. (Vrana, Robert) (Entered: 12/31/2019)
12/31/2019	<a href="#">436</a>	[SEALED] DECLARATION re <a href="#">435</a> Answering Brief in Opposition [ <i>DECLARATION OF YUE LI IN SUPPORT OF DEFENDANT VMWARE'S OPPOSITION TO PLAINTIFFS' MOTION TO EXCLUDE CERTAIN EXPERT TESTIMONY OF PAUL K. MEYER AND M.T. PHAM</i> ] with Exhibits 1-14 by VMware, Inc.. (Vrana, Robert) (Entered: 12/31/2019)
12/31/2019	<a href="#">437</a>	[SEALED] REPLY BRIEF re <a href="#">414</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF JIM BERGMAN] , <a href="#">415</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VIJAY MADISETTI] , <a href="#">416</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VINCENT MAYFIELD] filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Main Document 437 replaced on 1/2/2020) (ntl). (Entered: 12/31/2019)
12/31/2019	<a href="#">438</a>	[SEALED] DECLARATION re <a href="#">437</a> Reply Brief, <i>DECLARATION OF CHRISTINE E. LEHMAN</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit A-E, # <a href="#">2</a> Exhibit F-I)(Dorsney, Kenneth) (Entered: 12/31/2019)
01/02/2020		CORRECTING ENTRY: Corrected document added to D.I. 437 per request of counsel. (ntl) (Entered: 01/02/2020)
01/02/2020	<a href="#">439</a>	[SEALED] Proposed Pretrial Order - <i>Volume 1 (Exhibits 1 - 10)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/02/2020)
01/02/2020	<a href="#">440</a>	[SEALED] Proposed Pretrial Order - <i>Volume 2 (Exhibits 11, 11A - 11F)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 11, 11A - 11C, # <a href="#">2</a> Exhibits 11D - 11F)(Dorsney, Kenneth) (Entered: 01/02/2020)
01/03/2020	<a href="#">441</a>	OBJECTIONS by VMware, Inc. to <a href="#">422</a> Proposed Voir Dire . (Vrana, Robert) (Entered: 01/03/2020)
01/03/2020	<a href="#">442</a>	REDACTED VERSION of <a href="#">408</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 and 2)(Gaza, Anne) (Entered: 01/03/2020)
01/03/2020	443	ORAL ORDER: For the reasons stated during the conference on December 17, 2019, IT IS HEREBY ORDERED that <a href="#">366</a> MOTION for Leave to File a Motion for Summary Judgment filed by VMware, Inc. is GRANTED in part and DENIED in part. ORDERED by Judge Leonard P. Stark on 1/3/20. (ntl) (Entered: 01/03/2020)
01/03/2020	<a href="#">444</a>	REDACTED VERSION of <a href="#">417</a> Opening Brief in Support, by VMware, Inc.. (Vrana, Robert) (Entered: 01/03/2020)
01/03/2020	<a href="#">445</a>	REDACTED VERSION of <a href="#">418</a> Declaration,, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-K)(Vrana, Robert) (Entered: 01/03/2020)
01/03/2020	<a href="#">446</a>	OBJECTIONS by Cirba IP, Inc., Cirba Inc. to <a href="#">424</a> Proposed Voir Dire <i>Densify's Objections to VMware's Proposed Voir Dire</i> . (Dorsney, Kenneth) (Entered: 01/03/2020)
01/03/2020	<a href="#">447</a>	REDACTED VERSION of <a href="#">412</a> Opening Brief in Support, by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/03/2020)
01/03/2020	<a href="#">448</a>	REDACTED VERSION of <a href="#">413</a> Declaration <i>OF SARAH JORGENSEN</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/03/2020)
01/03/2020	449	ORAL ORDER: Having reviewed the parties' proposed voir dire (D.I. 422, 424, 441, 446), IT IS HEREBY ORDERED that the parties shall meet and confer and, by no later than Monday, December 6, file a single, joint submission that (i) is consistent in form and informed by the voir dire the Court recently used in Roche Diagnostics Corp. v. Meso Scale Diagnostics, LLC, C.A. No. 17-cv-189-LPS D.I. 258; and (ii) clearly identifies for the Court where there are disputes. ORDERED by Judge Leonard P. Stark on 1/3/20. (ntl) (Entered: 01/03/2020)
01/03/2020	<a href="#">450</a>	[SEALED] MOTION for Leave to File a <i>Motion in Limine to Exclude New Infringement Theories Not Present in Vijay Madiseti's November 29 Infringement Expert Report and to Preclude New Infringement Theories at Trial</i> - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Local Rule 7.1.1 Certification, # <a href="#">2</a> Exhibit A)(Gaza, Anne) (Entered: 01/03/2020)
01/03/2020	<a href="#">451</a>	[SEALED] REPLY BRIEF re <a href="#">411</a> MOTION to Preclude <i>Motion to exclude certain expert testimony of Paul Meyer and M.T. Pham</i> filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/03/2020)
01/03/2020	<a href="#">452</a>	[SEALED] DECLARATION re <a href="#">451</a> Reply Brief <i>Declaration of WESLEY WHITE</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/03/2020)
01/03/2020	<a href="#">453</a>	[SEALED] ANSWERING BRIEF in Opposition to <i>Plaintiffs' Opening Brief as to the Construction of Virtualized Environment and Summary Judgment (D.I. 425)</i> filed by VMware, Inc..Reply Brief due date per Local Rules is 1/10/2020. (Vrana, Robert) (Entered: 01/03/2020)
01/03/2020	<a href="#">454</a>	[SEALED] STATEMENT re <a href="#">426</a> Response to Order - <i>Densify's response to VMware's Opening Brief as to the Construction of "Virtualized Environment" and Summary Judgment</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/03/2020)
01/03/2020	<a href="#">455</a>	[SEALED] DECLARATION re <a href="#">454</a> Statement ( <i>executed by Wesley White</i> ) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/03/2020)
01/03/2020	<a href="#">456</a>	[SEALED] REPLY BRIEF re <a href="#">414</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF JIM BERGMAN] , <a href="#">415</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VIJAY MADISETTI] , <a href="#">416</a> MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VINCENT MAYFIELD] filed by VMware, Inc.. (Vrana, Robert) (Entered: 01/03/2020)
01/03/2020	<a href="#">457</a>	[SEALED] DECLARATION re <a href="#">456</a> Reply Brief, - <i>Declaration of Yue Li</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit L-N)(Vrana, Robert) (Entered: 01/03/2020)
01/04/2020	<a href="#">458</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Motion for Leave to File Motion in Limine No. 4



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		and Dr. Madiseti's New January 3, 2020 Infringement Theories - re <a href="#">450</a> MOTION for Leave to File a Motion in Limine to Exclude New Infringement Theories Not Present in Vijay Madiseti's November 29 Infringement Expert Report and to Preclude New Infringement Theories at Trial, <a href="#">455</a> Declaration, <a href="#">174</a> Scheduling Order,, (Gaza, Anne) (Entered: 01/04/2020)
01/04/2020	<a href="#">459</a>	RESPONSE to Motion re <a href="#">450</a> MOTION for Leave to File a Motion in Limine to Exclude New Infringement Theories Not Present in Vijay Madiseti's November 29 Infringement Expert Report and to Preclude New Infringement Theories at Trial ; Densify's Response to VMware's Motion for Leave to File a Fourth Motion In Limine Re Supplemental Claim Construction Briefing filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/04/2020)
01/06/2020	<a href="#">460</a>	MEMORANDUM ORDER re rulings on motions in limine and other trial related issues. Signed by Judge Leonard P. Stark on 1/6/20. (ntl) (Entered: 01/06/2020)
01/06/2020	<a href="#">461</a>	REDACTED VERSION of <a href="#">419</a> Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Response to December 27, 2019 Letter by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/06/2020)
01/06/2020	<a href="#">462</a>	Proposed Voir Dire by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/06/2020)
01/06/2020	<a href="#">463</a>	Proposed Voir Dire by VMware, Inc.. (Wilson, Samantha) (Entered: 01/06/2020)
01/06/2020	<a href="#">464</a>	REDACTED VERSION of <a href="#">426</a> Response to Order by VMware, Inc.. (Gaza, Anne) (Entered: 01/06/2020)
01/06/2020	<a href="#">465</a>	REDACTED VERSION of <a href="#">427</a> Declaration, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-11)(Gaza, Anne) (Entered: 01/06/2020)
01/07/2020	<a href="#">466</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding argument for opposition to Jim Bergman Daubert Motion. (Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">467</a>	MEMORANDUM ORDER re rulings on the Daubert motions. Signed by Judge Leonard P. Stark on 1/7/2020. (ntl) (Entered: 01/07/2020)
01/07/2020	<a href="#">468</a>	REDACTED VERSION of <a href="#">425</a> Response to Order - Plaintiffs' Opening Brief as to the Construction of "Virtualized Environment" and Summary Judgment by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">469</a>	REDACTED VERSION of <a href="#">428</a> Declaration, of Madiseti (Volume I) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">470</a>	REDACTED VERSION of <a href="#">429</a> Declaration of Madiseti (Vol II) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">471</a>	REDACTED VERSION of <a href="#">430</a> Declaration, of Madiseti (Volume III) by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Part 1, # <a href="#">2</a> Part 2, # <a href="#">3</a> Part 3)(Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">472</a>	REDACTED VERSION of <a href="#">431</a> Declaration, of Madiseti (Volume IV) by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Part 1, # <a href="#">2</a> Part 2, # <a href="#">3</a> Part 3, # <a href="#">4</a> Part 4, # <a href="#">5</a> Part 5)(Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">473</a>	REDACTED VERSION of <a href="#">432</a> Declaration of Madiseti (Volume V) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">474</a>	REDACTED VERSION of <a href="#">437</a> Reply Brief, REPLY BRIEF re 414 MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF JIM BERGMAN], 415 MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VIJAY MADISETTI], 416 MOTION [VMWARE, INC. 9;S MOTION TO EXCLUDE TESTIMONY OF VINCENT MAYFIELD] by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020	<a href="#">475</a>	REDACTED VERSION of <a href="#">438</a> Declaration DECLARATION OF CHRISTINE E. LEHMAN by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/07/2020)
01/07/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Pretrial Conference held on 1/7/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/08/2020)
01/08/2020	<a href="#">476</a>	ORAL ORDER: For the reasons stated in Court at yesterday's hearing, IT IS HEREBY ORDERED that VMware's motion to exclude certain expert testimony of Dr. Madiseti (D.I. 415) is DENIED. IT IS FURTHER ORDERED that the term "virtualized environment" shall be given its plain and ordinary meaning. ORDERED by Judge Leonard P. Stark on 1/8/2020. (ntl) (Entered: 01/08/2020)
01/08/2020	<a href="#">477</a>	REDACTED VERSION of <a href="#">435</a> Answering Brief in Opposition to Motion to Exclude Certain Expert Testimony of Paul K. Meyer & M.T. Pham by VMware, Inc.. (Vrana, Robert) (Entered: 01/08/2020)
01/08/2020	<a href="#">478</a>	REDACTED VERSION of <a href="#">436</a> Declaration, OF YUE LI IN SUPPORT OF DEFENDANT VMWARE'S OPPOSITION TO PLAINTIFFS' MOTION TO EXCLUDE CERTAIN EXPERT TESTIMONY OF PAUL K. MEYER AND M.T. PHAM by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 through 14)(Vrana, Robert) (Entered: 01/08/2020)
01/10/2020	<a href="#">479</a>	REDACTED VERSION of <a href="#">439</a> Proposed Pretrial Order (Volume I) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/10/2020)
01/10/2020	<a href="#">480</a>	REDACTED VERSION of <a href="#">440</a> Proposed Pretrial Order (Volume II) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/10/2020)
01/10/2020	<a href="#">481</a>	Voir Dire Questions. (ntl) (Entered: 01/10/2020)
01/10/2020	<a href="#">482</a>	REDACTED VERSION of <a href="#">450</a> MOTION for Leave to File a Motion in Limine to Exclude New Infringement Theories Not Present in Vijay Madiseti's November 29 Infringement Expert Report and to Preclude New Infringement Theories at Trial by VMware, Inc.. (Vrana, Robert) (Entered: 01/10/2020)
01/10/2020	<a href="#">483</a>	REDACTED VERSION of <a href="#">453</a> Answering Brief in Opposition, to Plaintiffs' Opening Brief as to the Construction of Virtualized Environment and Summary Judgment by VMware, Inc.. (Vrana, Robert) (Entered: 01/10/2020)
01/10/2020	<a href="#">484</a>	REDACTED VERSION of <a href="#">456</a> Reply Brief, re 414 MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF JIM BERGMAN], 415 MOTION [VMWARE, INC.'S MOTION TO EXCLUDE TESTIMONY OF VIJAY MADISETTI], 416 MOTION [VMWARE, INC. 9;S MOTION TO EXCLUDE TESTIMONY OF VINCENT MAYFIELD] by VMware, Inc.. (Vrana, Robert) (Entered: 01/10/2020)

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01/10/2020	<a href="#">485</a>	REDACTED VERSION of <a href="#">457</a> Declaration of <i>Yue Li in Support of Reply Brief</i> by VMware, Inc.. (Vrana, Robert) (Entered: 01/10/2020)
01/11/2020	<a href="#">486</a>	Proposed Jury Instructions by VMware, Inc. - <i>[Joint Proposed] Amended Preliminary Jury Instructions</i> . (Wilson, Samantha) (Entered: 01/11/2020)
01/13/2020	<a href="#">487</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware, Inc.'s Objections to Plaintiffs' Deposition Designations for Trial on January 14, 2020. (Attachments: # <a href="#">1</a> Exhibit 1-5)(Gaza, Anne) (Entered: 01/13/2020)
01/13/2020	<a href="#">488</a>	[SEALED] Letter to Chief Judge Stark from Densify regarding Unresolved Objections and Responses. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Dorsney, Kenneth) (Entered: 01/13/2020)
01/13/2020	<a href="#">489</a>	[SEALED] EXHIBIT re <a href="#">488</a> Letter ( <i>Exhibit C</i> ) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/13/2020)
01/13/2020	<a href="#">490</a>	Preliminary Jury Instructions. (ntl) (Entered: 01/13/2020)
01/13/2020	<a href="#">491</a>	REDACTED VERSION of <a href="#">451</a> Reply Brief <i>in support of Densify's Motion to Exclude certain expert testimony of Paul Meyer and M.T. Pham</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/13/2020)
01/13/2020	<a href="#">492</a>	REDACTED VERSION of <a href="#">452</a> Declaration of <i>Wesley White</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/13/2020)
01/13/2020	<a href="#">493</a>	REDACTED VERSION of <a href="#">454</a> Statement - <i>Densify's response to VMware's Opening Brief as to the Construction of "Virtualized Environment" and Summary Judgment</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/13/2020)
01/13/2020	<a href="#">494</a>	REDACTED VERSION of <a href="#">455</a> Declaration of <i>Wesley White</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/13/2020)
01/13/2020	<a href="#">495</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Deposition Designations. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Dorsney, Kenneth) (Entered: 01/13/2020)
01/13/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/13/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/14/2020)
01/14/2020	<a href="#">496</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Certain Proposed Opinions of Cirba's Technical Expert, Mr. Vijay Madiseti. (Gaza, Anne) (Entered: 01/14/2020)
01/14/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/14/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/15/2020)
01/15/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/15/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/16/2020)
01/16/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/16/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/17/2020)
01/17/2020	<a href="#">497</a>	VERDICT SHEET by Cirba IP, Inc., Cirba Inc. <i>Cirba's amended proposed verdict sheet</i> . (Dorsney, Kenneth) (Entered: 01/17/2020)
01/17/2020	<a href="#">498</a>	Proposed Jury Instructions by Cirba IP, Inc., Cirba Inc. <i>amended proposed joint final jury instructions</i> . (Dorsney, Kenneth) (Entered: 01/17/2020)
01/17/2020	<a href="#">499</a>	VERDICT SHEET by VMware, Inc. - <i>VMware's Amended Verdict Form</i> -. (Wilson, Samantha) (Entered: 01/17/2020)
01/17/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/17/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/21/2020)
01/18/2020	<a href="#">500</a>	Letter to Anne S. Gaza from Kenneth L. Dorsney regarding Response to Court Inquiry. (Dorsney, Kenneth) (Entered: 01/18/2020)
01/18/2020	<a href="#">501</a>	Official Transcript of Discovery Conference held on December 17, 2019 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: gaffigan@verizon.net. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 2/10/2020. Redacted Transcript Deadline set for 2/18/2020. Release of Transcript Restriction set for 4/17/2020. (bpg) (Entered: 01/18/2020)
01/19/2020	<a href="#">502</a>	ANSWERING BRIEF in Opposition to <i>VMware's Oral Motion for JMOL on Densify's Trademark Claims</i> filed by Cirba IP, Inc., Cirba Inc..Reply Brief due date per Local Rules is 1/27/2020. (Dorsney, Kenneth) (Entered: 01/19/2020)
01/19/2020	<a href="#">503</a>	APPENDIX re <a href="#">502</a> Answering Brief in Opposition to <i>VMWARES ORAL MOTION FOR JUDGMENT AS A MATTER OF LAW ON PLAINTIFFS TRADEMARK CLAIMS</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/19/2020)
01/19/2020	<a href="#">504</a>	Letter to The Honorable Leonard P. Stark from Samantha G. Wilson regarding Deposition Designation Disputes. (Wilson, Samantha) (Entered: 01/19/2020)
01/20/2020	<a href="#">505</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Samantha G. Wilson regarding disputes pertaining to deposition designations to be played at trial on January 21, 2020. (Attachments: # <a href="#">1</a> Exhibit 1-3)(Wilson, Samantha) (Entered: 01/20/2020)
01/20/2020	<a href="#">506</a>	REPLY BRIEF <i>in Support of VMware's Motion for Judgment as a Matter of Law on Trademark Claims</i> filed by VMware, Inc.. (Gaza, Anne) (Main Document 506 replaced on 1/21/2020) (ntl). (Entered: 01/20/2020)
01/20/2020	<a href="#">507</a>	DECLARATION re <a href="#">506</a> Reply Brief - <i>Declaration of Joyce Liou</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-14)(Gaza, Anne) (Entered: 01/20/2020)
01/20/2020	<a href="#">508</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: Exhibit 13 to Declaration of Joyce Liou (D.I. 507). Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Anne Shea Gaza on behalf of VMware, Inc. (Gaza, Anne) (Entered: 01/20/2020)
01/20/2020	<a href="#">509</a>	Letter to The Honorable Leonard P. Stark and Cirba Counsel from Anne Shea Gaza regarding Narrowing of Invalidity Defenses at Trial. (Gaza, Anne) (Entered: 01/20/2020)
01/21/2020	<a href="#">510</a>	NOTICE of Lodging [Demonstrative - Kit Colbert] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">511</a>	NOTICE of Lodging [Demonstrative - Dr. Vijay Madiseti] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)

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01/21/2020	<a href="#">512</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Jim W. Bergman] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">513</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Pat Gelsinger] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">514</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Andrew Hillier] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">515</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Greg Lavender] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">516</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Vijay K. Madiseti, Ph.D.] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">517</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Rangarajan Raghuram] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">518</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Ajay Singh] by VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020		CORRECTING ENTRY: Corrected reply brief added to D.I. 506 per request of counsel. (ntl) (Entered: 01/21/2020)
01/21/2020	<a href="#">519</a>	VERDICT SHEET by VMware, Inc. [ <i>AMENDED PROPOSED</i> ]. (Wilson, Samantha) (Entered: 01/21/2020)
01/21/2020	<a href="#">520</a>	Proposed Jury Instructions by Cirba IP, Inc., Cirba Inc. - <i>Revised Amended Joint Proposed Final Jury Instructions</i> . (Dorsney, Kenneth) (Entered: 01/21/2020)
01/21/2020	<a href="#">521</a>	Letter to Chief Judge Stark from Kenneth Dorsney regarding Jury Instructions. (Dorsney, Kenneth) (Entered: 01/21/2020)
01/21/2020	<a href="#">522</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Final Jury Instructions. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">523</a>	NOTICE of Lodging of VMware's demonstrative slides presented during its opening statement by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/21/2020)
01/21/2020	<a href="#">524</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: Exhibit A-1 to Notice of Lodging (D.I. 523). Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Anne Shea Gaza on behalf of VMware, Inc. (Gaza, Anne) (Entered: 01/21/2020)
01/21/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/21/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/22/2020)
01/22/2020	<a href="#">525</a>	Proposed Final Jury Instructions (1/21/20 version). (ntl) (Entered: 01/22/2020)
01/22/2020	<a href="#">526</a>	Final Jury Instructions. (ntl) (Entered: 01/22/2020)
01/22/2020	<a href="#">527</a>	REDACTED VERSION of <a href="#">488</a> Letter to <i>The Honorable Leonard P. Stark regarding unresolved objections and responses to witness testimony by deposition</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/22/2020)
01/22/2020	<a href="#">528</a>	REDACTED VERSION of <a href="#">489</a> Exhibit to a Document ( <i>Exhibit C</i> ) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/22/2020)
01/22/2020	<a href="#">529</a>	REDACTED VERSION of <a href="#">495</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding deposition designations</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/22/2020)
01/22/2020	<a href="#">530</a>	VERDICT SHEET by VMware, Inc. - <i>VMware's January 22, 2020 Amended Verdict Form</i> -. (Gaza, Anne) (Entered: 01/22/2020)
01/22/2020	<a href="#">531</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Verdict Form. (Attachments: # <a href="#">1</a> PTX-3655, # <a href="#">2</a> Slides)(Gaza, Anne) (Entered: 01/22/2020)
01/22/2020	<a href="#">532</a>	VERDICT SHEET by Cirba IP, Inc., Cirba Inc. <i>Amended</i> . (Dorsney, Kenneth) (Entered: 01/22/2020)
01/22/2020	<a href="#">533</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Verdict Form - re <a href="#">532</a> Verdict Sheet. (Dorsney, Kenneth) (Entered: 01/22/2020)
01/22/2020	<a href="#">534</a>	REDACTED VERSION of <a href="#">487</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-5)(Gaza, Anne) (Entered: 01/22/2020)
01/22/2020	<a href="#">535</a>	REDACTED VERSION of <a href="#">496</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Attachments A and B, # <a href="#">2</a> Exhibit 1)(Gaza, Anne) (Entered: 01/22/2020)
01/22/2020	<a href="#">536</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Andrew Hillier] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/22/2020)
01/22/2020	<a href="#">537</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Scott Browne] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/22/2020)
01/22/2020	<a href="#">538</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Riyaz Somani] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/22/2020)
01/22/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/22/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/23/2020)
01/23/2020	<a href="#">539</a>	[SEALED] NOTICE of Lodging [Deposition Designations - Gerald Smith] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/23/2020)
01/23/2020	<a href="#">540</a>	NOTICE of Lodging [Demonstratives - Dr. Jason Nieh] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/23/2020)
01/23/2020	<a href="#">541</a>	[SEALED] EXHIBIT re <a href="#">540</a> Notice (Other) - <i>Exhibit B to Notice of Lodging [Demonstratives - Dr. Jason Nieh]</i> by VMware, Inc.. (Gaza, Anne) (Entered: 01/23/2020)
01/23/2020	<a href="#">542</a>	NOTICE of Lodging [Demonstrative - Dr. Carl Waldspurger] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/23/2020)
01/23/2020	<a href="#">543</a>	NOTICE of Lodging [Demonstrative - Chandra Prathuri] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/23/2020)

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		01/23/2020)
01/23/2020	<a href="#">544</a>	FINAL VERDICT SHEET. (etg) (Entered: 01/23/2020)
01/23/2020	<a href="#">545</a>	CORRECTED FINAL VERDICT SHEET. (etg) (Entered: 01/23/2020)
01/23/2020	546	MULTI MEDIA DOCUMENT filed by VMware, Inc. in the form of a DVD. Filing related to <a href="#">507</a> Declaration, <a href="#">508</a> Notice of Filing Multi Media Materials. (Media on file in Clerk's Office). (ntl) (Entered: 01/23/2020)
01/23/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial held on 1/23/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/23/2020)
01/24/2020	547	MULTI MEDIA DOCUMENT filed by VMware, Inc. in the form of a DVD. Filing related to <a href="#">524</a> Notice of Filing Multi Media Materials, <a href="#">523</a> Notice of Lodging. (Media on file in Clerk's Office). (ntl) (Entered: 01/24/2020)
01/24/2020	<a href="#">548</a>	NOTICE requesting Clerk to remove Elizabeth Ann Patterson as co-counsel.. (Wilson, Samantha) (Entered: 01/24/2020)
01/24/2020	<a href="#">549</a>	[SEALED] JURY VERDICT. (ntl) (Entered: 01/24/2020)
01/24/2020	<a href="#">550</a>	REDACTED VERSION of <a href="#">549</a> Jury Verdict. (ntl) (Entered: 01/24/2020)
01/24/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Jury Trial completed on 1/24/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 01/27/2020)
01/27/2020	<a href="#">551</a>	REDACTED VERSION of <a href="#">505</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-3)(Wilson, Samantha) (Entered: 01/27/2020)
01/28/2020	<a href="#">552</a>	ORDER directing that jurors be provided lunch (cc: Finance). Signed by Judge Leonard P. Stark on 1/28/20. (ntl) (Entered: 01/28/2020)
01/28/2020	<a href="#">553</a>	[SEALED] Jury Notes. (ntl) (Entered: 01/28/2020)
01/29/2020	<a href="#">554</a>	NOTICE of Lodging of VMware's demonstratives presented during its closing statement by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A, Part 1, # <a href="#">2</a> Exhibit A, Part 2, # <a href="#">3</a> Exhibit B)(Gaza, Anne) (Entered: 01/29/2020)
01/30/2020	<a href="#">555</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Trial Testimony of Dr. Vijay Madiseti - re <a href="#">496</a> Letter. (Dorsney, Kenneth) (Entered: 01/30/2020)
01/30/2020	<a href="#">556</a>	REDACTED VERSION of <a href="#">512</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Jim W. Bergman]</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">557</a>	REDACTED VERSION of <a href="#">513</a> Notice (Other) <i>Notice of Lodging [Deposition Designations - Pat Gelsinger]</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">558</a>	REDACTED VERSION of <a href="#">514</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Andrew Hillier]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">559</a>	REDACTED VERSION of <a href="#">515</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Greg Lavender]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">560</a>	REDACTED VERSION of <a href="#">516</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Vijay K. Madiseti, Ph.D.]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">561</a>	REDACTED VERSION of <a href="#">517</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Rangarajan Raghuram]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">562</a>	REDACTED VERSION of <a href="#">518</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Ajay Singh]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">563</a>	REDACTED VERSION of <a href="#">536</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Andrew Hillier]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">564</a>	REDACTED VERSION of <a href="#">537</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Scott Browne]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">565</a>	REDACTED VERSION of <a href="#">538</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Riyaz Somani]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-C)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">566</a>	REDACTED VERSION of <a href="#">539</a> Notice (Other) - <i>Notice of Lodging [Deposition Designations - Gerald Smith]</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 01/30/2020)
01/30/2020	<a href="#">567</a>	REDACTED VERSION of <a href="#">541</a> Exhibit to a Document - <i>Exhibit B to Notice of Lodging [Demonstratives - Dr. Jason Nieh]</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 01/30/2020)
01/31/2020		Pro Hac Vice Attorney Yue Li for VMware, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (sam) (Entered: 01/31/2020)
01/31/2020		Pro Hac Vice Attorney Richard S.J. Hung for VMware, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (sam) (Entered: 01/31/2020)
01/31/2020	<a href="#">568</a>	STATUS REPORT by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/31/2020)
01/31/2020	<a href="#">569</a>	PROPOSED ORDER Densify's Proposed Judgment Following Jury Verdict by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 01/31/2020)
01/31/2020	<a href="#">570</a>	STATUS REPORT by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Gaza, Anne) (Entered: 01/31/2020)
01/31/2020	<a href="#">571</a>	PROPOSED ORDER - Proposed Scheduling Order for Counter-Plaintiff VMware, Inc.'s Patent Infringement Counterclaims - by VMware, Inc.. (Attachments: # <a href="#">1</a> Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Proposed Scheduling Order) (Gaza, Anne) (Entered: 01/31/2020)
02/05/2020	<a href="#">572</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Proposed Stipulation and Order. (Attachments: # <a href="#">1</a> [Proposed]

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		Stipulation and Order)(Gaza, Anne) (Entered: 02/05/2020)
02/06/2020	<a href="#">573</a>	REDACTED VERSION of <a href="#">555</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding trial testimony of Dr. Madisetti</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 02/06/2020)
02/10/2020	<a href="#">574</a>	ORAL ORDER: Having reviewed the parties' filings related to Densify's Motion to Redact (D.I. 161, 181, 192), IT IS HEREBY ORDERED that the motion is GRANTED. The Court recognizes that the majority of Densify's proposed redactions are unopposed by VMware. As to the opposed redactions, the Court finds that Densify has shown with requisite specificity good cause to redact the limited portions of the transcript it proposes to redact. IT IS FURTHER ORDERED that the following schedule shall apply to any post-trial briefing, including VMware's anticipated standing motion: (i) any post-trial motions and the accompanying opening brief(s) shall be filed no later than March 9, 2020; (ii) any answering brief shall be filed no later than March 30, 2020; and (iii) any post-trial reply brief shall be filed no later than April 13, 2020. With respect to all such briefing, each side shall be limited to 25 pages of any opening briefs, 25 pages of any answering briefs, and 12 pages of any reply briefs (that is, the parties will submit a total of no more than 124 pages of briefing). ORDERED by Judge Leonard P. Stark on 2/10/20. (ntl) (Entered: 02/10/2020)
02/10/2020	<a href="#">575</a>	Letter to Counsel from Judge Stark regarding post-trial motions and other post-trial issues. (ntl) (Entered: 02/10/2020)
02/10/2020	<a href="#">576</a>	SO ORDERED, re <a href="#">572</a> Stipulation and Order of Dismissal with prejudice. Signed by Judge Leonard P. Stark on 2/10/20. (ntl) (Entered: 02/10/2020)
02/10/2020	<a href="#">577</a>	JUDGMENT in favor of Cirba IP, Inc., Cirba Inc. d/b/a Densify against VMware, Inc. in the amount of \$236,836,876 (See Judgment for further details). Signed by Judge Leonard P. Stark on 2/10/20. (ntl) (Entered: 02/10/2020)
02/10/2020	<a href="#">578</a>	SCHEDULING ORDER RE COUNTERCLAIMS: Case referred to the Magistrate Judge for the purpose of exploring ADR. Fact Discovery completed by 12/18/2020. Status Report due by 7/10/2020. Dispositive Motions due by 4/20/2021. An Oral Argument is set for 6/7/2021 at 09:00 AM in Courtroom 6B before Judge Leonard P. Stark. Joint Claim Construction Brief due by 6/30/2020. A Markman Hearing is set for 7/31/2020 at 04:00 PM in Courtroom 6B before Judge Leonard P. Stark. Proposed Pretrial Order due by 8/20/2021. A Final Pretrial Conference is set for 8/27/2021 at 11:30 AM in Courtroom 6B before Judge Leonard P. Stark. A 10-day Jury Trial is set for 9/13/2021 at 09:00 AM in Courtroom 6B before Judge Leonard P. Stark. Signed by Judge Leonard P. Stark on 2/10/20. (ntl) (Entered: 02/10/2020)
02/12/2020	<a href="#">579</a>	MOTION for Pro Hac Vice Appearance of Attorney William F. Lee, Seth P. Waxman, and Thomas G. Saunders - filed by VMware, Inc.. (Vrana, Robert) (Entered: 02/12/2020)
02/13/2020		SO ORDERED, re <a href="#">579</a> MOTION for Pro Hac Vice Appearance of Attorney William F. Lee, Seth P. Waxman, and Thomas G. Saunders filed by VMware, Inc. Signed by Judge Leonard P. Stark on 2/13/20. (ntl) (Entered: 02/13/2020)
02/14/2020	<a href="#">580</a>	ORAL ORDER Setting Mediation Conference: A Telephone Conference is set for 2/24/2020 at 11:15 AM before Judge Christopher J. Burke to discuss ADR. Counsel for Plaintiffs shall initiate the call. Ordered by Judge Christopher J. Burke on 2/14/2020. (dlb) (Entered: 02/14/2020)
02/14/2020		Pro Hac Vice Attorney Thomas G. Saunders for VMware, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (kmd) (Entered: 02/14/2020)
02/19/2020		Pro Hac Vice Attorney Seth P. Waxman for VMware, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mal) (Entered: 02/19/2020)
02/19/2020		Pro Hac Vice Attorney William F. Lee for VMware, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d), Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (kmd) (Entered: 02/19/2020)
02/20/2020	<a href="#">581</a>	NOTICE of Change of Address by Kenneth Laurence Dorsney (Dorsney, Kenneth) (Entered: 02/20/2020)
02/20/2020	<a href="#">582</a>	NOTICE OF SERVICE of (1) Densify's Rule 26(a)(1) Initial Disclosures; (2) Densify's Paragraph 3 Disclosures; and (3) Densify's Notice of Supplemental Production of Core Technical Documents and Sales Figures related to the Accused Products filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 02/20/2020)
02/20/2020	<a href="#">583</a>	NOTICE OF SERVICE of 1) Counter-Plaintiff VMware's Rule 26(a)(1) Initial Disclosures and 2) Counter-Plaintiff VMware, Inc.'s Disclosures Under Section 3 of the Default Standard for Discovery filed by VMware, Inc..(Vrana, Robert) (Entered: 02/20/2020)
02/25/2020	<a href="#">584</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Request for Relief in Advance of Post-Trial Briefing. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K)(Gaza, Anne) (Entered: 02/25/2020)
02/28/2020	<a href="#">585</a>	Redaction of <a href="#">138</a> Transcript. Preliminary Injunction Hearing before Chief Judge Leonard P. Stark on August 6, 2019. Court Reporter Brian Gaffigan. Brian_Gaffigan@ded.uscourts.gov.(bpg) (Entered: 02/28/2020)
03/01/2020	<a href="#">586</a>	Official Transcript of Pretrial Conference held on January 7, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 3/23/2020. Redacted Transcript Deadline set for 4/1/2020. Release of Transcript Restriction set for 6/1/2020. (bpg) (Entered: 03/01/2020)
03/01/2020	<a href="#">587</a>	[SEALED] Official Transcript of Jury Trial - Volume A held on January 13, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) Modified on 3/26/2020 (ntl). (Entered: 03/01/2020)
03/01/2020	<a href="#">588</a>	[SEALED] Transcript of Jury Trial - Volume A held on January 13, 2020 before Chief Judge Leonard P. Stark. (bpg) (Entered: 03/01/2020)
03/01/2020	<a href="#">589</a>	[SEALED] Official Transcript of Jury Trial - Volume B held on January 14, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) Modified on 3/26/2020 (ntl). (Entered: 03/01/2020)
03/01/2020	<a href="#">590</a>	[SEALED] Official Transcript of Jury Trial - Volume C held on January 15, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) Modified on 3/26/2020 (ntl). (Entered: 03/01/2020)
03/01/2020	<a href="#">591</a>	[SEALED] Official Transcript of Jury Trial - Volume D held on January 16, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) Modified on 3/26/2020 (ntl). (Entered: 03/01/2020)

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03/01/2020	<a href="#">592</a>	[SEALED] Official Transcript of Jury Trial - Volume E held on January 17, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) Modified on 3/26/2020 (ntl). (Entered: 03/01/2020)
03/01/2020	<a href="#">593</a>	[SEALED] Official Transcript of Jury Trial - Volume F held on January 21, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) Modified on 3/26/2020 (ntl). (Entered: 03/01/2020)
03/01/2020	<a href="#">594</a>	Official Transcript of Jury Trial - Volume G held on January 22, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 3/23/2020. Redacted Transcript Deadline set for 4/1/2020. Release of Transcript Restriction set for 6/1/2020. (bpg) (Entered: 03/01/2020)
03/01/2020	<a href="#">595</a>	[SEALED] Official Transcript of Jury Trial - Volume H held on January 23, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) Modified on 3/26/2020 (ntl). (Entered: 03/01/2020)
03/01/2020	<a href="#">596</a>	[SEALED] Transcript of Jury Trial - Volume H held on January 23, 2020 before Chief Judge Leonard P. Stark. (bpg) (Entered: 03/01/2020)
03/01/2020	<a href="#">597</a>	Official Transcript of Jury Trial - Volume I held on January 24, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 3/23/2020. Redacted Transcript Deadline set for 4/1/2020. Release of Transcript Restriction set for 6/1/2020. (bpg) (Entered: 03/01/2020)
03/03/2020	<a href="#">598</a>	REDACTED VERSION of <a href="#">584</a> Letter, by VMware, Inc.. (Vrana, Robert) (Entered: 03/03/2020)
03/03/2020	599	ORAL ORDER: Having reviewed VMware's letter requesting relief in advance of post-trial briefing (D.I. 584), IT IS HEREBY ORDERED that VMware's request is DENIED. Without taking any view on the merits of any potential dispute that VMware may be contemplating raising in post-trial motions, the Court is not persuaded that it should require Densify to do anything until its previously-scheduled due date for filing a brief in response to whatever motion VMware files. ORDERED by Judge Leonard P. Stark on 3/3/20. (ntl) (Entered: 03/03/2020)
03/06/2020	<a href="#">600</a>	NOTICE of Intent to Request Redaction by Kenneth Laurence Dorsney re <a href="#">587</a> Transcript,, <a href="#">591</a> Transcript,, <a href="#">590</a> Transcript,, <a href="#">589</a> Transcript,, <a href="#">595</a> Transcript,, <a href="#">592</a> Transcript,, <a href="#">593</a> Transcript,, (Dorsney, Kenneth) (Entered: 03/06/2020)
03/09/2020	<a href="#">601</a>	MOTION for Judgment as a Matter of Law , <i>for a New Trial and Remittitur, and to Dismiss Cirba Inc. for Lack of Standing</i> - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Gaza, Anne) (Entered: 03/09/2020)
03/09/2020	<a href="#">602</a>	[SEALED] OPENING BRIEF in Support re <a href="#">601</a> MOTION for Judgment as a Matter of Law , <i>for a New Trial and Remittitur, and to Dismiss Cirba Inc. for Lack of Standing</i> filed by VMware, Inc.. Answering Brief/Response due date per Local Rules is 3/23/2020. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 03/09/2020)
03/09/2020	<a href="#">603</a>	[SEALED] DECLARATION re <a href="#">602</a> Opening Brief in Support, <a href="#">601</a> MOTION for Judgment as a Matter of Law , <i>for a New Trial and Remittitur, and to Dismiss Cirba Inc. for Lack of Standing - Declaration of Richard S.J. Hung</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Gaza, Anne) (Entered: 03/09/2020)
03/09/2020	<a href="#">604</a>	[SEALED] MOTION Post-trial Relief - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">605</a>	[SEALED] OPENING BRIEF in Support re <a href="#">604</a> MOTION Post-trial Relief filed by Cirba IP, Inc., Cirba Inc.. Answering Brief/Response due date per Local Rules is 3/23/2020. (Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">606</a>	[SEALED] DECLARATION of <i>Gerald William Smith</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Main Document 606 replaced on 3/10/2020) (ntl). (Entered: 03/09/2020)
03/09/2020	<a href="#">607</a>	[SEALED] DECLARATION of <i>Andrew Hillier - Vol I</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 1 - 19, # <a href="#">2</a> Exhibit 20) (Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">608</a>	[SEALED] DECLARATION of <i>Andrew Hillier - Vol II</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exh 21 - Part 1, # <a href="#">2</a> Exh 21 - Part 2, # <a href="#">3</a> Exh 21 - Part 3, # <a href="#">4</a> Exh 21 - Part 4, # <a href="#">5</a> Exh 21 - Part 5, # <a href="#">6</a> Exhibits 22 - 23)(Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">609</a>	[SEALED] DECLARATION of <i>Jim Bergman - Vol I</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exh A and B)(Dorsney, Kenneth) (Main Document 609 replaced on 3/10/2020) (ntl). (Attachment 1 replaced on 3/10/2020) (ntl). (Entered: 03/09/2020)
03/09/2020	<a href="#">610</a>	[SEALED] DECLARATION of <i>Jim Bergman (Vol II)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit C - Part 1)(Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">611</a>	[SEALED] DECLARATION of <i>Jim Bergman (Vol III)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit C - Part 2)(Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">612</a>	[SEALED] DECLARATION of <i>Jim Bergman (Vol IV)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit D - Part 1)(Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">613</a>	[SEALED] DECLARATION of <i>Jim Bergman (Vol V)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit D - Part 2)(Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">614</a>	[SEALED] DECLARATION of <i>Jim Bergman (Vol VI)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits E - F)(Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">615</a>	[SEALED] DECLARATION of <i>Wesley White</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 1 - 8, # <a href="#">2</a> Exhibits 9 - 27, # <a href="#">3</a> Exhibits 28 - 45, # <a href="#">4</a> Exhibits 46 - 64)(Dorsney, Kenneth) (Entered: 03/09/2020)
03/09/2020	<a href="#">616</a>	[SEALED] DECLARATION re <a href="#">605</a> Opening Brief in Support ( <i>Declaration of RIYAZ SOMANI</i> ) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/09/2020)
03/10/2020		CORRECTING ENTRY: Corrected documents added to D.I. 606 & 609 per request of counsel. (ntl) (Entered: 03/10/2020)
03/16/2020	<a href="#">617</a>	REDACTED VERSION of <a href="#">604</a> MOTION Post-trial Relief by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)

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03/16/2020	<a href="#">618</a>	REDACTED VERSION of <a href="#">605</a> Opening Brief in Support of <i>Post-Trial Relief</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">619</a>	REDACTED VERSION of <a href="#">606</a> Declaration of <i>Gerald Smith</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">620</a>	REDACTED VERSION of <a href="#">607</a> Declaration of <i>Andrew Hillier (Vol I)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibits 1 - 19, # <a href="#">2</a> Exhibit 20)(Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">621</a>	REDACTED VERSION of <a href="#">608</a> Declaration, of <i>Andrew Hillier (Vol II)</i> by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit 21 - part 1, # <a href="#">2</a> Exhibit 21 - part 2, # <a href="#">3</a> Exhibit 21 - part 3, # <a href="#">4</a> Exhibit 21 - part 4, # <a href="#">5</a> Exhibit 21 - part 5, # <a href="#">6</a> Exhibits 22 - 23)(Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">622</a>	REDACTED VERSION of <a href="#">609</a> Declaration of <i>Jim Bergman (Vol I)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">623</a>	REDACTED VERSION of <a href="#">610</a> Declaration of <i>Jim Bergman (Vol II)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">624</a>	REDACTED VERSION of <a href="#">611</a> Declaration of <i>Jim Bergman (Vol III)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">625</a>	REDACTED VERSION of <a href="#">612</a> Declaration of <i>Jim Bergman (Vol IV)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">626</a>	REDACTED VERSION of <a href="#">613</a> Declaration of <i>Jim Bergman (Vol V)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">627</a>	REDACTED VERSION of <a href="#">614</a> Declaration of <i>Jim Bergman (Vol VI)</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">628</a>	REDACTED VERSION of <a href="#">615</a> Declaration of <i>Wesley White</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">629</a>	REDACTED VERSION of <a href="#">616</a> Declaration of <i>Riyaz Somani</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/16/2020)
03/16/2020	<a href="#">630</a>	REDACTED VERSION of <a href="#">602</a> Opening Brief in Support, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 03/16/2020)
03/16/2020	<a href="#">631</a>	REDACTED VERSION of <a href="#">603</a> Declaration, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 and 2)(Gaza, Anne) (Entered: 03/16/2020)
03/17/2020	<a href="#">632</a>	NOTICE to Take Deposition of Andrew Hillier on March 24, 2020 filed by VMware, Inc..(Vrana, Robert) (Entered: 03/17/2020)
03/17/2020	<a href="#">633</a>	NOTICE to Take Deposition of Gerald Smith on March 24, 2020 filed by VMware, Inc..(Vrana, Robert) (Entered: 03/17/2020)
03/17/2020	<a href="#">634</a>	NOTICE to Take Deposition of Riyaz Somani on March 24, 2020 filed by VMware, Inc..(Vrana, Robert) (Entered: 03/17/2020)
03/17/2020	<a href="#">635</a>	NOTICE to Take Deposition of Jim Bergman on March 25, 2020 filed by VMware, Inc..(Vrana, Robert) (Entered: 03/17/2020)
03/18/2020	<a href="#">636</a>	NOTICE OF SERVICE of VMware, Inc.'s First Set of Counterclaim Interrogatories to Counter-Defendant Cirba Inc. (Nos. 1-6) filed by VMware, Inc..(Gaza, Anne) (Entered: 03/18/2020)
03/20/2020	<a href="#">637</a>	NOTICE OF SERVICE of Densify's Initial Invalidity Contentions filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 03/20/2020)
03/20/2020	<a href="#">638</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza on behalf of VMware, Inc. regarding Plaintiffs' Post-Trial Declarations. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Main Document 638 replaced on 3/23/2020) (ntl). (Entered: 03/20/2020)
03/20/2020	<a href="#">639</a>	MOTION to Consolidate Cases - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/20/2020)
03/20/2020	<a href="#">640</a>	OPENING BRIEF in Support re <a href="#">639</a> MOTION to Consolidate Cases filed by Cirba IP, Inc., Cirba Inc..Answering Brief/Response due date per Local Rules is 4/3/2020. (Dorsney, Kenneth) (Entered: 03/20/2020)
03/20/2020	<a href="#">641</a>	NOTICE OF SERVICE of VMware, Inc.'s First Set of Counterclaim Requests for Production to Counter-Defendant Cirba Inc. (Nos. 1-130) filed by VMware, Inc..(Vrana, Robert) (Entered: 03/20/2020)
03/21/2020	<a href="#">642</a>	[SEALED] NOTICE of Subsequent Development related to Densify's Motion for Permanent Injunction by Cirba IP, Inc., Cirba Inc. re <a href="#">605</a> Opening Brief in Support, <a href="#">604</a> MOTION Post-trial Relief (Dorsney, Kenneth) (Entered: 03/21/2020)
03/23/2020		CORRECTING ENTRY: Corrected letter added to D.I. 638 per request of counsel. (ntl) (Entered: 03/23/2020)
03/23/2020	<a href="#">643</a>	MOTION to Redact <a href="#">587</a> Transcript,, <a href="#">591</a> Transcript,, <a href="#">590</a> Transcript,, <a href="#">589</a> Transcript,, <a href="#">595</a> Transcript,, <a href="#">592</a> Transcript,, <a href="#">593</a> Transcript,, - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/23/2020)
03/23/2020	<a href="#">644</a>	[SEALED] DECLARATION re <a href="#">643</a> MOTION to Redact <a href="#">587</a> Transcript,, <a href="#">591</a> Transcript,, <a href="#">590</a> Transcript,, <a href="#">589</a> Transcript,, <a href="#">595</a> Transcript,, <a href="#">592</a> Transcript,, <a href="#">593</a> Transcript,, executed by <i>Jennifer Estremera</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/23/2020)
03/24/2020	<a href="#">645</a>	RESPONSE to Motion re <a href="#">643</a> MOTION to Redact <a href="#">587</a> Transcript,, <a href="#">591</a> Transcript,, <a href="#">590</a> Transcript,, <a href="#">589</a> Transcript,, <a href="#">595</a> Transcript,, <a href="#">592</a> Transcript,, <a href="#">593</a> Transcript,, filed by VMware, Inc.. (Gaza, Anne) (Entered: 03/24/2020)
03/25/2020	<a href="#">646</a>	STATEMENT re <a href="#">642</a> Notice (Other) - <i>Response to Cirba's Notice of Subsequent Development</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 03/25/2020)
03/26/2020	<a href="#">647</a>	ORAL ORDER: Having reviewed Densify's Motion to Redact (D.I. 643) and VMware's Response (D.I. 645), IT IS HEREBY ORDERED that the motion (D.I. 643) is GRANTED. The Court is persuaded that Densify has shown good cause for its proposed redactions, and that those limited redactions - regarding which VMware takes no position - involve confidential sensitive business information of the type that should be protected from public disclosure. The redacted version of the transcripts attached as Exhibit B to the motion shall be filed as the public version at the date for release of the electronic transcripts per the Courts policies. ORDERED by Judge Leonard P. Stark on 3/26/20. (ntl) (Entered: 03/26/2020)

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03/26/2020	<a href="#">648</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's March 20, 2020 Letter. (Dorsney, Kenneth) (Entered: 03/26/2020)
03/26/2020	<a href="#">649</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: with regard to Densify's March 26, 2020 Letter. Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Kenneth Laurence Dorsney on behalf of Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 03/26/2020)
03/26/2020	<a href="#">650</a>	REDACTED VERSION of <a href="#">642</a> Notice (Other) of <i>Subsequent Development</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/26/2020)
03/27/2020	<a href="#">651</a>	ORAL ORDER: Having reviewed the parties' recent submissions relating to a modification to the post-trial briefing schedule (D.I. 638, 642, 646, 648), IT IS HEREBY ORDERED that VMware's request to modify the schedule is GRANTED IN PART and DENIED IN PART. Although the Court recognizes that further discovery may be necessary after briefing has concluded and/or following argument on the motions, the Court disagrees that such discovery should occur before briefing can proceed. However, considering challenges and concerns relating to COVID-19, a slight modification to the schedule is appropriate. IT IS FURTHER ORDERED that both sides' post-trial opposition briefs are now due next Friday, April 3, 2020. ORDERED by Judge Leonard P. Stark on 3/27/20. (ntl) (Entered: 03/27/2020)
03/27/2020	<a href="#">652</a>	REDACTED VERSION of <a href="#">638</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 03/27/2020)
03/27/2020	<a href="#">653</a>	NOTICE OF SERVICE of (1) Densify's Amended Rule 26(a) Initial Disclosures; and (2) Densify's Amended Paragraph 3 Disclosures filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 03/27/2020)
03/30/2020	<a href="#">654</a>	REDACTED VERSION of <a href="#">644</a> Declaration, of <i>Jennifer Estremera</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/30/2020)
03/30/2020	<a href="#">655</a>	REDACTED VERSION of <a href="#">648</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's March 20, 2020 Letter</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 03/30/2020)
03/30/2020	<a href="#">656</a>	[SEALED] MULTI MEDIA DOCUMENT filed by Cirba IP, Inc., Cirba Inc. in the form of a DVD. Filing related to <a href="#">649</a> Notice of Filing Multi Media Materials (Media on file in Clerk's Office). (ntl) (Entered: 03/30/2020)
03/31/2020	<a href="#">657</a>	Redaction of <a href="#">587</a> Transcript. Official Transcript of Jury Trial - Volume A held on January 13, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) (Entered: 03/31/2020)
03/31/2020	<a href="#">658</a>	Redaction of <a href="#">589</a> Transcript. Official Transcript of Jury Trial - Volume B held on January 14, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) (Entered: 03/31/2020)
03/31/2020	<a href="#">659</a>	Redaction of <a href="#">590</a> Transcript. Official Transcript of Jury Trial - Volume C held on January 15, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) (Entered: 03/31/2020)
03/31/2020	<a href="#">660</a>	Redaction of <a href="#">591</a> Transcript. Official Transcript of Jury Trial - Volume D held on January 16, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) (Entered: 03/31/2020)
03/31/2020	<a href="#">661</a>	Redaction of <a href="#">592</a> Transcript. Official Transcript of Jury Trial - Volume E held on January 17, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) (Entered: 03/31/2020)
03/31/2020	<a href="#">662</a>	Redaction of <a href="#">593</a> Transcript. Official Transcript of Jury Trial - Volume F held on January 21, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) (Entered: 03/31/2020)
03/31/2020	<a href="#">663</a>	Redaction of <a href="#">595</a> Transcript. Official Transcript of Jury Trial - Volume H held on January 23, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: Brian_Gaffigan@ded.uscourts.gov. (bpg) (Entered: 03/31/2020)
04/03/2020	<a href="#">664</a>	ANSWERING BRIEF in Opposition re <a href="#">639</a> MOTION to Consolidate Cases filed by VMware, Inc..Reply Brief due date per Local Rules is 4/13/2020. (Attachments: # <a href="#">1</a> Exhibit A-C, # <a href="#">2</a> Text of Proposed Order)(Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">665</a>	[SEALED] DECLARATION re <a href="#">664</a> Answering Brief in Opposition - <i>Declaration of R. Benjamin Nelson</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 and 2)(Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">666</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">604</a> MOTION Post-trial Relief filed by VMware, Inc..Reply Brief due date per Local Rules is 4/13/2020. (Attachments: # <a href="#">1</a> Exhibit A-C)(Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">667</a>	[SEALED] DECLARATION re <a href="#">666</a> Answering Brief in Opposition - <i>Declaration of Chandra Prathuri</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">668</a>	[SEALED] DECLARATION re <a href="#">666</a> Answering Brief in Opposition - <i>Declaration of Dr. Jason Nieh</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">669</a>	[SEALED] DECLARATION re <a href="#">666</a> Answering Brief in Opposition - <i>Declaration of Paul K. Meyer Regarding Post-Verdict Damages</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Attachments 1 - 10)(Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">670</a>	[SEALED] DECLARATION re <a href="#">666</a> Answering Brief in Opposition - <i>Declaration of Rajesh Venkatasubramanian</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-D)(Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">671</a>	[SEALED] DECLARATION re <a href="#">666</a> Answering Brief in Opposition - <i>Declaration of Richard S.J. Hung</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-10)(Gaza, Anne) (Entered: 04/03/2020)
04/03/2020	<a href="#">672</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">601</a> MOTION for Judgment as a Matter of Law , <i>for a New Trial and Remittitur, and to Dismiss Cirba Inc. for Lack of Standing</i> filed by Cirba IP, Inc., Cirba Inc..Reply Brief due date per Local Rules is 4/13/2020. (Dorsney, Kenneth) (Entered: 04/03/2020)
04/03/2020	<a href="#">673</a>	APPENDIX re <a href="#">672</a> Answering Brief in Opposition, by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/03/2020)
04/03/2020	<a href="#">674</a>	[SEALED] DECLARATION re <a href="#">672</a> Answering Brief in Opposition, <i>executed by Ariel Green</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/03/2020)
04/07/2020	<a href="#">675</a>	REPLY BRIEF re <a href="#">639</a> MOTION to Consolidate Cases filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/07/2020)



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04/09/2020	<a href="#">676</a>	REDACTED VERSION of <a href="#">672</a> Answering Brief in Opposition, to <i>VMware's Post-Trial Motions</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/09/2020)
04/09/2020	<a href="#">677</a>	REDACTED VERSION of <a href="#">674</a> Declaration of <i>Ariel Green</i> in support of <i>Densify's Opposition to VMware's Post-Trial Motions</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/09/2020)
04/13/2020	<a href="#">678</a>	REDACTED VERSION of <a href="#">665</a> Declaration of <i>R. Benjamin Nelson</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 and 2)(Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">679</a>	[SEALED] REPLY BRIEF re <a href="#">604</a> MOTION Post-trial Relief filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/13/2020)
04/13/2020	<a href="#">680</a>	[SEALED] DECLARATION re <a href="#">679</a> Reply Brief -- <i>executed by Vijay Madiseti</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/13/2020)
04/13/2020	<a href="#">681</a>	[SEALED] DECLARATION re <a href="#">679</a> Reply Brief -- <i>executed by Ariel Green</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/13/2020)
04/13/2020	<a href="#">682</a>	[SEALED] DECLARATION re <a href="#">679</a> Reply Brief -- <i>executed by Jim Bergman</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/13/2020)
04/13/2020	<a href="#">683</a>	REDACTED VERSION of <a href="#">666</a> Answering Brief in Opposition by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-C)(Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">684</a>	REDACTED VERSION of <a href="#">667</a> Declaration of <i>Chandra Prathuri</i> by VMware, Inc.. (Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">685</a>	[SEALED] REPLY BRIEF re <a href="#">601</a> MOTION for Judgment as a Matter of Law , <i>for a New Trial and Remittitur, and to Dismiss Cirba Inc. for Lack of Standing</i> filed by VMware, Inc.. (Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">686</a>	[SEALED] DECLARATION re <a href="#">685</a> Reply Brief - <i>Declaration of Richard S.J. Hung</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1) (Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">687</a>	REDACTED VERSION of <a href="#">668</a> Declaration of <i>Dr. Jason Nieh</i> by VMware, Inc.. (Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">688</a>	REDACTED VERSION of <a href="#">669</a> Declaration of <i>Paul K. Meyer</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Attachments 1 - 10)(Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">689</a>	REDACTED VERSION of <a href="#">670</a> Declaration of <i>Rajesh Venkatasubramanian</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> A-D)(Gaza, Anne) (Entered: 04/13/2020)
04/13/2020	<a href="#">690</a>	REDACTED VERSION of <a href="#">671</a> Declaration of <i>Richard S.J. Hung</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-10)(Gaza, Anne) (Entered: 04/13/2020)
04/14/2020	<a href="#">691</a>	[SEALED] NOTICE of Lodging of Bergman Demonstratives by Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 04/14/2020)
04/14/2020	<a href="#">692</a>	[SEALED] NOTICE of Lodging of Madiseti Demonstratives by Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 04/14/2020)
04/14/2020	<a href="#">693</a>	REQUEST for Oral Argument by VMware, Inc. re <a href="#">639</a> MOTION to Consolidate Cases . (Vrana, Robert) (Entered: 04/14/2020)
04/15/2020	<a href="#">694</a>	STIPULATION to Amend the Scheduling Order by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/15/2020)
04/17/2020	<a href="#">695</a>	NOTICE OF SERVICE of (1) Densify's Second Supplemental Production of Sales Figures related to the Accused Products; and (2) Densify's response to VMware's First Set of Counterclaim Interrogatories (Nos. 1-6) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 04/17/2020)
04/20/2020	<a href="#">696</a>	REDACTED VERSION of <a href="#">679</a> Reply Brief in support of <i>Densify's Post-Trial Relief</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/20/2020)
04/20/2020	<a href="#">697</a>	REDACTED VERSION of <a href="#">680</a> Declaration of <i>Vijay Madiseti</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/20/2020)
04/20/2020	<a href="#">698</a>	REDACTED VERSION of <a href="#">681</a> Declaration of <i>Ariel Green</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/20/2020)
04/20/2020	<a href="#">699</a>	REDACTED VERSION of <a href="#">682</a> Declaration of <i>Jim Bergman</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/20/2020)
04/20/2020	<a href="#">700</a>	REDACTED VERSION of <a href="#">685</a> Reply Brief by VMware, Inc.. (Vrana, Robert) (Entered: 04/20/2020)
04/20/2020	<a href="#">701</a>	REDACTED VERSION of <a href="#">686</a> Declaration by VMware, Inc.. (Vrana, Robert) (Entered: 04/20/2020)
04/20/2020	702	ORAL ORDER: IT IS HEREBY ORDERED that the Court will hear argument by teleconference on the post-trial motions and the motion to consolidate on May 15, 2020 beginning at 10:30 a.m. Each side will be allocated up to one (1) hour to present its argument. Any party wishing to refer to slides or other materials shall provide a copy to the Court no later than 4:00 p.m. the day before the hearing. The parties can access the teleconference by dialing 877-336-1829 and using the access code 1408971. ORDERED by Judge Leonard P. Stark on 4/20/20. (ntl) (Entered: 04/20/2020)
04/20/2020	<a href="#">703</a>	MOTION for Leave to File a <i>Sur-Reply Brief (and Motion to Exclude) re VMware's Reply Post-Trial Brief</i> - filed by Cirba IP, Inc., Cirba Inc.. (Attachments: # <a href="#">1</a> Exhibit A (Sur-Reply), # <a href="#">2</a> Exhibit B)(Dorsney, Kenneth) (Entered: 04/20/2020)
04/20/2020	<a href="#">704</a>	[SEALED] MOTION for Leave to File a <i>Sur-reply in Opposition to Cirba's Motion for Post-Trial Relief (D.I. 604)</i> - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Text of Proposed Order)(Gaza, Anne) (Entered: 04/20/2020)
04/21/2020	<a href="#">705</a>	NOTICE OF SERVICE of Densify's response to VMware's First Set of Counterclaim Requests for Production (Nos. 1-130) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 04/21/2020)
04/21/2020	<a href="#">706</a>	REDACTED VERSION of <a href="#">691</a> Notice (Other) of <i>Lodging of Bergman Demonstratives</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/21/2020)
04/21/2020	<a href="#">707</a>	REDACTED VERSION of <a href="#">692</a> Notice (Other) of <i>Lodging of Madiseti Demonstratives</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/21/2020)
04/21/2020	<a href="#">708</a>	[SEALED] NOTICE of Lodging of Bergman Demonstratives (CORRECTED) by Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 04/21/2020)

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		04/21/2020)
04/21/2020	<a href="#">709</a>	[SEALED] NOTICE of Lodging of Madisetti Demonstratives (CORRECTED) by Cirba IP, Inc., Cirba Inc. (Dorsney, Kenneth) (Entered: 04/21/2020)
04/22/2020		SO ORDERED, re <a href="#">694</a> Stipulation to Amend Scheduling Order filed by Cirba Inc., Cirba IP, Inc. -- Joint Claim Construction Brief due by 7/7/2020. Signed by Judge Leonard P. Stark on 4/22/20. (ntl) (Entered: 04/22/2020)
04/22/2020	<a href="#">710</a>	NOTICE OF SERVICE of Densify's Preliminary Identification of Claim Terms for Construction, Proposed Constructions and Intrinsic Evidence filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 04/22/2020)
04/22/2020	<a href="#">711</a>	NOTICE OF SERVICE of VMware's Preliminary Identification of Claim Terms and Proposed Constructions filed by VMware, Inc.. (Vrana, Robert) (Entered: 04/22/2020)
04/22/2020	<a href="#">712</a>	[SEALED] OPENING BRIEF in Support re <a href="#">601</a> MOTION for Judgment as a Matter of Law , <i>for a New Trial and Remittitur, and to Dismiss Cirba Inc. for Lack of Standing [CORRECTED]</i> filed by VMware, Inc..Answering Brief/Response due date per Local Rules is 5/6/2020. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 04/22/2020)
04/22/2020	<a href="#">713</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza on behalf of VMware, Inc. regarding Plaintiffs' Post-Trial Declarations [CORRECTED]. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 04/22/2020)
04/22/2020	<a href="#">714</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">604</a> MOTION Post-trial Relief [CORRECTED] filed by VMware, Inc..Reply Brief due date per Local Rules is 4/29/2020. (Attachments: # <a href="#">1</a> Exhibit A-C)(Gaza, Anne) (Entered: 04/22/2020)
04/22/2020	<a href="#">715</a>	[SEALED] REPLY BRIEF re <a href="#">601</a> MOTION for Judgment as a Matter of Law , <i>for a New Trial and Remittitur, and to Dismiss Cirba Inc. for Lack of Standing [CORRECTED]</i> filed by VMware, Inc.. (Gaza, Anne) (Entered: 04/22/2020)
04/22/2020	<a href="#">716</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware, Inc.'s Hyperlinked Copies of Post-Trial Submissions and Corrected Post-Trial Filings. (Gaza, Anne) (Entered: 04/22/2020)
04/23/2020	<a href="#">717</a>	NOTICE OF SERVICE of Densify's First Set of Counterclaim Requests for Production to VMware (Nos. 1-164) filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 04/23/2020)
04/24/2020	<a href="#">718</a>	ANSWERING BRIEF in Opposition re <a href="#">704</a> MOTION for Leave to File a <i>Sur-reply in Opposition to Cirba's Motion for Post-Trial Relief (D.I. 604)</i> filed by Cirba IP, Inc., Cirba Inc..Reply Brief due date per Local Rules is 5/1/2020. (Dorsney, Kenneth) (Entered: 04/24/2020)
04/24/2020	<a href="#">719</a>	NOTICE OF SERVICE of Densify's First Set of Counterclaim Interrogatories to VMware (Nos. 1-9) filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/24/2020)
04/24/2020	<a href="#">720</a>	REDACTED VERSION of <a href="#">712</a> Opening Brief in Support, [CORRECTED] by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 04/24/2020)
04/24/2020	<a href="#">721</a>	REDACTED VERSION of <a href="#">713</a> Letter [CORRECTED] by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 04/24/2020)
04/24/2020	<a href="#">722</a>	REDACTED VERSION of <a href="#">714</a> Answering Brief in Opposition [CORRECTED] by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-C) (Gaza, Anne) (Entered: 04/24/2020)
04/24/2020	<a href="#">723</a>	REDACTED VERSION of <a href="#">715</a> Reply Brief [CORRECTED] by VMware, Inc.. (Gaza, Anne) (Entered: 04/24/2020)
04/27/2020	<a href="#">724</a>	REDACTED VERSION of <a href="#">704</a> MOTION for Leave to File a <i>Sur-reply in Opposition to Cirba's Motion for Post-Trial Relief (D.I. 604)</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Text of Proposed Order)(Gaza, Anne) (Entered: 04/27/2020)
04/27/2020	<a href="#">725</a>	NOTICE OF SERVICE of Densify's Supplemental Initial Invalidity Contentions filed by Cirba IP, Inc., Cirba Inc..(Dorsney, Kenneth) (Entered: 04/27/2020)
04/28/2020	<a href="#">726</a>	REDACTED VERSION of <a href="#">709</a> Notice (Other) of Lodging of Madisetti Demonstratives (CORRECTED) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/28/2020)
04/28/2020	<a href="#">727</a>	REDACTED VERSION of <a href="#">708</a> Notice (Other) of Lodging of Bergman Demonstratives (CORRECTED) by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/28/2020)
04/29/2020	728	ORAL ORDER: In light of the Court's measures in response to COVID-19, IT IS HEREBY ORDERED that Densify shall submit to the Court by no later than Friday, May 1, either hyperlinked briefs or, if submitting hyperlinked briefs is not feasible, electronic versions of the trial exhibits cited in Densify's briefs. ORDERED by Judge Leonard P. Stark on 4/29/20. (ntl) (Entered: 04/29/2020)
04/29/2020	<a href="#">729</a>	MOTION for Pro Hac Vice Appearance of Attorney Adam Adler - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 04/29/2020)
04/29/2020	<a href="#">730</a>	Joint STIPULATION to Amend Scheduling Order re <a href="#">578</a> Scheduling Order,, <a href="#">694</a> Stipulation by VMware, Inc.. (Vrana, Robert) (Entered: 04/29/2020)
04/30/2020		SO ORDERED, re <a href="#">729</a> MOTION for Pro Hac Vice Appearance of Attorney Adam Adler filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 4/30/20. (ntl) (Entered: 04/30/2020)
05/01/2020	<a href="#">731</a>	MOTION to Strike <a href="#">709</a> Notice (Other), <a href="#">691</a> Notice (Other), <a href="#">708</a> Notice (Other), <a href="#">692</a> Notice (Other) [DEFENDANT VMWARE'S MOTION TO STRIKE NOTICES OF LODGING AND CORRECTED NOTICES OF LODGING] - filed by VMware, Inc.. (Gaza, Anne) (Entered: 05/01/2020)
05/01/2020	<a href="#">732</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding [DEFENDANT VMWARE'S LETTER BRIEF RE: POST-TRIAL MOTION TO STRIKE CIRBA'S NOTICES AND CORRECTED NOTICES OF LODGING] - re <a href="#">731</a> MOTION to Strike <a href="#">709</a> Notice (Other), <a href="#">691</a> Notice (Other), <a href="#">708</a> Notice (Other), <a href="#">692</a> Notice (Other) [DEFENDANT VMWARE'S MOTION TO STRIKE NOTICES OF LODGING AND CORRECTED NOTICES OF LODGING]. (Gaza, Anne) (Entered: 05/01/2020)
05/01/2020	<a href="#">733</a>	[SEALED] EXHIBIT re <a href="#">732</a> Letter, [EXHIBITS A-D TO LETTER TO THE HONORABLE LEONARD P. STARK FROM ANNE SHEA GAZA RE: DEFENDANT VMWARE'S POST-TRIAL MOTION TO STRIKE CIRBA'S NOTICES AND CORRECTED NOTICES OF LODGING] by VMware, Inc.. (Gaza, Anne) (Entered: 05/01/2020)

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05/04/2020	<a href="#">734</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's hyperlinked post-trial briefs and cited trial exhibits - re 728 Order,. (Dorsney, Kenneth) (Entered: 05/04/2020)
05/04/2020		SO ORDERED, re <a href="#">730</a> Joint Stipulation to Amend Scheduling Order filed by VMware, Inc. -- Joint Claim Construction Brief due by 7/9/2020. Signed by Judge Leonard P. Stark on 5/4/20. (ntl) (Entered: 05/04/2020)
05/04/2020	<a href="#">735</a>	[SEALED] REPLY BRIEF re <a href="#">704</a> MOTION for Leave to File a <i>Sur-reply in Opposition to Cirba's Motion for Post-Trial Relief (D.I. 604)</i> filed by VMware, Inc.. (Gaza, Anne) (Entered: 05/04/2020)
05/04/2020	<a href="#">736</a>	ANSWERING BRIEF in Opposition re <a href="#">703</a> MOTION for Leave to File a <i>Sur-Reply Brief (and Motion to Exclude) re VMware's Reply Post-Trial Brief</i> filed by VMware, Inc..Reply Brief due date per Local Rules is 5/11/2020. (Gaza, Anne) (Entered: 05/04/2020)
05/04/2020	<a href="#">737</a>	CLAIM Construction Chart by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-D, # <a href="#">2</a> Exhibit E-G, # <a href="#">3</a> Exhibit H-L)(Gaza, Anne) (Entered: 05/04/2020)
05/05/2020		Pro Hac Vice Attorney Adam Adler for Cirba IP, Inc. and Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mal) (Entered: 05/05/2020)
05/08/2020	738	ORAL ORDER: IT IS HEREBY ORDERED that the Telephone Conference scheduled for May 15, 2020 will begin at 12:30 PM. ORDERED by Judge Leonard P. Stark on 5/8/20. (ntl) (Entered: 05/08/2020)
05/08/2020	<a href="#">739</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's Motion to Strike Densify's notices of lodging of trial demonstratives - re <a href="#">731</a> MOTION to Strike <a href="#">709</a> Notice (Other), <a href="#">691</a> Notice (Other), <a href="#">708</a> Notice (Other), <a href="#">692</a> Notice (Other) <i>[DEFENDANT VMWARE'S MOTION TO STRIKE NOTICES OF LODGING AND CORRECTED NOTICES OF LODGING]</i> . (Dorsney, Kenneth) (Entered: 05/08/2020)
05/08/2020	<a href="#">740</a>	MOTION for Pro Hac Vice Appearance of Attorney Paul D. Clement and Attorney Julie M.K. Siegal - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/08/2020)
05/08/2020	<a href="#">741</a>	REDACTED VERSION of <a href="#">733</a> Exhibit to a Document, - <i>Exhibits A-D to Letter regarding VMware's Post-Trial Motion to Strike</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit B, Part 1, # <a href="#">2</a> Exhibit B, Part 2, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, Part 1, # <a href="#">5</a> Exhibit D, Part 2 and Certificate of Service)(Gaza, Anne) (Entered: 05/08/2020)
05/11/2020		SO ORDERED, re <a href="#">740</a> MOTION for Pro Hac Vice Appearance of Attorney Paul D. Clement and Attorney Julie M.K. Siegal filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 5/11/20. (ntl) (Entered: 05/11/2020)
05/11/2020		Pro Hac Vice Attorney Julie M.K. Siegal for Cirba IP, Inc. and Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mal) (Entered: 05/11/2020)
05/11/2020		Pro Hac Vice Attorney Paul D. Clement for Cirba IP, Inc. and Cirba Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mal) (Entered: 05/11/2020)
05/11/2020	<a href="#">742</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Reply in Support of Defendant VMware's Post-Trial Motion to Strike Cirba's Notices and Corrected Notices of Lodging - re <a href="#">731</a> MOTION to Strike <a href="#">709</a> Notice (Other), <a href="#">691</a> Notice (Other), <a href="#">708</a> Notice (Other), <a href="#">692</a> Notice (Other) <i>[DEFENDANT VMWARE'S MOTION TO STRIKE NOTICES OF LODGING AND CORRECTED NOTICES OF LODGING]</i> . (Gaza, Anne) (Entered: 05/11/2020)
05/11/2020	<a href="#">743</a>	REDACTED VERSION of <a href="#">735</a> Reply Brief by VMware, Inc.. (Gaza, Anne) (Entered: 05/11/2020)
05/11/2020	<a href="#">744</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza on behalf of all parties regarding a hearing on VMware's Motion to Strike - re <a href="#">731</a> MOTION to Strike <a href="#">709</a> Notice (Other), <a href="#">691</a> Notice (Other), <a href="#">708</a> Notice (Other), <a href="#">692</a> Notice (Other) <i>[DEFENDANT VMWARE'S MOTION TO STRIKE NOTICES OF LODGING AND CORRECTED NOTICES OF LODGING]</i> . (Gaza, Anne) (Entered: 05/11/2020)
05/15/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Telephone Conference held on 5/15/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 05/15/2020)
05/18/2020	<a href="#">745</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Request for supplemental briefing on VMwares JMOL motion - re <a href="#">602</a> Opening Brief in Support,. (Dorsney, Kenneth) (Entered: 05/18/2020)
05/19/2020	<a href="#">746</a>	NOTICE OF SERVICE of VMware's Opening Claim Construction Brief and supporting Declaration of Dr. Daniel Menasce filed by VMware, Inc..(Vrana, Robert) (Entered: 05/19/2020)
05/20/2020	<a href="#">747</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Cirba's Request to Supplement Post-Trial Briefing - re <a href="#">745</a> Letter. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 05/20/2020)
05/21/2020	<a href="#">748</a>	STIPULATION TO EXTEND TIME Technology Tutorials and Comments on Opposing Technology Tutorial to June 25, 2020 and July 9, 2020 respectively - filed by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 05/21/2020)
05/22/2020	<a href="#">749</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's May 20, 2020 Letter (D.I. <a href="#">747</a> ) regarding request for supplemental briefing. (Dorsney, Kenneth) Modified on 5/26/2020 (ntl). Modified on 5/26/2020 (ntl). (Entered: 05/22/2020)
05/26/2020	<a href="#">750</a>	NOTICE OF SERVICE of 1) VMware, Inc.'s Objections and Responses to Cirba's First Set of Counterclaim Interrogatories (Nos. 1-9), and 2) VMware, Inc.'s Objections and Responses to Cirba's First Set of Counterclaim Requests for Production of Documents and Things (Nos. 1-164) filed by VMware, Inc..(Vrana, Robert) (Entered: 05/26/2020)
05/27/2020	<a href="#">751</a>	REDACTED VERSION of <a href="#">747</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 05/27/2020)
06/01/2020		SO ORDERED, re <a href="#">748</a> STIPULATION TO EXTEND TIME Technology Tutorials and Comments on Opposing Technology Tutorial to June 25, 2020 and July 9, 2020 respectively filed by Cirba Inc., Cirba IP, Inc. Signed by Judge Leonard P. Stark on 6/1/20. (ntl) (Entered: 06/01/2020)
06/03/2020	<a href="#">752</a>	MEMORANDUM ORDER re <a href="#">601</a> MOTION to Dismiss Cirba Inc. for Lack of Standing filed by VMware, Inc. is GRANTED. Cirba Inc. is dismissed. Signed by Judge Leonard P. Stark on 6/3/20. This order has been emailed to local counsel. (ntl) (Main Document 752 replaced and UNSEALED on 6/4/2020) (ntl). Modified on 6/4/2020 (ntl). (Entered: 06/03/2020)

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06/04/2020		Document Unsealed -- <a href="#">752</a> Memorandum Order. (ntl) (Entered: 06/04/2020)
06/09/2020	<a href="#">753</a>	NOTICE OF SERVICE of Cirba Inc.'s Responsive Claim Construction Brief and related Declaration of Dr. Madisetti filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 06/09/2020)
06/11/2020	<a href="#">754</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza on behalf of VMware, Inc. regarding Supplemental Post-Trial Briefing - re <a href="#">752</a> Memorandum and Order,. (Attachments: # <a href="#">1</a> Exhibit 1-8)(Gaza, Anne) (Entered: 06/11/2020)
06/11/2020	<a href="#">755</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's supplemental letter brief as to VMware's post-trial motions - re <a href="#">752</a> Memorandum and Order,. (Dorsney, Kenneth) (Entered: 06/11/2020)
06/17/2020	<a href="#">756</a>	[SEALED] MOTION for Reargument re <a href="#">752</a> Memorandum and Order, - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 06/17/2020)
06/17/2020	<a href="#">757</a>	[SEALED] DECLARATION re <a href="#">756</a> MOTION for Reargument re <a href="#">752</a> Memorandum and Order, by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 06/17/2020)
06/18/2020	<a href="#">758</a>	[SEALED] Official Transcript of Teleconference Oral Argument held on May 15, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: gaffigan@verizon.net. (bpg) Modified on 8/4/2020 (ntl). (Entered: 06/18/2020)
06/18/2020	<a href="#">759</a>	REDACTED VERSION of <a href="#">755</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's supplemental letter brief as to post-trial motions</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 06/18/2020)
06/18/2020	<a href="#">760</a>	REDACTED VERSION of <a href="#">754</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-8)(Gaza, Anne) (Entered: 06/18/2020)
06/19/2020	<a href="#">761</a>	[SEALED] Letter to Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Supplemental Post-Trial Responsive Brief - re <a href="#">754</a> Letter. (Dorsney, Kenneth) (Entered: 06/19/2020)
06/19/2020	<a href="#">762</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Response to Cirba's Supplemental Letter Brief as to VMware's Post-Trial Motions - re <a href="#">755</a> Letter. (Gaza, Anne) (Entered: 06/19/2020)
06/23/2020	<a href="#">763</a>	NOTICE OF SERVICE of 1) VMware's Reply Claim Construction Brief, and 2) Declaration of Dr. Daniel Menasce in Support of VMware's Reply Claim Construction Brief filed by VMware, Inc..(Vrana, Robert) (Entered: 06/23/2020)
06/24/2020	<a href="#">764</a>	REDACTED VERSION of <a href="#">756</a> MOTION for Reargument re <a href="#">752</a> Memorandum and Order, by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 06/24/2020)
06/24/2020	<a href="#">765</a>	REDACTED VERSION of <a href="#">757</a> Declaration of <i>Ariel Green</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 06/24/2020)
06/24/2020	<a href="#">766</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Plaintiff's reply supplemental post-trial letter brief - re <a href="#">755</a> Letter, <a href="#">761</a> Letter. (Dorsney, Kenneth) (Entered: 06/24/2020)
06/24/2020	<a href="#">767</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Supplemental Post-Trial Reply Brief - re <a href="#">761</a> Letter. (Attachments: # <a href="#">1</a> Exhibit 1-3)(Gaza, Anne) (Entered: 06/24/2020)
06/25/2020	<a href="#">768</a>	NOTICE of Intent to Request Redaction by Kenneth Laurence Dorsney re <a href="#">758</a> Transcript,, (Dorsney, Kenneth) (Entered: 06/25/2020)
06/25/2020	<a href="#">769</a>	NOTICE of Intent to Request Redaction by Robert M. Vrana re <a href="#">758</a> Transcript,, (Vrana, Robert) (Entered: 06/25/2020)
06/25/2020	<a href="#">770</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding enclosure of Cirba's technology tutorial. (Dorsney, Kenneth) (Entered: 06/25/2020)
06/25/2020	<a href="#">771</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Technology Tutorial. (Attachments: # <a href="#">1</a> VMware's Technology Tutorial slides)(Gaza, Anne) (Entered: 06/25/2020)
06/26/2020	<a href="#">772</a>	REDACTED VERSION of <a href="#">762</a> Letter by VMware, Inc.. (Vrana, Robert) (Entered: 06/26/2020)
06/26/2020	<a href="#">773</a>	REDACTED VERSION of <a href="#">761</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Plaintiff's response to VMware's supplemental post-trial letter brief</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 06/26/2020)
06/26/2020	<a href="#">774</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding enclosure of hyperlinked versions of Densify's supplemental letter briefing and motion for reargument - re <a href="#">755</a> Letter, <a href="#">766</a> Letter, <a href="#">761</a> Letter, <a href="#">756</a> MOTION for Reargument re <a href="#">752</a> Memorandum and Order, . (Dorsney, Kenneth) (Entered: 06/26/2020)
07/01/2020	<a href="#">775</a>	REDACTED VERSION of <a href="#">766</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Plaintiff's reply supplemental post-trial letter brief</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/01/2020)
07/01/2020	<a href="#">776</a>	REDACTED VERSION of <a href="#">767</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-3)(Gaza, Anne) (Entered: 07/01/2020)
07/01/2020	<a href="#">777</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">756</a> MOTION for Reargument re <a href="#">752</a> Memorandum and Order, filed by VMware, Inc..Reply Brief due date per Local Rules is 7/8/2020. (Gaza, Anne) (Entered: 07/01/2020)
07/02/2020	<a href="#">778</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's hyperlinked versions of its supplemental post-trial submissions - re <a href="#">762</a> Letter, <a href="#">767</a> Letter, <a href="#">777</a> Answering Brief in Opposition, <a href="#">754</a> Letter. (Gaza, Anne) (Entered: 07/02/2020)
07/07/2020	<a href="#">779</a>	NOTICE OF SERVICE of Plaintiff's Sur-Reply Claim Construction Brief filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 07/07/2020)
07/08/2020	<a href="#">780</a>	REDACTED VERSION of <a href="#">777</a> Answering Brief in Opposition by VMware, Inc.. (Gaza, Anne) (Entered: 07/08/2020)
07/09/2020	<a href="#">781</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's comments on Cirba's June 25, 2020 technology tutorial - re <a href="#">770</a> Letter. (Gaza, Anne) (Entered: 07/09/2020)
07/09/2020	<a href="#">782</a>	[SEALED] MOTION to Redact <a href="#">758</a> Transcript,, ( <i>UNOPPOSED</i> ) - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/09/2020)
07/09/2020	<a href="#">783</a>	[SEALED] DECLARATION re <a href="#">782</a> MOTION to Redact <a href="#">758</a> Transcript,, ( <i>UNOPPOSED</i> ) -- <i>executed by Jennifer Estremera</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/09/2020)
07/09/2020	<a href="#">784</a>	STATEMENT - <i>Plaintiffs' comments to VMware's Technology Tutorial</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/09/2020)

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07/09/2020	<a href="#">785</a>	MOTION to Redact <a href="#">758</a> Transcript,, - filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Gaza, Anne) (Entered: 07/09/2020)
07/09/2020	<a href="#">786</a>	[SEALED] DECLARATION re <a href="#">785</a> MOTION to Redact <a href="#">758</a> Transcript,, - <i>Declaration of Diek O. Van Nort</i> - by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Gaza, Anne) (Entered: 07/09/2020)
07/09/2020	<a href="#">787</a>	DECLARATION re <a href="#">785</a> MOTION to Redact <a href="#">758</a> Transcript,, - <i>Declaration of Chandra Prathuri</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 07/09/2020)
07/09/2020	<a href="#">788</a>	JOINT CLAIM CONSTRUCTION BRIEF filed by VMware, Inc.. (Gaza, Anne) (Entered: 07/09/2020)
07/09/2020	<a href="#">789</a>	Joint APPENDIX re <a href="#">788</a> Joint Claim Construction Brief by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A1 - A12, # <a href="#">2</a> Exhibit B1 - B4) (Gaza, Anne) (Entered: 07/09/2020)
07/09/2020	<a href="#">790</a>	CLAIM Construction Chart by VMware, Inc.. (Gaza, Anne) (Entered: 07/09/2020)
07/09/2020	<a href="#">791</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Claim Construction Hearing. (Gaza, Anne) (Entered: 07/09/2020)
07/10/2020	<a href="#">792</a>	Joint STATUS REPORT by VMware, Inc.. (Gaza, Anne) (Entered: 07/10/2020)
07/16/2020	<a href="#">793</a>	REDACTED VERSION of <a href="#">782</a> MOTION to Redact <a href="#">758</a> Transcript,, ( <i>UNOPPOSED</i> ) by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/16/2020)
07/16/2020	<a href="#">794</a>	REDACTED VERSION of <a href="#">783</a> Declaration of <i>Jennifer Estremera in support of Densify's Unopposed Motion to Redact Transcript</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/16/2020)
07/16/2020	<a href="#">795</a>	REDACTED VERSION of <a href="#">786</a> Declaration by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A and B)(Wilson, Samantha) (Entered: 07/16/2020)
07/16/2020	<a href="#">796</a>	NOTICE OF SERVICE of VMware, Inc.'s Second Set of Counterclaim Requests for Production to Counter-Defendant Cirba Inc. Nos. 131-174 filed by VMware, Inc..(Wilson, Samantha) (Entered: 07/16/2020)
07/20/2020	<a href="#">797</a>	NOTICE OF SERVICE of Densify's Second Supplemental Initial Invalidity Contentions filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 07/20/2020)
07/21/2020	<a href="#">798</a>	NOTICE of Subsequent Authority by VMware, Inc. re <a href="#">712</a> Opening Brief in Support, <a href="#">715</a> Reply Brief (Attachments: # <a href="#">1</a> Exhibit A) (Gaza, Anne) (Entered: 07/21/2020)
07/23/2020	<a href="#">799</a>	[SEALED] ANSWERING BRIEF in Opposition re <a href="#">785</a> MOTION to Redact <a href="#">758</a> Transcript,, filed by Cirba IP, Inc..Reply Brief due date per Local Rules is 7/30/2020. (Dorsney, Kenneth) (Entered: 07/23/2020)
07/23/2020	<a href="#">800</a>	[SEALED] DECLARATION re <a href="#">799</a> Answering Brief in Opposition to <i>Motion to Redact, executed by Michael G. Flanigan</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/23/2020)
07/23/2020	<a href="#">801</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: Video Exhibit B to Declaration of Michael G. Flanigan in support of Plaintiff's Opposition to VMware's Motion to Redact and Seal post-trial hearing transcript. Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Kenneth Laurence Dorsney on behalf of Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 07/23/2020)
07/24/2020	<a href="#">802</a>	ORAL ORDER: IT IS HEREBY ORDERED that the Markman hearing scheduled for July 31 is RESCHEDULED for August 7, 2020 beginning at 1:00 p.m. and will proceed by video. The parties shall make the necessary arrangements. Any demonstratives or other materials a party wishes to refer to at the hearing must be submitted to the Court no later than 1:00 p.m. on August 6. The Court approves all that is set forth in Counsel's letter to the Court dated July 9 (D.I. 791). ORDERED by Judge Leonard P. Stark on 7/24/20. (ntl) (Entered: 07/24/2020)
07/24/2020	<a href="#">803</a>	NOTICE OF SERVICE of VMware, Inc.'s Second Set of Counterclaim Interrogatories to Counter-Defendant Cirba Inc. (Nos. 7-18) filed by VMware, Inc..(Vrana, Robert) (Entered: 07/24/2020)
07/30/2020	<a href="#">804</a>	REDACTED VERSION of <a href="#">799</a> Answering Brief in Opposition to <i>VMware's Motion to Seal and Redact the Post-Trial Hearing Transcript</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/30/2020)
07/30/2020	<a href="#">805</a>	REDACTED VERSION of <a href="#">800</a> Declaration of <i>Michael G. Flanigan</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/30/2020)
07/30/2020	<a href="#">806</a>	REPLY BRIEF re <a href="#">785</a> MOTION to Redact <a href="#">758</a> Transcript,, filed by VMware, Inc.. (Gaza, Anne) (Entered: 07/30/2020)
07/30/2020	<a href="#">807</a>	STATEMENT re <a href="#">798</a> Notice (Other) - <i>Densify's response to VMware's Notice of Subsequent Authority</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 07/30/2020)
08/04/2020	<a href="#">808</a>	ORDER re <a href="#">782</a> MOTION to Redact <a href="#">758</a> Transcript ( <i>UNOPPOSED</i> ) filed by Cirba IP, Inc. Signed by Judge Leonard P. Stark on 8/4/20. (ntl) (Entered: 08/04/2020)
08/05/2020	<a href="#">809</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Claim Construction Hearing on August 7, 2020. (Gaza, Anne) (Entered: 08/05/2020)
08/06/2020	<a href="#">810</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware, Inc.'s PowerPoint Slides for the August 7, 2020 Claim Construction Hearing - re 802 Order,, Set Hearings,, (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 08/06/2020)
08/06/2020	<a href="#">811</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding enclosure of Densify's Markman Slides - re 802 Order,, Set Hearings,, (Attachments: # <a href="#">1</a> Slides)(Dorsney, Kenneth) (Entered: 08/06/2020)
08/07/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Markman Hearing held on 8/7/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 08/07/2020)
08/11/2020	<a href="#">812</a>	STIPULATION TO EXTEND TIME for the substantial completion of document production to September 11, 2020 - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 08/11/2020)
08/12/2020		SO ORDERED, re <a href="#">812</a> STIPULATION TO EXTEND TIME for the substantial completion of document production to September 11,

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		2020 filed by Cirba IP, Inc. Signed by Judge Leonard P. Stark on 8/12/20. (ntl) (Entered: 08/12/2020)
08/14/2020	<a href="#">813</a>	Redaction of <a href="#">758</a> Transcript. Telephonic Oral Argument Hearing before Chief Judge Leonard P. Stark. Brian Gaffigan, court reporter, e-mail address: gaffigan@verizon.net (bpg) (Entered: 08/14/2020)
08/17/2020	<a href="#">814</a>	NOTICE OF SERVICE of Cirba's responses to VMware's Second Set of Counterclaim Requests for Production (Nos. 131-174) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 08/17/2020)
08/20/2020	<a href="#">815</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Request for Discovery Dispute Teleconference. (Gaza, Anne) (Entered: 08/20/2020)
08/20/2020	<a href="#">816</a>	[SEALED] EXHIBIT re <a href="#">815</a> Letter [ <i>Exhibits 1-8</i> ] by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8, # <a href="#">9</a> Certificate of Service)(Gaza, Anne) (Entered: 08/20/2020)
08/20/2020	<a href="#">817</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's August 20, 2020 Letter - re <a href="#">815</a> Letter, <a href="#">816</a> Exhibit to a Document,. (Dorsney, Kenneth) (Entered: 08/20/2020)
08/24/2020	<a href="#">818</a>	NOTICE OF SERVICE of Densify's response to VMware's Second Set of Counterclaim Interrogatories (Nos. 7-18) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 08/24/2020)
08/26/2020	<a href="#">819</a>	NOTICE OF SERVICE of 1) Counter-Plaintiff VMware's Rule 26(a)(1) Amended and Supplemental Initial Disclosures; 2) Counter-Plaintiff VMware, Inc.'s Amended Disclosures Under Section 3 of the Default Standard for Discovery, and 3) VMware, Inc.'s Amended and Supplemental Objections and Responses to Cirba's First Set of Counterclaim Interrogatories (Nos. 1-9) filed by VMware, Inc.. (Vrana, Robert) (Entered: 08/26/2020)
08/27/2020	<a href="#">820</a>	Official Transcript of Claim Construction Hearing held on August 7, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, e-mail: gaffigan@verizon.net. Transcript may be viewed at the court public terminal or ordered/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 9/17/2020. Redacted Transcript Deadline set for 9/28/2020. Release of Transcript Restriction set for 11/25/2020. (bpg) (Entered: 08/27/2020)
08/27/2020	<a href="#">821</a>	REDACTED VERSION of <a href="#">815</a> Letter to <i>The Honorable Leonard P. Stark from Anne Shea Gaza regarding Request for Discovery Dispute Teleconference</i> by VMware, Inc.. (Vrana, Robert) (Entered: 08/27/2020)
08/27/2020	<a href="#">822</a>	REDACTED VERSION of <a href="#">816</a> Exhibit to a Document, [ <i>Exhibits 1-8</i> ] by VMware, Inc.. (Vrana, Robert) (Entered: 08/27/2020)
08/31/2020	<a href="#">823</a>	REDACTED VERSION of <a href="#">817</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding response to VMware's August 20, 2020 Letter</i> by Cirba IP, Inc., Cirba Inc.. (Dorsney, Kenneth) (Entered: 08/31/2020)
09/02/2020	<a href="#">824</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding update to discovery disputes - re <a href="#">817</a> Letter. (Dorsney, Kenneth) (Entered: 09/02/2020)
09/02/2020	<a href="#">825</a>	NOTICE requesting Clerk to remove Justin Jeffery Sorensen as co-counsel.. (Vrana, Robert) (Entered: 09/02/2020)
09/04/2020	<a href="#">826</a>	NOTICE requesting Clerk to remove Joachim B. Steinberg as co-counsel.. (Dorsney, Kenneth) (Entered: 09/04/2020)
09/08/2020	827	ORAL ORDER: Having reviewed the parties' recent letters (D.I. 815, 817, 824), IT IS HEREBY ORDERED that the parties shall file a joint letter by no later than September 11, 2020, outlining any outstanding issues that require resolution by the Court. At that time, the Court will consider whether a teleconference is warranted to address those issues. ORDERED by Judge Leonard P. Stark on 9/8/20. (ntl) (Entered: 09/08/2020)
09/11/2020	<a href="#">828</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding identification of outstanding discovery issues - re 827 Order,. (Dorsney, Kenneth) (Entered: 09/11/2020)
09/18/2020	<a href="#">829</a>	NOTICE OF SERVICE of VMware, Inc.'s Second Amended and Supplemental Objections and Responses to Cirba's First Set of Counterclaim Interrogatories (Nos. 1-9) filed by VMware, Inc..(Vrana, Robert) (Entered: 09/18/2020)
09/21/2020	<a href="#">830</a>	[SEALED] NOTICE to Take Deposition of International Business Machines Corporation on October 5, 2020 and Notice of Service of Subpoena filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1)(Wilson, Samantha) (Entered: 09/21/2020)
09/23/2020	<a href="#">831</a>	NOTICE OF SERVICE of Densify's Second Set of Counterclaim Interrogatories (Nos. 10-17) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 09/23/2020)
09/25/2020	<a href="#">832</a>	[SEALED] NOTICE of Subpoena to International Business Machines Corp. by Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 09/25/2020)
09/25/2020	<a href="#">833</a>	Joint STIPULATION and [Proposed] Order Regarding Modification to the Protective Order (D.I. 111) re SO ORDERED, <a href="#">111</a> Proposed Order by VMware, Inc.. (Vrana, Robert) (Entered: 09/25/2020)
09/28/2020	<a href="#">834</a>	REDACTED VERSION of <a href="#">830</a> Notice to Take Deposition by VMware, Inc.. (Vrana, Robert) (Entered: 09/28/2020)
10/01/2020	<a href="#">835</a>	NOTICE OF SERVICE of VMware, Inc.'s Final Infringement Contentions filed by VMware, Inc..(Vrana, Robert) (Entered: 10/01/2020)
10/01/2020	<a href="#">836</a>	REDACTED VERSION of <a href="#">832</a> Notice (Other) of <i>Subpoena to International Business Machines Corp.</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/01/2020)
10/02/2020	<a href="#">837</a>	[SEALED] NOTICE to Take Deposition of Cirba, Inc. [30(b)(6)] on October 30, 2020 filed by VMware, Inc..(Gaza, Anne) (Entered: 10/02/2020)
10/05/2020	<a href="#">838</a>	NOTICE OF SERVICE of VMware, Inc.'s Corrected Final Infringement Contentions filed by VMware, Inc..(Vrana, Robert) (Entered: 10/05/2020)
10/05/2020		SO ORDERED, re <a href="#">833</a> Stipulation and Order Regarding Modification to the Protective Order filed by VMware, Inc. Signed by Judge Leonard P. Stark on 10/1/20. (ntl) (Entered: 10/05/2020)
10/06/2020	<a href="#">839</a>	MEMORANDUM OPINION re claim construction. Signed by Judge Leonard P. Stark on 10/6/20. (ntl) (Entered: 10/06/2020)
10/06/2020	<a href="#">840</a>	ORDER re <a href="#">839</a> Memorandum Opinion regarding claim construction. Signed by Judge Leonard P. Stark on 10/6/20. (ntl) (Entered: 10/06/2020)

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10/07/2020	841	ORAL ORDER: After having been advised by Plaintiff(s) and Defendant(s) of their inability to resolve a discovery matter, IT IS HEREBY ORDERED that a teleconference is scheduled for October 20, 2020 at 10:00 a.m. The parties can access the teleconference by dialing 877-336-1829 and using the access code 1408971. IT IS FURTHER ORDERED that not later than October 13, 2020, any party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. Not later than October 15, 2020, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition. Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference. ORDERED by Judge Leonard P. Stark on 10/7/2020. (ntl) (Entered: 10/07/2020)
10/09/2020	<a href="#">842</a>	STIPULATION TO EXTEND TIME for Plaintiffs/Counter-Defendants Cirba Inc. (d/b/a Densify) and Cirba IP, Inc. to serve final invalidity contentions to October 21, 2020 - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/09/2020)
10/09/2020	<a href="#">843</a>	REDACTED VERSION of <a href="#">837</a> Notice to Take Deposition by VMware, Inc.. (Gaza, Anne) (Entered: 10/09/2020)
10/13/2020		SO ORDERED, re <a href="#">842</a> STIPULATION TO EXTEND TIME for Plaintiffs/Counter-Defendants Cirba Inc. (d/b/a Densify) and Cirba IP, Inc. to serve final invalidity contentions to October 21, 2020 filed by Cirba IP, Inc.. Signed by Judge Leonard P. Stark on 10/13/20. (ntl) (Entered: 10/13/2020)
10/13/2020	<a href="#">844</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza on behalf of VMware, Inc. regarding Discovery Disputes in Response to the Court's October 7, 2020 Order - re 841 Order Setting Teleconference,,,,. (Attachments: # <a href="#">1</a> Exhibit 1-16, # <a href="#">2</a> Exhibit 17-33, # <a href="#">3</a> Text of Proposed Order)(Gaza, Anne) (Entered: 10/13/2020)
10/13/2020	<a href="#">845</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Initial Discovery Dispute Letter - re 841 Order Setting Teleconference,,,,. (Dorsney, Kenneth) (Entered: 10/13/2020)
10/13/2020	<a href="#">846</a>	[SEALED] DECLARATION re <a href="#">845</a> Letter to The Honorable Leonard P. Stark regarding Densify's Initial Discovery Dispute Letter (executed by Ariel C. Green) by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/13/2020)
10/15/2020	<a href="#">847</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Responsive Discovery Dispute Letter - re <a href="#">844</a> Letter., (Dorsney, Kenneth) (Main Document 847 replaced on 10/16/2020) (ntl). (Entered: 10/15/2020)
10/15/2020	<a href="#">848</a>	[SEALED] Second DECLARATION re <a href="#">847</a> Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Responsive Discovery Dispute Letter (executed by Ariel C. Green) by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/15/2020)
10/15/2020	<a href="#">849</a>	[SEALED] DECLARATION re <a href="#">847</a> Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Responsive Discovery Dispute Letter (executed by Brent Wells) by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/15/2020)
10/15/2020	<a href="#">850</a>	[SEALED] DECLARATION re <a href="#">847</a> Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Responsive Discovery Dispute Letter (executed by Jeffery Pauze) by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/15/2020)
10/15/2020	<a href="#">851</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Response to Cirba's October 13, 2020 Discovery Dispute Letter - re <a href="#">845</a> Letter. (Attachments: # <a href="#">1</a> Exhibit 34-42)(Gaza, Anne) (Entered: 10/15/2020)
10/16/2020		CORRECTING ENTRY: Corrected letter added to D.I. <a href="#">847</a> per request of counsel. (ntl) (Entered: 10/16/2020)
10/19/2020	852	ORAL ORDER: Having reviewed the parties' discovery dispute letters and related materials (see, e.g., D.I. 844, 845, 847, 851), IT IS HEREBY ORDERED that as to each issue that a party argues in those letters is moot or unripe due to a failure to confer, the opposing party shall submit, no later than 10:00 a.m. tomorrow morning, (i) evidence that the parties actually met and conferred on the relevant issue before the discovery dispute letters were filed, (ii) confirmation that the parties had not met and conferred on the relevant issue before the discovery dispute letters were filed, and/or (iii) an explanation as to why the issue is ripe for judicial resolution. IT IS FURTHER ORDERED that the discovery dispute teleconference scheduled for tomorrow is CONTINUED to Wednesday, October 21 at 3:45 p.m. ORDERED by Judge Leonard P. Stark on 10/19/20. (ntl) (Entered: 10/19/2020)
10/20/2020	<a href="#">853</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's response to the Court's October 19, 2020 Oral Order - re 852 Order Setting Teleconference,,,,. (Dorsney, Kenneth) (Entered: 10/20/2020)
10/20/2020	<a href="#">854</a>	[SEALED] DECLARATION re <a href="#">853</a> Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney responding to October 19th, 2020 Oral Order (executed by Wesley L. White) by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/20/2020)
10/20/2020	<a href="#">855</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Submission in Response to the Court's October 19, 2020 Order (D.I. 852) - re 852 Order Setting Teleconference,,,,. (Attachments: # <a href="#">1</a> Exhibit 43)(Gaza, Anne) (Entered: 10/20/2020)
10/20/2020	<a href="#">856</a>	[SEALED] NOTICE to Take Deposition of Kohl's Corporation on November 3, 2020 and Notice of Subpoena filed by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1)(Vrana, Robert) (Entered: 10/20/2020)
10/20/2020	<a href="#">857</a>	REDACTED VERSION of <a href="#">845</a> Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Initial Discovery Dispute Letter by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/20/2020)
10/20/2020	<a href="#">858</a>	REDACTED VERSION of <a href="#">846</a> Declaration of Ariel C. Green by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/20/2020)
10/20/2020	<a href="#">859</a>	REDACTED VERSION of <a href="#">844</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-33, # <a href="#">2</a> Text of Proposed Order)(Gaza, Anne) (Entered: 10/20/2020)
10/21/2020	860	ORAL ORDER: Having reviewed the parties' discovery dispute letters (D.I. 844, 845, 847, 851) and related materials, and subsequent letters and additional materials more specifically addressing the issue of meet and confer (D.I. 853, 855), IT IS HEREBY ORDERED that: (i) Densify's request regarding vCenter development documents is DENIED for failure to confer, as the parties met and conferred in connection with a request to substitute custodians (in the context of the sought sales organization documents) and not as to the now-requested vCenter development documents - Densify has further failed to show that the parties met and conferred regarding its request for additional documents concerning DRS; (ii) Densify's request regarding sales organization documents is DENIED for failure to confer as to the two previously-unidentified proposed custodians (Densify admits that it had not specifically mentioned the head of VMware sales or VMware's sales representative(s) for Bank of America (D.I. 853 at 3)), and is DENIED as to all proposed custodians as unripe in light of VMware's offer to compromise (D.I. 851 at 2) - the request is DENIED as to documents responsive to RFPs 77 and 110-12 given VMware's representation that it is not withholding any documents responsive to those RFPs (D.I. 851 at 2); (iii) Densify's request regarding copying documents is DENIED in light of VMware's representation that all custodial documents responsive to RFPs 119-23

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		have been produced (D.I. 851 at 2-3); (iv) Densify's request regarding acquisition-related documents is DENIED for failure to confer as to Day, a previously-identified proposed custodian (Densify fails to address Day in its latest letter) (see generally D.I. 853), and is DENIED as to Raghuram for failure to show good cause to expand the list of custodians, particularly in light of Raghuram's prior deposition and the acquisition-related documents already produced before the January trial; (v) VMware's request regarding usage data is DENIED as unripe in light of Densify's stated intention to supplement its interrogatory responses by October 30 and to search for documents like those identified by VMware (D.I. 847 at 2-3); (vi) VMware's request regarding ESI search terms is DENIED as unripe in light of Densify's representation that it will consider the proposed search terms in VMware's letter (see D.I. 844 Ex. 23) and Densify's expressed willingness to reach a compromise with VMware as to a set of search terms (D.I. 847 at 3); (vii) VMware's request regarding interrogatory responses is DENIED as unripe in light of Densify's intent to supplement its interrogatory responses by October 30 and Densify's assertion that it has advised VMware of additional documents in its production related to managed services (D.I. 847 at 3); and (viii) VMware's request regarding Botelho as a proposed custodian is DENIED, given that Botelho was a direct report of Pauze, who has stated that he can answer VMware's source code/Confluence questions if he is permitted to review the code, and given that the combination of Hillier (Chief Technology Officer), Yuyitung (Chief Architect), and Jurgens (Senior Vice President of Product Management) as already-designated custodians should adequately capture the documents VMware seeks. IT IS FURTHER ORDERED that the teleconference today will be focused on the disputes not resolved by this Order, namely Densify's request for production of testing documents and VMware's requests for production of technical documents and to expand the temporal limit. ORDERED by Judge Leonard P. Stark on 10/21/20. (ntl) (Entered: 10/21/2020)
10/21/2020		Minute Entry for proceedings held before Judge Leonard P. Stark - Telephone Conference held on 10/21/2020. (Court Reporter B. Gaffigan.) (ntl) (Entered: 10/21/2020)
10/22/2020	<a href="#">861</a>	NOTICE OF SERVICE of Densify's Final Invalidation Contentions filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 10/22/2020)
10/22/2020	<a href="#">862</a>	REDACTED VERSION of <a href="#">847</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Responsive Discovery Dispute Letter</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/22/2020)
10/22/2020	<a href="#">863</a>	REDACTED VERSION of <a href="#">848</a> Declaration of <i>Ariel C. Green</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/22/2020)
10/22/2020	<a href="#">864</a>	REDACTED VERSION of <a href="#">849</a> Declaration of <i>Brent Wells</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/22/2020)
10/22/2020	<a href="#">865</a>	REDACTED VERSION of <a href="#">850</a> Declaration of <i>Jeffery Pauze</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/22/2020)
10/22/2020	<a href="#">866</a>	REDACTED VERSION of <a href="#">851</a> Letter by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 34-42)(Gaza, Anne) (Entered: 10/22/2020)
10/22/2020	<a href="#">867</a>	REDACTED VERSION of <a href="#">856</a> Notice to Take Deposition <i>and Notice of Subpoena</i> by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1) (Vrana, Robert) (Entered: 10/22/2020)
10/23/2020	<a href="#">868</a>	NOTICE OF SERVICE of Densify's Second Set of Counterclaim Requests for Production to VMware (Nos. 165-201) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 10/23/2020)
10/23/2020	<a href="#">869</a>	NOTICE OF SERVICE of VMware, Inc.'s Objections and Responses to Cirba's Second Set of Counterclaim Interrogatories (Nos. 10-17) filed by VMware, Inc..(Vrana, Robert) (Entered: 10/23/2020)
10/27/2020	<a href="#">870</a>	REDACTED VERSION of <a href="#">855</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit 43)(Gaza, Anne) (Entered: 10/27/2020)
10/27/2020	<a href="#">871</a>	REDACTED VERSION of <a href="#">853</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney responding to October 19th, 2020 Oral Order</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/27/2020)
10/27/2020	<a href="#">872</a>	REDACTED VERSION of <a href="#">854</a> Declaration of <i>Wesley L. White</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 10/27/2020)
10/27/2020	<a href="#">873</a>	[SEALED] Official Transcript of Telephone Conference held on October 21, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian P. Gaffigan, email: gaffigan@verizon.net. (bpg) Modified on 12/23/2020 (ntl). (Entered: 10/27/2020)
10/29/2020	<a href="#">874</a>	NOTICE OF SERVICE of Counter-Plaintiff VMware, Inc.'s Second Amended Disclosures Under Section 3 of the Default Standard for Discovery filed by VMware, Inc..(Vrana, Robert) (Entered: 10/29/2020)
10/29/2020	<a href="#">875</a>	NOTICE OF SERVICE of (1) Densify's Objections and Responses to VMware's Notice of 30(b)(6) Deposition; and (2) Densify's Notice of 30(b)(6) Deposition to VMware filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 10/29/2020)
11/02/2020	<a href="#">876</a>	NOTICE OF SERVICE of (1) Densify's supplemental responses to VMware's First Set of Counterclaim Interrogatories (Nos. 1-6); and (2) Densify's supplemental response to VMware's Second Set of Counterclaim Interrogatories (Nos. 7-18) filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/02/2020)
11/02/2020	<a href="#">877</a>	NOTICE of Intent to Request Redaction by Kenneth Laurence Dorsney re <a href="#">873</a> Transcript,, (Dorsney, Kenneth) (Entered: 11/02/2020)
11/04/2020	<a href="#">878</a>	NOTICE to Take Deposition of Ray Boots on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/04/2020	<a href="#">879</a>	NOTICE to Take Deposition of Rodney Botelho on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/04/2020	<a href="#">880</a>	NOTICE to Take Deposition of Scott Browne on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/04/2020	<a href="#">881</a>	NOTICE to Take Deposition of Andrew Hillier on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/04/2020	<a href="#">882</a>	NOTICE to Take Deposition of Gerry Smith on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/04/2020	<a href="#">883</a>	NOTICE to Take Deposition of Riyaz Somani on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/04/2020	<a href="#">884</a>	NOTICE to Take Deposition of Chuck Tatham on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/04/2020	<a href="#">885</a>	NOTICE to Take Deposition of Tom Yuyitung on [Date TBD] filed by VMware, Inc..(Vrana, Robert) (Entered: 11/04/2020)
11/06/2020	<a href="#">886</a>	NOTICE to Take Deposition of Tracy Waller filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 11/06/2020)
11/06/2020	<a href="#">887</a>	NOTICE to Take Deposition of Joe Kinsella filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 11/06/2020)
11/06/2020	<a href="#">888</a>	NOTICE to Take Deposition of Rajesh Venkatasubramanian filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 11/06/2020)
11/06/2020	<a href="#">889</a>	Interim STATUS REPORT by VMware, Inc.. (Gaza, Anne) (Entered: 11/06/2020)



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11/12/2020	<a href="#">890</a>	[SEALED] MOTION to Redact <a href="#">873</a> Transcript,, - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/12/2020)
11/12/2020	<a href="#">891</a>	[SEALED] DECLARATION re <a href="#">890</a> MOTION to Redact <a href="#">873</a> Transcript,, <i>Declaration of Wesley L. White</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/12/2020)
11/13/2020	<a href="#">892</a>	Joint STIPULATION Concerning Remote Depositions by VMware, Inc.. (Vrana, Robert) (Entered: 11/13/2020)
11/16/2020	<a href="#">893</a>	[SEALED] NOTICE of Deposition and Notice of Subpoena to Kaiser Foundation Health Plan, Inc. by VMware, Inc. (Gaza, Anne) (Entered: 11/16/2020)
11/16/2020	<a href="#">894</a>	NOTICE to Take Deposition of Jeff Pauze on a date to be mutually agreed upon by the parties filed by VMware, Inc..(Gaza, Anne) (Entered: 11/16/2020)
11/17/2020	<a href="#">895</a>	[SEALED] NOTICE of Deposition and Notice of Subpoena to Fidelity Information Services, LLC by VMware, Inc. (Gaza, Anne) (Entered: 11/17/2020)
11/18/2020		SO ORDERED, re <a href="#">892</a> Joint STIPULATION Concerning Remote Depositions filed by VMware, Inc. Signed by Judge Leonard P. Stark on 11/18/20. (ntl) (Entered: 11/18/2020)
11/18/2020	<a href="#">896</a>	NOTICE OF SERVICE of (1)FIRST SET OF COUNTERCLAIM REQUESTS FOR ADMISSION. (NOS. 1-20); (2) THIRD SET OF COUNTERCLAIM REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NOS. 202-203) and THIRD SET OF COUNTERCLAIM INTERROGATORIES (NOS. 18-25) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 11/18/2020)
11/18/2020	<a href="#">897</a>	NOTICE OF SERVICE of 1) VMware, Inc.'s Third Set of Counterclaim Interrogatories to Counter-Defendant Cirba Inc. (Nos. 19-25), and 2) VMware, Inc.'s First Set of Counterclaim Requests for Admission to Counter-Defendants (Nos. 1-20) filed by VMware, Inc.. (Vrana, Robert) (Entered: 11/18/2020)
11/19/2020	<a href="#">898</a>	[SEALED] NOTICE of Deposition and Notice of Subpoena to American International Group, Inc. by VMware, Inc. (Gaza, Anne) (Entered: 11/19/2020)
11/19/2020	<a href="#">899</a>	[SEALED] NOTICE of Notice of Deposition and Notice of Subpoena to AT&T Inc. by VMware, Inc. (Gaza, Anne) (Entered: 11/19/2020)
11/19/2020	<a href="#">900</a>	REDACTED VERSION of <a href="#">890</a> MOTION to Redact <a href="#">873</a> Transcript,, by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/19/2020)
11/19/2020	<a href="#">901</a>	REDACTED VERSION of <a href="#">891</a> Declaration of <i>Wesley L. White</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/19/2020)
11/19/2020	<a href="#">902</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding the parties' request for the scheduling of a discovery teleconference. (Gaza, Anne) (Entered: 11/19/2020)
11/23/2020	<a href="#">903</a>	REDACTED VERSION of <a href="#">893</a> Notice (Other) by VMware, Inc.. (Vrana, Robert) (Entered: 11/23/2020)
11/23/2020	<a href="#">904</a>	REDACTED VERSION of <a href="#">895</a> Notice (Other) by VMware, Inc.. (Vrana, Robert) (Entered: 11/23/2020)
11/23/2020	<a href="#">905</a>	REDACTED VERSION of <a href="#">898</a> Notice (Other) by VMware, Inc.. (Vrana, Robert) (Entered: 11/23/2020)
11/23/2020	<a href="#">906</a>	REDACTED VERSION of <a href="#">899</a> Notice (Other) by VMware, Inc.. (Vrana, Robert) (Entered: 11/23/2020)
11/23/2020	<a href="#">907</a>	NOTICE of Deposition of Chris Wolf by Cirba IP, Inc. (Hitch, Cortlan) (Entered: 11/23/2020)
11/23/2020	<a href="#">908</a>	[SEALED] NOTICE of Subpoena for Deposition to Bill Erdman by Cirba IP, Inc. (Hitch, Cortlan) (Entered: 11/23/2020)
11/23/2020	<a href="#">909</a>	NOTICE OF SERVICE of VMware, Inc.'s Objections and Responses to Cirba's Second Set of Counterclaim Requests for Production of Documents and Things (Nos. 165-201) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/23/2020)
11/24/2020	910	ORAL ORDER: After having been advised by Plaintiff(s) and Defendant(s) of their inability to resolve a discovery matter, IT IS HEREBY ORDERED that a teleconference is scheduled for December 21, 2020 at 4:15 p.m. The parties can access the teleconference by dialing 877-336-1829 and using the access code 1408971. IT IS FURTHER ORDERED that not later than December 15, 2020, any party seeking relief shall file with the Court a letter, not to exceed three (3) pages, outlining the issues in dispute and its position on those issues. Not later than December 17, 2020, any party opposing the application for relief may file a letter, not to exceed three (3) pages, outlining that party's reasons for its opposition. Should the Court find further briefing necessary upon conclusion of the telephone conference, the Court will order it. Alternatively, the Court may choose to resolve the dispute prior to the telephone conference and will, in that event, cancel the conference. ORDERED by Judge Leonard P. Stark on 11/24/2020. (ntl) (Entered: 11/24/2020)
11/24/2020	<a href="#">911</a>	[SEALED] NOTICE of Subpoena for Deposition to Bill Erdman (AMENDED) by Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 11/24/2020)
11/25/2020	<a href="#">912</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Initial Discovery Dispute Letter - re 910 Order Setting Teleconference,,,, (Dorsney, Kenneth) (Entered: 11/25/2020)
11/25/2020	<a href="#">913</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding the filing of Densify's Initial Discovery Dispute Letter - re 910 Order Setting Teleconference,,,, <a href="#">912</a> Letter. (Dorsney, Kenneth) (Entered: 11/25/2020)
11/25/2020	<a href="#">914</a>	NOTICE OF SERVICE of VMware, Inc.'s First Supplemental Objections and Responses to Cirba's Second Set of Counterclaim Interrogatories (Nos. 10-17) filed by VMware, Inc..(Vrana, Robert) (Entered: 11/25/2020)
11/30/2020	<a href="#">915</a>	NOTICE to Take Deposition of Zhelong Pan filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 11/30/2020)
11/30/2020	<a href="#">916</a>	REDACTED VERSION of <a href="#">908</a> Notice (Other) of <i>Subpoena to Bill Erdman</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/30/2020)
11/30/2020	<a href="#">917</a>	REDACTED VERSION of <a href="#">911</a> Notice (Other) of <i>Subpoena to Bill Erdman (AMENDED)</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/30/2020)
11/30/2020	<a href="#">918</a>	NOTICE OF SERVICE of (1) Densify's Second Supplemental Objections and Responses to Counter-Plaintiff's VMware, Inc.'s First Set of Counterclaim Interrogatories to Counter-Defendant (Nos. 1-6); and (2) Densify's Second Supplemental Objections and Responses to Counter-Plaintiff's VMware, Inc.'s Second Set of Counterclaim Interrogatories to Counter-Defendant (Nos. 7-18) filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 11/30/2020)
11/30/2020	<a href="#">919</a>	NOTICE OF SERVICE of VMware, Inc.'s Response to Densify's Notice of Deposition of VMware filed by VMware, Inc..(Wilson,

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		Samantha) (Entered: 11/30/2020)
12/01/2020	<a href="#">920</a>	NOTICE requesting Clerk to remove Peter J. Ayers as co-counsel.. (Dorsney, Kenneth) (Entered: 12/01/2020)
12/01/2020	<a href="#">921</a>	MOTION for Pro Hac Vice Appearance of Attorney Connor Houghton - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 12/01/2020)
12/02/2020		SO ORDERED, re <a href="#">921</a> MOTION for Pro Hac Vice Appearance of Attorney Connor Houghton filed by Cirba IP, Inc. Signed by Judge Leonard P. Stark on 12/2/20. (ntl) (Entered: 12/02/2020)
12/02/2020	<a href="#">922</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding Response to Cirba's November 25, 2020 Discovery Dispute Letter (D.I. 912, 913) - re <a href="#">913</a> Letter, <a href="#">912</a> Letter. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H)(Gaza, Anne) (Entered: 12/02/2020)
12/02/2020		Pro Hac Vice Attorney Connor S. Houghton for Cirba IP, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (kmd) (Entered: 12/02/2020)
12/02/2020	<a href="#">923</a>	REDACTED VERSION of <a href="#">912</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Initial Discovery Dispute Letter</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 12/02/2020)
12/02/2020	<a href="#">924</a>	[SEALED] NOTICE of Subpoena to American International Group, Inc. by Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 12/02/2020)
12/02/2020	<a href="#">925</a>	[SEALED] NOTICE of Subpoena to Kaiser Foundation Health Plan, Inc. by Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 12/02/2020)
12/02/2020	<a href="#">926</a>	[SEALED] NOTICE of Subpoena to Benjamin Scheerer by Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 12/02/2020)
12/08/2020	<a href="#">927</a>	ORAL ORDER: Having reviewed the parties' letters concerning Densify's request for an extension of the case schedule (D.I. 912, 922), IT IS HEREBY ORDERED that the request is GRANTED. "Good cause exists when the imposed schedule cannot reasonably be met despite the diligence of the party seeking the extension." <i>Le v. City of Wilmington</i> , 2010 WL 2754253, at *2 (D. Del. July 12, 2010) (internal quotation marks omitted). Here, Densify has shown good cause. For example, since the hearing on October 21, 2020, it appears that Densify has been diligently complying with the Courts order to "do... significantly more." (D.I. 873 at 26; see also D.I. 912 at 1 (outlining efforts since October 21, including production of 115,000 additional responsive documents, supplemental interrogatory responses, responses to deposition notices, and witness designations)) In light of Densify's diligence and the ongoing pandemic, and the potential for conducting twenty-plus depositions in only two weeks this month and with newly-produced documents, Densify's request for a short extension is reasonable. The Court understands that Densify, having argued only the extension issue in its opening letter (and no other issue previously identified in the parties' joint request for a discovery dispute teleconference (D.I. 902)), has withdrawn its request to press its previously-listed requests. Accordingly, the briefing schedule originally ordered by the Court (D.I. 910) remains in place as to VMware's issues, should VMware still wish to raise them, and the teleconference set for December 21, 2020 will address only those issues. Should Densify have other issues it wishes still to brief, it shall follow the discovery process (i.e., meet and confer and submit a letter requesting a teleconference) in which case the Court may add issues back to the agenda for December 21. ORDERED by Judge Leonard P. Stark on 12/8/20. (ntl) (Entered: 12/08/2020)
12/09/2020	<a href="#">928</a>	REDACTED VERSION of <a href="#">924</a> Notice (Other) of <i>Subpoena</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 12/09/2020)
12/09/2020	<a href="#">929</a>	REDACTED VERSION of <a href="#">925</a> Notice (Other) of <i>Subpoena</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 12/09/2020)
12/09/2020	<a href="#">930</a>	REDACTED VERSION of <a href="#">926</a> Notice (Other) of <i>Subpoena to Benjamin Scheerer</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 12/09/2020)
12/09/2020	<a href="#">931</a>	[SEALED] NOTICE of Withdrawal of Subpoenas by Cirba IP, Inc. re <a href="#">908</a> Notice (Other), <a href="#">911</a> Notice (Other), <a href="#">926</a> Notice (Other), <a href="#">832</a> Notice (Other), <a href="#">925</a> Notice (Other), <a href="#">924</a> Notice (Other) (Dorsney, Kenneth) Modified on 12/10/2020 (ntl). (Entered: 12/09/2020)
12/09/2020	<a href="#">932</a>	REDACTED VERSION of <a href="#">922</a> Letter, by VMware, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-H)(Gaza, Anne) (Entered: 12/09/2020)
12/10/2020		Remark: D.I. <a href="#">931</a> was placed under seal per request of counsel. (ntl) (Entered: 12/10/2020)
12/15/2020	<a href="#">933</a>	NOTICE OF SERVICE of (1) Densify's Third Supplemental and Amended Responses to VMware's First Set of Counterclaim Interrogatories (Nos. 1-6); and (2) Densify's Third Supplemental and Amended Responses to VMware's Second Set of Counterclaim Interrogatories (Nos. 7-18) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 12/15/2020)
12/15/2020	<a href="#">934</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Anne Shea Gaza on behalf of VMware, Inc. regarding Discovery Disputes in Response to the Court's November 24, 2020 Order - re 910 Order Setting Teleconference,,,,. (Gaza, Anne) (Entered: 12/15/2020)
12/15/2020	<a href="#">935</a>	[SEALED] EXHIBIT re <a href="#">934</a> Letter to <i>The Honorable Leonard P. Stark from Anne Shea Gaza regarding Discovery Disputes in Response to the Court's November 24, 2020 Order - Exhibits 1-8</i> - by VMware, Inc.. (Gaza, Anne) (Entered: 12/15/2020)
12/16/2020	<a href="#">936</a>	REDACTED VERSION of <a href="#">931</a> Notice (Other), of <i>Withdrawal of Subpoenas</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 12/16/2020)
12/16/2020	<a href="#">937</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding the parties' request for the Court's clarification of the case schedule pursuant to the Oral Order of December 8, 2020 - re 927 Order,,,,,,. (Gaza, Anne) (Entered: 12/16/2020)
12/17/2020	<a href="#">938</a>	[SEALED] NOTICE of Withdrawal of Notice of Deposition by VMware, Inc. re <a href="#">895</a> Notice (Other) (Vrana, Robert) (Entered: 12/17/2020)
12/17/2020	<a href="#">939</a>	NOTICE of Amended 30(b)(6) Deposition of VMware, Inc. by Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 12/17/2020)
12/17/2020	<a href="#">940</a>	[SEALED] NOTICE of Withdrawal of Notice of Deposition by VMware, Inc. re <a href="#">893</a> Notice (Other) (Vrana, Robert) (Entered: 12/17/2020)
12/17/2020	<a href="#">941</a>	[SEALED] NOTICE of Withdrawal of Notice of Deposition by VMware, Inc. re <a href="#">898</a> Notice (Other) (Vrana, Robert) (Entered: 12/17/2020)
12/17/2020	<a href="#">942</a>	[SEALED] Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Responsive Discovery Dispute Letter - re <a href="#">937</a> Letter. (Dorsney, Kenneth) (Entered: 12/17/2020)
12/18/2020	<a href="#">943</a>	NOTICE of Change of Address by Kenneth Laurence Dorsney (Dorsney, Kenneth) (Entered: 12/18/2020)
12/18/2020	<a href="#">944</a>	NOTICE OF SERVICE of (1) Densify's Objections and Responses to Counter-Plaintiffs VMWare, Inc.'s Third Set of Counterclaim

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		Interrogatories to Counter-Defendant Cirba Inc. (Nos.19-25) ;and (2) Densify's Responses to VMWare's First Set of Requests for Admissions to Plaintiffs (Nos. 1-20) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 12/18/2020)
12/18/2020	<a href="#">945</a>	NOTICE OF SERVICE of 1) VMware, Inc.'s Objections and Responses to Cirba's Third Set of Counterclaim Interrogatories (Nos. 18-25); 2) VMware, Inc.'s Objections and Responses to Cirba's Third Set of Counterclaim Requests for Production of Documents and Things (Nos. 202-203), and 3) VMware, Inc.'s Objections and Responses to Cirba's First Set of Counterclaim Requests for Admission (Nos. 1-20) filed by VMware, Inc..(Vrana, Robert) (Entered: 12/18/2020)
12/21/2020	<a href="#">946</a>	MEMORANDUM ORDER regarding all pending motions including post-trial motions and motion to consolidate. Signed by Judge Leonard P. Stark on 12/21/20. Associated Cases: 1:19-cv-00742-LPS, 1:20-cv-00272-LPS (ntl) (Entered: 12/21/2020)
12/21/2020	<a href="#">947</a>	ORAL ORDER: Having reviewed the parties' most recent discovery dispute letters and related materials (see, e.g., D.I. 934, 942), IT IS HEREBY ORDERED that: (i) with respect to VMware's request for an order compelling production of additional documents, it is clear Densify has made significant efforts to comply with the Court's October 21 order, likely rendering its production sufficiently responsive and proportional to the needs of the case; if nonetheless - after a further meet and confer, in light of the recency of VMware's specific requests and Densify's non-opposition to further production, subject to conditions - VMware continues to want further production, Densify shall provide that production PROVIDED that VMware agrees to pay 75% of Densify's costs associated with that production, for the reasons stated by Densify (see, e.g., D.I. 942 at 1-2); (ii) VMware's requests for an order compelling further responses to interrogatories 2 and 3 are DENIED, because, respectively, (a) VMware agreed that a Rule 33(d) response was sufficient, as long as Densify "point[ed] to the documents reflecting that information on a customer-by-customer basis" (D.I. 942 Ex. D at 6), it appears Densify did just that, and the burden of combing through the cited material appears to be the same regardless of which party undertakes to do it, and (b) Densify has sufficiently identified the bases for its non-infringement positions, which will be further articulated in expert reports, and Densify has agreed it is bound by the theories it has disclosed to date. IT IS FURTHER ORDERED that the Court will be appointing a special master to handle all future discovery disputes, with costs to be shared equally by both sides. This highly-litigious action has already involved dozens of discovery disputes. (See, e.g., D.I. 89, 185, 268, 277, 278, 296, 313, 341, 408, 419, 420, 501, 815, 860, 902) IT IS FURTHER ORDERED that the discovery dispute teleconference scheduled for today is CANCELLED. ORDERED by Judge Leonard P. Stark on 12/21/20. (ntl) (Entered: 12/21/2020)
12/22/2020	<a href="#">948</a>	REDACTED VERSION of <a href="#">934</a> Letter by VMware, Inc.. (Vrana, Robert) (Entered: 12/22/2020)
12/22/2020	<a href="#">949</a>	REDACTED VERSION of <a href="#">935</a> Exhibit to a Document by VMware, Inc.. (Vrana, Robert) (Entered: 12/22/2020)
12/23/2020	<a href="#">950</a>	ORDER REFERRING CASE to Clerk for assignment of a Special Master. Signed by Judge Leonard P. Stark on 12/23/20. (ntl) (Entered: 12/23/2020)
12/28/2020	<a href="#">951</a>	Redaction of <a href="#">758</a> Transcript. Official Transcript of Teleconference Oral Argument held on May 15, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, Email: gaffigan@verizon.net.(bpg) (Entered: 12/28/2020)
12/28/2020	<a href="#">952</a>	Redaction of <a href="#">873</a> Transcript. Official Transcript of Telephone Conference held on October 21, 2020 before Chief Judge Leonard P. Stark. Court Reporter Brian P. Gaffigan, email: gaffigan@verizon.net. (bpg) (Entered: 12/28/2020)
12/28/2020	<a href="#">953</a>	REDACTED VERSION of <a href="#">942</a> Letter to <i>The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Responsive Discovery Dispute Letter</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 12/28/2020)
12/28/2020	<a href="#">954</a>	REDACTED VERSION of <a href="#">938</a> Notice (Other) by VMware, Inc.. (Vrana, Robert) (Entered: 12/28/2020)
12/28/2020	<a href="#">955</a>	REDACTED VERSION of <a href="#">940</a> Notice (Other) by VMware, Inc.. (Vrana, Robert) (Entered: 12/28/2020)
12/28/2020	<a href="#">956</a>	REDACTED VERSION of <a href="#">941</a> Notice (Other) by VMware, Inc.. (Vrana, Robert) (Entered: 12/28/2020)
01/05/2021	<a href="#">957</a>	Joint STIPULATION TO EXTEND TIME to submit proposed schedule to January 15, 2021 - filed by VMware, Inc.. (Vrana, Robert) (Entered: 01/05/2021)
01/07/2021		SO ORDERED, re <a href="#">957</a> Joint STIPULATION TO EXTEND TIME to submit proposed schedule to January 15, 2021 filed by VMware, Inc. Signed by Judge Leonard P. Stark on 1/6/21. (ntl) (Entered: 01/07/2021)
01/08/2021	<a href="#">958</a>	ORDER Appointing Special Master: John W. Shaw, Esq. appointed. Signed by Judge Leonard P. Stark on 1/8/21. (ntl) (Entered: 01/08/2021)
01/14/2021	<a href="#">959</a>	STIPULATION TO EXTEND TIME to Submit a Proposed Scheduling Order to January 22, 2021 - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 01/14/2021)
01/19/2021		SO ORDERED, re <a href="#">959</a> STIPULATION TO EXTEND TIME to Submit a Proposed Scheduling Order to January 22, 2021 filed by Cirba IP, Inc. Signed by Judge Leonard P. Stark on 1/19/21. (ntl) (Entered: 01/19/2021)
01/20/2021	<a href="#">960</a>	MOTION for Certification under 28 U.S.C § 1292(b) re <a href="#">752</a> Memorandum and Order, <a href="#">946</a> Memorandum and Order - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 01/20/2021)
01/20/2021	<a href="#">961</a>	OPENING BRIEF in Support re <a href="#">960</a> MOTION for Certification under 28 U.S.C § 1292(b) re <a href="#">752</a> Memorandum and Order, <a href="#">946</a> Memorandum and Order filed by Cirba IP, Inc..Answering Brief/Response due date per Local Rules is 2/3/2021. (Dorsney, Kenneth) (Entered: 01/20/2021)
01/22/2021	<a href="#">962</a>	PROPOSED ORDER - Consolidated Proposed Scheduling Order by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 01/22/2021)
02/03/2021	<a href="#">963</a>	ANSWERING BRIEF in Opposition re <a href="#">960</a> MOTION for Certification under 28 U.S.C § 1292(b) re <a href="#">752</a> Memorandum and Order, <a href="#">946</a> Memorandum and Order filed by VMware, Inc..Reply Brief due date per Local Rules is 2/10/2021. (Gaza, Anne) (Entered: 02/03/2021)
02/05/2021	<a href="#">964</a>	NOTICE OF SERVICE of (1) Densify's Second Amended 26(a) Initial Disclosures and; (2) Densify's Second Amended Paragraph 3 Initial Disclosures filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 02/05/2021)
02/05/2021	<a href="#">965</a>	NOTICE OF SERVICE of 1) VMware's Supplemental Disclosures Under Section 3 of the Default Standard for Discovery, and 2) VMware's Amended and Supplemental Initial Rule 26(a)(1) Initial Disclosures filed by VMware, Inc..(Vrana, Robert) (Entered: 02/05/2021)
02/10/2021	<a href="#">966</a>	REPLY BRIEF re <a href="#">960</a> MOTION for Certification under 28 U.S.C § 1292(b) re <a href="#">752</a> Memorandum and Order, <a href="#">946</a> Memorandum and Order filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 02/10/2021)

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02/24/2021	<a href="#">967</a>	NOTICE requesting Clerk to remove Dan Hubin as co-counsel.. (Vrana, Robert) (Entered: 02/24/2021)
02/25/2021	<a href="#">968</a>	CONSOLIDATED SCHEDULING ORDER: Discovery due by 4/29/2022. Status Report due by 6/10/2021. Dispositive Motions due by 11/1/2022. An Oral Argument is set for 1/6/2023 at 10:00 AM in Courtroom 6B before Judge Leonard P. Stark. Joint Claim Construction Brief due by 11/4/2021. A Markman Hearing is set for 11/22/2021 at 03:00 PM in Courtroom 6B before Judge Leonard P. Stark. Proposed Pretrial Order due by 3/24/2023. A Final Pretrial Conference is set for 4/10/2023 at 10:00 AM in Courtroom 6B before Judge Leonard P. Stark. A 15-day Jury Trial is set for 4/24/2023 at 09:00 AM in Courtroom 6B before Judge Leonard P. Stark. Signed by Judge Leonard P. Stark on 2/24/21. (ntl) (Main Document 968 replaced on 3/4/2021) (ntl). (Entered: 02/25/2021)
03/01/2021	<a href="#">969</a>	NOTICE of [VMWARE'S NOTICE OF EX PARTE REEXAMINATION OF U.S. PATENT NO. 8,209,687] by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Gaza, Anne) (Entered: 03/01/2021)
03/04/2021		CORRECTING ENTRY: Corrected document added to D.I. <a href="#">968</a> correcting paragraph numbers. (ntl) (Entered: 03/04/2021)
03/05/2021	<a href="#">970</a>	STIPULATION TO EXTEND TIME for all motions to amend or supplement the pleadings to March 23, 2021 - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 03/05/2021)
03/05/2021	<a href="#">971</a>	NOTICE of Change of Firm Name by Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 03/05/2021)
03/08/2021	<a href="#">972</a>	NOTICE OF SERVICE of (1) Plaintiff's Initial Identification of Accused Products, Asserted Patents and Damages Model; (2) Plaintiff's Third Amended 26(a) Initial Disclosures; and (3) Plaintiff's Third Amended Paragraph 3 Disclosures filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 03/08/2021)
03/08/2021	<a href="#">973</a>	NOTICE OF SERVICE of 1) VMware's Amended Supplemental Disclosures Under Section 3 of the Default Standard for Discovery; 2) VMware's Second Amended and Supplemental Rule 26(a)(1) Initial Disclosures, and 3) VMware, Inc.'s Supplemental Identification of Asserted Patents, Accused Products, Damages Model, and Prosecution File Histories filed by VMware, Inc..(Vrana, Robert) (Entered: 03/08/2021)
03/09/2021		SO ORDERED, re <a href="#">970</a> STIPULATION TO EXTEND TIME for all motions to amend or supplement the pleadings to March 23, 2021 filed by Cirba IP, Inc. Signed by Judge Leonard P. Stark on 3/9/21. (ntl) (Entered: 03/09/2021)
03/15/2021	<a href="#">974</a>	NOTICE requesting Clerk to remove R. Benjamin Nelson as co-counsel.. (Vrana, Robert) (Entered: 03/15/2021)
03/18/2021	<a href="#">975</a>	Joint STIPULATION TO EXTEND TIME for the parties to negotiate any proposed amendment to the existing ESI Order (D.I. 188) to April 1, 2021 - filed by VMware, Inc.. (Vrana, Robert) (Entered: 03/18/2021)
03/23/2021		SO ORDERED, re <a href="#">975</a> Joint STIPULATION TO EXTEND TIME for the parties to negotiate any proposed amendment to the existing ESI Order (D.I. 188) to April 1, 2021 filed by VMware, Inc. Signed by Judge Leonard P. Stark on 3/22/21. (ntl) (Entered: 03/23/2021)
03/23/2021	<a href="#">976</a>	MOTION to Amend/Correct ( <i>Densify's Motion for Leave to File Amended or Supplemental Answer and Counterclaims</i> ) - filed by Cirba IP, Inc.. (Attachments: # <a href="#">1</a> Exhibit A (clean version), # <a href="#">2</a> Exhibits 1 - 8 to Exhibit A, # <a href="#">3</a> Exhibits 9 - 59 to Exhibit A, # <a href="#">4</a> Exhibit B (redline))(Dorsney, Kenneth) (Entered: 03/23/2021)
03/23/2021	<a href="#">977</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Motion for Leave to file Amended or Supplemental Answer and Counterclaims - re <a href="#">976</a> MOTION to Amend/Correct ( <i>Densify's Motion for Leave to File Amended or Supplemental Answer and Counterclaims</i> ). (Dorsney, Kenneth) (Entered: 03/23/2021)
03/23/2021	<a href="#">978</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: with regard to Densify's March 23, 2021 Motion to Amend and related Letter. Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Kenneth Laurence Dorsney on behalf of Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 03/23/2021)
03/26/2021	<a href="#">979</a>	ORAL ORDER: IT IS HEREBY ORDERED that the Court will hear argument by teleconference on the motion for certification of interlocutory appeal (D.I. 960) on April 16, 2021 beginning at 11:30 a.m. Each side will be allocated up to fifteen (15) minutes to present its argument. Any party wishing to refer to slides or other materials shall provide a copy to the Court no later than 4:00 p.m. the day before the hearing. The parties can access the teleconference by dialing 877-336-1829 and using the access code 1408971. ORDERED by Judge Leonard P. Stark on 3/26/21. (ntl) (Entered: 03/26/2021)
03/26/2021	<a href="#">980</a>	NOTICE OF SERVICE of Densify's Second Supplemental Core Technical Documents and Sales Figures related to the Accused Products filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 03/26/2021)
03/26/2021	<a href="#">981</a>	NOTICE OF SERVICE of VMware's production of core technical documents bearing Bates numbers VMWCC00146732 to VMWCC00173981 filed by VMware, Inc..(Vrana, Robert) (Entered: 03/26/2021)
03/30/2021	<a href="#">982</a>	PROPOSED ORDER - STIPULATED ORDER FOR DISCOVERY, INCLUDING DISCOVERY OF ELECTRONICALLY STORED INFORMATION ("ESI") FOR CONSOLIDATED ACTIONS by VMware, Inc.. (Vrana, Robert) (Entered: 03/30/2021)
03/30/2021	<a href="#">983</a>	Letter to The Honorable Leonard P. Stark from Anne Shea Gaza regarding VMware's Opposition to Cirba's Motion for Leave to File Amended or Supplemental Answer and Counterclaims - re <a href="#">976</a> MOTION to Amend/Correct ( <i>Densify's Motion for Leave to File Amended or Supplemental Answer and Counterclaims</i> ), <a href="#">977</a> Letter.. (Gaza, Anne) (Entered: 03/30/2021)
04/01/2021	<a href="#">984</a>	Letter to Chief Judge Stark from Kenneth L. Dorsney regarding Rescheduling April 16, 2021 Oral Argument. (Dorsney, Kenneth) (Entered: 04/01/2021)
04/05/2021	<a href="#">985</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding Densify's Reply in support of Motion for Leave to file Amended or Supplemental Answer and Counterclaims - re <a href="#">983</a> Letter.. (Dorsney, Kenneth) (Entered: 04/05/2021)
04/05/2021	<a href="#">986</a>	Letter to The Honorable Leonard P. Stark from Kenneth L. Dorsney regarding request for the scheduling of a teleconference for Densify's pending Motion for Leave to Amend Answer - re <a href="#">978</a> Notice of Filing Multi Media Materials, <a href="#">985</a> Letter, <a href="#">983</a> Letter, <a href="#">977</a> Letter.. (Dorsney, Kenneth) (Entered: 04/05/2021)
04/06/2021	<a href="#">987</a>	ORAL ORDER: IT IS HEREBY ORDERED that the teleconference on the motion for certification of interlocutory appeal currently scheduled for April 16 is rescheduled to May 3, 2021, beginning at 10:30 a.m. IT IS FURTHER ORDERED that, having considered the parties' request for a teleconference (D.I. 986) to address Plaintiffs' motion for leave to amend (D.I. 976), the Court will hear argument on this motion during the same teleconference. Each side will be allocated up to thirty (30) minutes to present its argument on both motions. ORDERED by Judge Leonard P. Stark on 4/6/21. (ntl) (Entered: 04/06/2021)
04/08/2021		SO ORDERED, re <a href="#">982</a> STIPULATED ORDER FOR DISCOVERY, INCLUDING DISCOVERY OF ELECTRONICALLY STORED

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		INFORMATION ("ESI") FOR CONSOLIDATED ACTIONS. Signed by Judge Leonard P. Stark on 4/7/21. (ntl) (Entered: 04/08/2021)
04/08/2021	<a href="#">988</a>	NOTICE OF SERVICE of VMware, Inc.'s First Set of Requests for Production to Cirba Inc. and Cirba IP, Inc. in the Consolidated Action (Nos. 175-212) filed by VMware, Inc..(Vrana, Robert) (Entered: 04/08/2021)
04/19/2021	<a href="#">989</a>	NOTICE OF SERVICE of VMware, Inc.'s Initial Infringement Claim Charts filed by VMware, Inc..(Vrana, Robert) (Entered: 04/19/2021)
04/20/2021	<a href="#">990</a>	NOTICE OF SERVICE of for Densify's Initial Infringement Contentions for the Consolidated Action filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 04/20/2021)
05/03/2021	<a href="#">991</a>	ORAL ORDER: For the reasons stated at the conclusion of today's teleconference, IT IS HEREBY ORDERED that (i) Plaintiffs' motion for certification under 28 U.S.C § 1292(b) (D.I. 960) is DENIED, and (ii) Plaintiffs' motion for leave to file an amended or supplemental answer and counterclaims (D.I. 976) is GRANTED. IT IS FURTHER ORDERED that, by no later than May 7, the parties shall submit proposed revisions to the current case schedule. ORDERED by Judge Leonard P. Stark on 5/3/21. (ntl) (Entered: 05/03/2021)
05/03/2021		Minute Entry for proceedings held before Judge Leonard P. Stark - Telephone Conference held on 5/3/2021. (Court Reporter B. Gaffigan.) (ntl) (Entered: 05/03/2021)
05/03/2021	<a href="#">992</a>	AMENDED ANSWER to, COUNTERCLAIM -- <i>Densify's Amended Answer and Counterclaims to VMware's Complaint</i> -- against VMware, Inc. by Cirba IP, Inc.. (Attachments: # <a href="#">1</a> Exhibits 1 - 8, # <a href="#">2</a> Exhibits 9 - 59)(Dorsney, Kenneth) (Entered: 05/03/2021)
05/03/2021	<a href="#">993</a>	NOTICE of filing the following Non-Paper material(s) in multi media format: with regard to Densify's Amended Answer and Counterclaims to VMware's Complaint. Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Kenneth Laurence Dorsney on behalf of Cirba IP, Inc. (Dorsney, Kenneth) (Entered: 05/03/2021)
05/04/2021	<a href="#">994</a>	Official Transcript of Argument by Telephone Conference held on May 3, 2021 before Chief Judge Leonard P. Stark. Court Reporter Brian Gaffigan, email: gaffigan@verizon.net. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 5/25/2021. Redacted Transcript Deadline set for 6/4/2021. Release of Transcript Restriction set for 8/2/2021. (bpg) (Entered: 05/04/2021)
05/05/2021	<a href="#">995</a>	NOTICE of Intent to Request Redaction by Cortlan S. Hitch re <a href="#">994</a> Transcript,, (Hitch, Cortlan) (Entered: 05/05/2021)
05/07/2021	<a href="#">996</a>	PROPOSED ORDER - Proposed Amended Consolidated Scheduling Order by Cirba IP, Inc.. (Attachments: # <a href="#">1</a> Letter enclosing proposed order)(Dorsney, Kenneth) (Entered: 05/07/2021)
05/10/2021	<a href="#">997</a>	NOTICE OF SERVICE of Densify's responses to VMware's First Set of Requests for Production in consolidated case (Nos. 175-212) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 05/10/2021)
05/11/2021	<a href="#">998</a>	NOTICE of Related Proceedings Before the Patent Trial and Appeal Board by VMware, Inc. (Attachments: # <a href="#">1</a> Exhibit A)(Vrana, Robert) (Entered: 05/11/2021)
05/11/2021	<a href="#">999</a>	STIPULATION TO EXTEND TIME for VMware, Inc. to move against, answer, or otherwise respond to Cirba's Amended Counterclaims (D.I. 992) to June 4, 2021 - filed by VMware, Inc.. (Gaza, Anne) (Entered: 05/11/2021)
05/11/2021	<a href="#">1000</a>	NOTICE OF SERVICE of (1) Densify's Supplemental Initial Identification of the Accused Products, Asserted Patents and Damages Model; and (2) Densify's Supplemental Initial Infringement Contentions filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 05/11/2021)
05/13/2021		SO ORDERED, re <a href="#">999</a> STIPULATION TO EXTEND TIME for VMware, Inc. to move against, answer, or otherwise respond to Cirba's Amended Counterclaims (D.I. 992) to June 4, 2021 filed by VMware, Inc. Signed by Judge Leonard P. Stark on 5/12/21. (ntl) (Entered: 05/13/2021)
05/13/2021	<a href="#">1001</a>	NOTICE OF SERVICE of Densify's First Set of Requests for Production of Documents and Things to VMware in the Consolidated Action (Nos. 204-224) filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 05/13/2021)
05/17/2021	<a href="#">1002</a>	STATEMENT re <a href="#">995</a> Notice of Intent to Request Transcript Redaction <i>notice of withdrawal of notice of intent to redact the May 3, 2021 transcript</i> by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 05/17/2021)
05/18/2021	<a href="#">1003</a>	CONSOLIDATED SCHEDULING ORDER: Status Report due by 8/12/2021 and 10/7/2022. Dispositive Motions due by 11/21/2022. Joint Claim Construction Brief due by 11/22/2021. A Markman Hearing is set for 12/22/2021 at 09:00 AM in Courtroom 6B before Judge Leonard P. Stark. Signed by Judge Leonard P. Stark on 5/17/21. (ntl) (Entered: 05/18/2021)
05/20/2021	<a href="#">1004</a>	STIPULATION modification to the protective order re <a href="#">833</a> Stipulation, <a href="#">111</a> Proposed Order by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 05/20/2021)
05/20/2021	<a href="#">1005</a>	STIPULATION TO EXTEND TIME case dispositive motions to November 1, 2022 (Reset to corrected date) - filed by Cirba IP, Inc.. (Dorsney, Kenneth) (Entered: 05/20/2021)
05/21/2021		SO ORDERED, re <a href="#">1004</a> Stipulation and Order Regarding Modification to the Protective Order filed by Cirba IP, Inc., <a href="#">1005</a> STIPULATION TO EXTEND TIME case dispositive motions to November 1, 2022 (Reset to corrected date) filed by Cirba IP, Inc. Signed by Judge Leonard P. Stark on 5/21/21. (ntl) (Entered: 05/21/2021)
05/25/2021	<a href="#">1006</a>	NOTICE OF SERVICE of (1) Densify's Fourth Amended Initial 26(a) Disclosures and; (2) Densify's Fourth Amended Paragraph 3 Disclosures filed by Cirba IP, Inc..(Dorsney, Kenneth) (Entered: 05/25/2021)
05/26/2021	<a href="#">1007</a>	NOTICE OF SERVICE of 1) VMwares Third Amended and Supplemental Rule 26(a)(1)Initial Disclosures; and 2) VMwares Second Amended Supplemental Disclosures Under Section 3 of the Default Standard for Discovery filed by VMware, Inc..(Vrana, Robert) (Entered: 05/26/2021)
05/27/2021	<a href="#">1008</a>	NOTICE OF SERVICE of VMware, Inc.'s First Set of Interrogatories to Cirba Inc. and Cirba IP, Inc. in the Consolidated Action (Nos. 26-35) filed by VMware, Inc..(Wilson, Samantha) (Entered: 05/27/2021)
06/04/2021	<a href="#">1009</a>	ANSWER to <a href="#">992</a> Amended Answer to Complaint, Counterclaim [VMWARE, INC.'S ANSWER TO CIRBA'S AMENDED COUNTERCLAIMS] by VMware, Inc..(Gaza, Anne) (Entered: 06/04/2021)
06/07/2021	<a href="#">1010</a>	NOTICE OF SERVICE of Document Production in Accordance with Paragraph 8(b) of the Scheduling Order (D.I. 1003) filed by

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		VMware, Inc..(Wilson, Samantha) (Entered: 06/07/2021)
06/08/2021	<a href="#">1011</a>	NOTICE requesting Clerk to remove Rahul Sarkar as co-counsel.. (Dorsney, Kenneth) (Entered: 06/08/2021)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
06/10/2021 11:59:57			
<b>PACER Login:</b>	greenariel1005	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:19-cv-00742-LPS Start date: 1/1/1972 End date: 6/10/2021
<b>Billable Pages:</b>	30	<b>Cost:</b>	3.00

**LICENSE AGREEMENT  
Terms and Conditions**

This License Agreement ("**Agreement**"), dated and effective as of March 21, 2016, is between CIRBA IP Inc. (the "**Corporation**"), an Ontario corporation with its principal place of business at 45 Vogell Road, Suite 600, Richmond Hill, Ontario, L4B 3P6, and Cirba Inc. (the "**Licensee**") an Ontario corporation, with its principal place of business at 45 Vogell Road, Suite 600, Richmond Hill, Ontario, L4B 3P6. The Corporation and the Licensee agree and undertake as follows:

1. Definitions

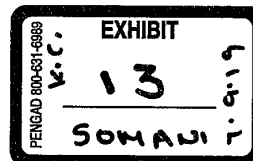
- (a) The term "**Products**" means all of the Software, as such term is defined below, and all intellectual property rights thereto, including the patents described in Schedule "A" attached hereto, used in or necessary for the Licensee to undertake the provision and sale of licenses of the Software to its customers including, without limitation, the right to sublicense the use of the Products to the Licensee's customers (the "**Commercial Endeavour**") and the following:
- (i) copies of all Software and all intellectual property rights thereto to the extent used exclusively in the Commercial Endeavour, in each case, solely to the extent the license thereof is permitted by applicable law;
  - (ii) to the extent applicable, all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent, and solely to the extent, affecting the Software and all intellectual property rights thereto used in or necessary for the operation of the Commercial Endeavour.

The term "**Products**" shall also include any Developments or Maintenance Modifications, whether through the efforts of the Corporation or the Licensee, as such terms are defined below

- (b) "**Software**" means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code; (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise; (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons; and (iv) all documentation, including user manuals and other training documentation related to any of the foregoing (the "**Documentation**");
- (c) The term "**Developments**" means the upgrading of a function or feature of the Products, or the addition of a previously unincluded function or feature which provides the Products with the capability to perform something which could not previously be performed by the Products.
- (d) The term "**Maintenance Modifications**" means any change to the Products for purposes of maintaining operating system compatibility, error correction or ongoing support of the Products.

2. License

Subject to the terms and conditions specified in this Agreement, the Corporation hereby grants, and the Licensee hereby accepts, an exclusive, transferable, worldwide license to use the Products (including, for greater certainty, any Developments or Maintenance Modifications thereof) in connection with the Commercial Endeavour.



Page 1

Highly Confidential - Outside Attorneys' Eyes Only

Appx120



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3. Term

The term of the license granted hereby shall begin on the date of execution of this Agreement and shall continue for a minimum period of twelve (12) months. Thereafter the License shall be automatically renewed for successive twelve (12) month periods unless the Licensee shall give not less than ninety (90) days' written notice to the Corporation that the Licensee desires to terminate the license at the end of its then current term.

4. Form of Payments

The Licensee shall pay to the Corporation the fees mutually agreed upon and documented in a memorandum between the Corporation and the Licensee at the times and in the manner so described (the "Memorandum"), it being acknowledged and agreed by the Corporation that the fees payable by the Licensee shall reflect costs incurred for any Developments or Maintenance Modifications made by the Licensee pursuant to the license granted hereunder.

Unless otherwise noted in the Memorandum, all license payments by the Licensee under this Agreement shall be made in Canadian Dollars free and clear of, and without deduction for, any taxes, levies, imposts, duties, charges, restrictions or conditions of any nature now or hereafter imposed or levied by any country or any political subdivision thereof or taxing or other authority therein, except with respect to income taxes assessed against or levied on the Corporation and pursuant to which the Licensee is compelled by law to make such deduction or withholding.

5. Purpose and Unauthorized Use; Access

The license granted by this Agreement is granted for purposes of use only as provided in Section 2 hereof, and the Licensee may not use the Products for any other purpose. The provisions of this Section 5 shall also apply to any code generated by the Product and any files created for program communication purposes and not as generally available output.

6. Delivery

By no later than ten (10) business days following request from the Licensee to the Corporation for installation of the Products, and from time to time during the term of the license granted hereby, the Corporation, at its own expense, shall deliver to the Licensee one copy of the latest issued release of each of the licensed Products, including the related Documentation, for which appropriate fees have been paid. The Licensee's use of any such copies of the Product shall be subject to the terms and conditions of this Agreement and the license granted hereunder

7. Developments

The Licensee shall be entitled to develop the Products on its own initiative, provided that the Licensee, in its reasonable discretion, determines that such Developments are appropriate in light of prevailing market conditions, costs, the availability of resources, and technical feasibility.

8. Proprietary Rights

The Licensee acknowledges that, between the Licensee and the Corporation, the Corporation is the exclusive owner of all proprietary rights, including rights based upon trade secret, patent and copyright laws, in and to the Products and the Documentation and information thereof, and agrees to



recognize the same and to abide by the terms thereof. This Agreement gives the Licensee no rights in such proprietary rights.

9. Amendment and Waiver

(a) None of the provisions of this Agreement shall be deemed to have been modified, amended or waived by any act or acquiescence on the part of either party, its agents or employees, except by an instrument in writing signed by an authorized officer of each party.

(b) No waiver by either party of any breach of this Agreement by the other party shall be effective as to any other breach of the same or any other provision of this Agreement whenever occurring.

10. Assignment

Except as specifically set forth below, this Agreement shall be binding upon and inure to the benefit of the parties thereto and their successors and assigns. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto.

11. Governing Law

This Agreement will be governed by, and interpreted under, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

12. Miscellaneous

This Agreement supersedes any and all oral or written agreements and understandings previously made between the parties relating to the subject matter hereof. The heading of Sections of this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any law applicable there, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

This Agreement may be executed in separate counterparts and by electronic means, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

Schedule "A" attached hereto form an integral part of this Agreement.

CIRBA INC.

By: *Cynthia Bain*  
Authorized Signing Officer

Date: March 21, 2016

CIRBA IP INC.

By: *Garry Smitz*  
Authorized Signing Officer

Date: March 21, 2016

Schedule "A"**Patents for the Transferred Property:**

No.	Name	Application No.	Patent No.	Filing Date	Jurisdiction
1	Method and System for Determining Parameter Distribution, variance, Outliers and Trends in Computer Systems	11/548,938	7,502,713	Oct 12/2006	USA
2	Method and System for Determining Parameter Distribution, variance, Outliers and Trends in Computer Systems	60/805,701		Jun 23, 2006	USA (provisional)
3	Method and System for Determining Parameter Distribution, variance, Outliers and Trends in Computer Systems	PCT/CA2007/00112 2		Jun 22, 2007	PCT
4	Method and System for Determining Parameter Distribution, variance, Outliers and Trends in Computer Systems	2,655,547	2,655,547	Jun 22, 2007	Canada
5	Method and System for Determining Parameter Distribution, variance, Outliers and Trends in Computer Systems	07720037.6		Jun 22, 2007	European Patent Office
6	System and Method for Evaluating Differences in Parameters for One or More Computer Systems	11/535,308	7,680,754	Sep 26, 2006	USA
7	Method and System for Determining Compatibility of Computer Systems	11/535,355	7,809,817	Sep 26, 2006	USA
8	Method and System for Determining Compatibility of Computer Systems	11/738,936	8,793,679	Apr 23, 2007	USA

Page 4

9	Method and System for Determining Compatibility of Computer Systems	2,648,528		Apr 23, 2007	Canada
10	Method and System for Determining Compatibility of Computer Systems	07719602.0		Apr 23, 2007	European Patent Office
11	Method and System for Determining Compatibility of Computer Systems	13169900.1		Apr 23, 2007	European Patent Office
12	Method and System for Determining Compatibility of Computer Systems	14/341,471		Jul 25, 2014	USA
13	Method and System for Determining Compatibility of Computer Systems	60/745,322		Apr 21, 2006	USA (provisional)
14	Method and System for Determining Compatibility of Computer Systems	PCT/CA2007/00067 5		Apr 23, 2007	PCT
15	Method for Detecting System Relationships Based on Correlating System Metrics	61/039,972		Mar 27, 2008	USA (provisional)
16	System and Method for Detecting System Relationships by Correlating System Workload Activity Levels	PCT/CA2009/00038 7		Mar 27, 2009	PCT
17	System and Method for Detecting System Relationships by Correlating System Workload Activity Levels	12/890,273	8,065,256	Sep 24, 2010	USA
18	System and Method for Detecting System Relationships by Correlating System Workload Activity Levels	2,719,720		Mar 27, 2009	Canada
19	System and Method for Detecting System Relationships by Correlating System	09725432.0		Mar 27, 2009	European Patent Office

Page 5

	Workload Activity Levels				
20	Method and System for Evaluating Virtualized Environments	12/201,323	8,209,687	Aug 29, 2008	USA
21	VMware Analysis using Cirba	60/969,344		Aug 31, 2007	USA (provisional)
22	Method and System for Evaluating Virtualized Environments	PCT/CA2008/00152 2		Aug 29, 2008	PCT
23	Method and System for Evaluating Virtualized Environments	2,697,965		Aug 29, 2008	Canada
24	Method and System for Evaluating Virtualized Environments	08800249.8		Aug 29, 2008	European Patent Office
25	Method for Estimating Combined Workloads with Variable Contention	61/028,323		Feb 13, 2008	USA (provisional)
26	System and Method for Estimating Combined Workloads of Systems with Uncorrelated and Non-Deterministic Workload Patterns	PCT/CA2009/00016 4		Feb 12, 2009	PCT
27	System and Method for Estimating Combined Workloads of Systems with Uncorrelated and Non-Deterministic Workload Patterns	12/847,204	8,887,161	Jul 30, 2010	USA
28	System and Method for Estimating Combined Workloads of Systems with Uncorrelated and Non-Deterministic Workload Patterns	2,713,889		Feb 12, 2009	Canada
29	System and Method for Estimating Combined Workloads of Systems with	09711113.2		Feb 12, 2009	European Patent Office

	Uncorrelated and Non-Deterministic Workload Patterns				
30	System and Method for Analyzing Computing System Resources	13/310,480		Dec 2, 2011	USA
31	System and Method for Analyzing Computing System Resources	2,723,511		Dec 3, 2010	Canada
32	System and Method for Analyzing Computing System Resources	61/419,671		Dec 3, 2010	USA (provisional )
33	System and Method for Quantifying and Visualizing Efficiency and Risks of Computing Environments	61/523,912		Aug 16, 2011	USA (provisional )
34	System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	PCT/CA2012/05056 1		Aug 16, 2012	PCT
35	System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	14/180,438		Feb 14, 2014	USA
36	System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	2,845,402		Aug 16, 2012	Canada
37	System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	12824582.6		Aug 16, 2012	European Patent Office
38	Control Framework for Virtualized and Cloud Computing Environments	61/528,276		Aug 28, 2011	USA (provisional )
39	Capacity Reservation	61/605,559		Mar 1, 2012	USA

Page 7

	System for Virtual and Cloud Environments				(provisional )
40	System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	PCT/CA2013/05015 7		Mar 1, 2013	PCT
41	System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	14/472,001		Aug 28, 2014	USA
42	System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	2,865,930		Mar 1, 2013	Canada
43	System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	13757520.5		Mar 1, 2013	European Patent Office
44	System and Method for Measuring Capacity in Computing Environments Using Demand Profiles	61/835,359		Jun 14, 2013	USA (provisional )
45	System and Method for Determining Capacity in Computing Environments using Demand Profiles	PCT/CA2014/05056 1		Jun 16, 2014	PCT
46	System and Method for Determining Capacity in Computing Environments using Demand Profiles	14/967,694		Dec 14, 2015	USA
47	System and Method for Determining Capacity in Computing Environments using	2,915,181		Jun 16, 2014	Canada

Page 8

	Demand Profiles				
48	System and Method for Determination and Deployment of License Optimization Rules	62/015,183		Jun 20, 2014	USA (provisional)
48	System and Method for Optimizing Placements of Virtual Machines on Hypervisor Hosts	PCT/CA2015/05057 5		Jun 22, 2015	PCT
50	System and Method for Routing Workloads based on Proximity	62/089,496		Dec 9, 2014	USA (provisional)
51	System and Method for Routing Workloads based on Proximity	PCT/CA2015/05129 6		Dec 9, 2015	PCT
52	System and Method for Computing Stranded Capacity for Virtual and Cloud Computing Environments	62/210,163		Aug 26, 2015	USA (provisional)
53	System and Method for Routing Workloads in Hybrid Cloud Environments	62/290,077		Feb 2, 2016	Provisional

*Assignment - World*

## ASSIGNMENT (World)

WHEREAS,

**Cirba Inc.**

hereinafter referred to as the "Assignor", whose full post office address is

**45 Vogell Road, Suite 600, Richmond Hill, Ontario, L4B 3P6, Canada,**

is the owner of the Inventions as described in the patents and patent applications listed in Schedule A attached hereto, hereinafter collectively referred to as the "Patents";

AND WHEREAS,

**Cirba IP Inc.**

hereinafter referred to as the "Assignee", whose full post office address is

**45 Vogell Road, Suite 600, Richmond Hill, Ontario, L4B 3P6, Canada,**

desires to acquire the Assignor's entire right, title and interest in and to the Inventions and the Patents;

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor does hereby sell, assign, transfer and set over to the Assignee, its successors, assigns, or legal representatives, its entire right, title, interest, property and benefit, in and to the Patents, and any counterpart foreign applications the Assignee may file, including any and all national entry filings, continuations, divisions, re-examinations, reissues and extensions, including subject matter fully set forth and described in the Patents, and all rights of enforcement thereto, including all rights to sue or recover for the past infringement thereof, and any and all choses in action related thereto, the same to be held and enjoyed as fully and exclusively as they would have been by the assignor had this assignment and transfer not been made.

AND the Assignor, on behalf of itself and its executors and administrators, does hereby covenant and agree to do all such lawful acts and things and to execute without further consideration such further lawful assignments, documents, assurances, applications and other instruments as may reasonably be required by the Assignee, its successors, assigns, or legal representatives, to obtain any and all Letters Patent for the Inventions and vest the same in the Assignee, its successors, assigns, or legal representatives.

AND the Assignee does hereby accept this assignment, such assignment to be effective March 21, 2016.

21942709.1

*Blake, Cassels & Graydon LLP*



## Schedule A

<u>Title</u>	<u>Country</u>	<u>Filing Date</u>	<u>Application No.</u>	<u>Patent No.</u>
Method and System For Determining Compatibility of Computer Systems	U.S.A.	Sep 26/2006	11/535,355	7,809,817
Method for Evaluating Differences in Parameters for One or More Computer Systems	U.S.A.	Sep 26/2006	11/535,308	7,680,754
Method and System for Determining Compatibility of Computer Systems	U.S.A.	Apr 23/2007	11/738,936	8,793,679
Method and System for Determining Compatibility of Computer Systems	U.S.A.	Jul 25/2014	14/341,471	
Method and System for Determining Compatibility of Computer Systems	U.S.A.	Apr 21/2006	60/745,322	
Method and System for Determining Compatibility of Computer Systems	PCT	Apr 23/2007	PCT/CA2007/000675	
Method and System for Determining Compatibility of Computer Systems	Canada	Apr 23/2007	2,648,528	
Method and System for Determining Compatibility of Computer Systems	European Patent Office	Apr 23/2007	07719602.0	
Method and System For Determining Compatibility of Computer Systems	European Patent Office	Apr 23/2007	13169900.1	
Method and System For Determining Parameter Distribution, Variance, Outliers and Trends in Computer Systems	U.S.A.	Oct 12/2006	11/548,938	7,502,713
Method and System for Determining Operational Parameter Distribution and Variance of Among Computer Systems	U.S.A.	Jun 23/2006	60/805,701	
Method and System for Determining Parameter Distribution, Variance, Outliers and Trends in Systems	PCT	Jun 22/2007	PCT/CA2007/001122	
Method and System for Determining Parameter Distribution, Variance, Outliers and Trends in Systems	Canada	Jun 22/2007	2,655,547	2,655,547
Method and System for Determining Parameter Distribution, Variance, Outliers and Trends in Systems	European Patent Office	Jun 22/2007	07720037.6	
Method and System for Evaluating Virtualized Environments	U.S.A.	Aug 29/2008	12/201,323	8,209,687
VMware Analysis using CIRBA	U.S.A.	Aug 31/2007	60/969,344	
Method and System for Evaluating Virtualized Environments	PCT	Aug 29/2008	PCT/CA2008/001522	
Method and System for Evaluating Virtualized Environments	Canada	Aug 29/2008	2,697,965	
Method and System for Evaluating Virtualized Environments	European Patent Office	Aug 29/2008	08800249.8	

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Blake, Cassels &amp; Graydon LLP

Method for Estimating Combined System Workloads with Variable Contention	U.S.A.	Feb 13/2008	61/028,323	
System and Method for Estimating Combined Workloads of Systems with Uncorrelated and Non-Deterministic Workload Patterns	PCT	Feb 12/2009	PCT/CA2009/000164	
System and Method for Estimating Combined Workloads of Systems with Uncorrelated and Non-Deterministic Workload Patterns	Canada	Feb 12/2009	2,713,889	
System and Method for Estimating Combined Workloads of Systems with Uncorrelated and Non-Deterministic Workload Patterns	European Patent Office	Feb 12/2009	09711113.2	
System and Method for Estimating Combined Workloads of Systems with Uncorrelated and Non-Deterministic Workload Patterns	U.S.A.	Jul 30/2010	12/847,204	8,887,161
Method for Detecting System Relationships Based on Correlating System Metrics	U.S.A.	Mar 27/2008	61/039,972	
System and Method for Detecting System Relationships By Correlating System Workload Activity Levels	PCT	Mar 27/2009	PCT/CA2009/000387	
System and Method for Detecting System Relationships By Correlating System Workload Activity Levels	Canada	Mar 27/2009	2,719,720	
System and Method for Detecting System Relationships By Correlating System Workload Activity Levels	European Patent Office	Mar 27/2009	09725432.0	
System and Method for Detecting System Relationships By Correlating System Workload Activity Levels	U.S.A.	Sep 24/2010	12/890,273	8,065,256
System and Method for Analyzing Computing System Resources	Canada	Dec 03/2010	2,723,511	
System and Method for Analyzing Computing System Resources	U.S.A.	Dec 02/2011	13/310,480	
System and Method for Analyzing Computing System Resources	U.S.A.	Dec 03/2010	61/419,671	
System and Method for Quantifying and Visualizing Efficiency and Risks of Computing Environments	U.S.A.	Aug 16/2011	61/523,912	
System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	PCT	Aug 16/2012	PCT/CA2012/050561	
System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	Canada	Aug 16/2012	2,845,402	
System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	European Patent Office	Aug 16/2012	12824582.6	
System and Method for Determining and Visualizing Efficiencies and Risks in Computing Environments	U.S.A.	Feb 14/2014	14/180,438	

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Control Framework for Virtualized and Cloud Computing Environments	U.S.A.	Aug 28/2011	61/528,276	
Capacity Reservation System for Virtual & Cloud Environments	U.S.A.	Mar 01/2012	61/605,559	
System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	PCT	Mar 01/2013	PCT/CA2013/050157	
System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	Canada	Mar 01/2013	2,865,930	
System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	European Patent Office	Mar 01/2013	13757520.5	
System and Method for Providing a Capacity Reservation System for a Virtual or Cloud Computing Environment	U.S.A.	Aug 28/2014	14/472,001	
System and Method for Measuring Capacity in Computing Environments Using Demand Profiles	U.S.A.	Jun 14/2013	61/835,359	
System and Method for Determining Capacity in Computer Environments Using Demand Profiles	PCT	Jun 16/2014	PCT/CA2014/050561	
System and Method for Determining Capacity in Computer Environments Using Demand Profiles	Canada	Jun 16/2014	2,915,181	
System and Method for Determining Capacity in Computer Environments Using Demand Profiles	U.S.A.	Dec 14/2015	14/967,694	
System and Method for Determination and Deployment of License Optimization Rules	U.S.A.	Jun 20/2014	62/015,183	
System and Method for Optimizing Placements of Virtual Machines on Hypervisor Hosts	PCT	Jun 22/2015	PCT/CA2015/050575	
System and Method for Routing Workloads based on Proximity	U.S.A.	Dec 09/2014	62/089,496	
System and Method for Routing Computing Workloads based on Proximity	PCT	Dec 09/2015	PCT/CA2015/051296	
System and Method for Computing Stranded Capacity for Virtual and Cloud Environments	U.S.A.	Aug 26/2015	62/210,163	
System and Method for Routing Workloads in Hybrid Cloud Environments	U.S.A.	Feb 02/2016	62/290,077	

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Blake, Cassels &amp; Graydon LLP

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**From:** ded\_nefreply@ded.uscourts.gov  
**Sent:** Monday, February 10, 2020 1:39 PM  
**To:** ded\_ecf@ded.uscourts.gov  
**Subject:** Activity in Case 1:19-cv-00742-LPS Cirba Inc. et al v. VMware, Inc. Order

[EXTERNAL]

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U.S. District Court

District of Delaware

## Notice of Electronic Filing

The following transaction was entered on 2/10/2020 at 4:38 PM EST and filed on 2/10/2020

**Case Name:** Cirba Inc. et al v. VMware, Inc.

**Case Number:** [1:19-cv-00742-LPS](#)

**Filer:**

**Document Number:** 574(No document attached)

### Docket Text:

**ORAL ORDER:** Having reviewed the parties' filings related to Densify's Motion to Redact (D.I. 161, 181, 192), IT IS HEREBY ORDERED that the motion is GRANTED. The Court recognizes that the majority of Densify's proposed redactions are unopposed by VMware. As to the opposed redactions, the Court finds that Densify has shown with requisite specificity good cause to redact the limited portions of the transcript it proposes to redact. IT IS FURTHER ORDERED that the following schedule shall apply to any post-trial briefing, including VMware's anticipated standing motion: (i) any post-trial motions and the accompanying opening brief(s) shall be filed no later than March 9, 2020; (ii) any answering brief shall be filed no later than March 30, 2020; and (iii) any post-trial reply brief shall be filed no later than April 13, 2020. With respect to all such briefing, each side shall be limited to 25 pages of any opening briefs, 25 pages of any answering briefs, and 12 pages of any reply briefs (that is, the parties will submit a total of no more than 124 pages of briefing). ORDERED by Judge Leonard P. Stark on 2/10/20. (ntl)

1:19-cv-00742-LPS Notice has been electronically mailed to:

Kenneth Laurence Dorsney kdorsney@morrisjames.com, ippara@morrisjames.com

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

Civil Action No. 1:19-cv-00742-LPS

JURY TRIAL DEMANDED

**FILED UNDER SEAL**

**DENSIFY’S MOTION FOR  
REDACTION OF LIMITED PORTIONS OF THE  
AUGUST 6, 2019 PRELIMINARY INJUNCTION HEARING TRANSCRIPT**

Plaintiffs Cirba Inc. and Cirba IP, Inc. (“Densify”) respectfully move for an order redacting limited portions of the August 6, 2019 preliminary injunction hearing transcript in the above-captioned action. Counsel for Densify conferred via email with counsel for Defendant VMware, Inc. (“VMware”) and confirmed that VMware does not oppose the specific numerical redactions proposed by Densify. The proposed redactions are set forth below and outlined in Exhibit A, and a redacted copy for public filing consistent with the redactions in Exhibit A is attached as Exhibit B.

During the expedited discovery process, the Parties agreed to a Protective Order, which the Court entered on August 1, 2019 (D.I. 111). The Protective Order provides in pertinent part that disclosure of “HIGHLY-CONFIDENTIAL—ATTORNEYS’ EYES ONLY” material, including business, marketing, or strategic plans; customer information; sensitive proposed or actual research and development; financial, budgeting and/or accounting information of a Party would create a substantial risk of serious harm. *Id.* at 2-3.

# Exhibit B

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -

CIRBA INC. (d/b/a DENSIFY) and  
CIRBA IP, INC.,

Plaintiffs,

v

VMWARE, INC.,

Defendant.

: CIVIL ACTION  
:  
:  
:  
:  
: NO. 19-742-LPS

- - -

Wilmington, Delaware  
Tuesday, August 6, 2019  
*Preliminary Injunction Hearing*

- - -

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES:

- - -

MORRIS JAMES, LLP  
BY: KENNETH L. DORSNEY, ESQ.

and

REICHMAN JORGENSEN, LLP  
BY: COURTLAND L. REICHMAN, ESQ., and  
SHAWNA BALLARD, ESQ.  
(Redwood Shores, California)

and

REICHMAN JORGENSEN, LLP  
BY: CHRISTINE LEHMAN, ESQ.  
(Washington, District of Columbia)

Counsel for Plaintiff

Brian P. Gaffigan  
Registered Merit Reporter

1 THE COURT: Any objection, Mr. Jacobs?

2 MR. JACOBS: No objection so long as it's not  
3 in the context of the quarrel with VMware, meaning over a  
4 particular customer.

5 MR. REICHMAN: Right.

6 THE COURT: Right. I take it the industry  
7 understands that you all have some shared customers, but  
8 if we're careful to just characterize them as your own  
9 customers, that is, Densify's own customers, then I don't  
10 think there is an objection.

11 MR. JACOBS: Correct.

12 THE COURT: Okay.

13 MR. REICHMAN: So this key innovation about  
14 doing host-based placement based on the three constraints,  
15 workload, technical, and business was something that the  
16 market responded to.

17 Densify built a very vibrant business. We put  
18 some of the customers up on the screen. They wanted it for  
19 the reasons you just saw, Your Honor. That it would save  
20 them money not just on software licensing but on other  
21 areas. It would decrease risk. It would be easier to  
22 manage. There is a whole host of reasons that, no pun  
23 intended, you would want to do host-based placement.

24 They built the company up to 180-plus employees  
25 with venture capital backing, investors and customers, a



1 placement. And it is noting Cirba is one of the competitors  
2 in this space.

3 If you turn in your hard copy to page 24, it is  
4 just a sampling of the types of things that are being heard  
5 from customers from 2013 to 2015. And these customers are,  
6 over and over again, referring to the differentiation of  
7 Cirba and the need for host-based placement. And for every  
8 one of these that is here, we have another dozen that are in  
9 the record. It is almost too much.

10 THE COURT: And these are examples of what you  
11 found in VMware internal documentation?

12 MR. REICHMAN: Yes, sir. This is all VMware  
13 internal documentation. So the customer in the first one  
14 bought Cirba as a corner case or Densify getting serious  
15 traction with our customers highly differentiated. They're  
16 starting to pop up. Clients are requesting it.

17 This other client, the "C" client in 2015, they  
18 like Cirba a lot for gaps it can fill in VMware. Over and  
19 over again, we see this in the documents.

20 If we put up slide 25.

21 What we see is a VMware employee in 2015, when  
22 talking about the competitive dynamic between VMware and  
23 Cirba, that they recognize that they are the 800 pound  
24 gorilla in the space and that Cirba is merely an ankle biter  
25 in this space.

1           That is an essential threat that affects core  
2 customers and the 180 employees and families and investors  
3 and they have a lot of business. They have customers to  
4 attend to. And I think of the irreparable harm as, you  
5 know, very much like the archival case of the wrecking ball  
6 standing outside of a building and the parties rush in to  
7 get a TRO or a preliminary injunction to say, hey, don't let  
8 them tear down the building. We'd like to have a trial  
9 about who gets this building. And if they tear it down,  
10 we're not having a trial about the building, we're having a  
11 trial about money.

12           That is what is going on here. There is a  
13 wrecking ball out there. We've got [REDACTED] percent of our  
14 customer renewals come up in the remainder of this year. We  
15 have got VMworld, which is the biggest event with something  
16 like 10,000 customers there, happening in two weeks. We  
17 already lost [REDACTED] percent because of Version 7 coming out.  
18 And now it's looking like it's expanding into the cloud  
19 business.

20           Not only is the infringement that is going to be  
21 in the future a problem but from a revenue perspective, the  
22 vast majority of the revenues of the company are on the  
23 on-premises side. And that money, of course, is used to  
24 fund new R&D and to expand into this new cloud space.

25           We've got in our briefs and in the declarations

1 the list of customers that are coming up for renewal,  
2 already lost █ percent, █ percent coming up for renewal in  
3 2019, █ percent up in two years. The point is there won't  
4 be a Densify around by the time trial comes around if we  
5 don't get a preliminary injunction.

6 To me, this case speaks to the fundamental  
7 right to exclude, as part of the patentee's bargain, public  
8 disclosure versus this limited right for a period of years.  
9 This is what Densify built its business on is this right to  
10 exclude. And when they have not licensed their patents,  
11 when they are in head-to-head competition, which this is  
12 their core differentiator, the cases pretty much formally  
13 recognize that is what patent law was meant to help with.  
14 Because, after all, without a preliminary injunction, by  
15 the time we get to trial, Densify becomes a forced patent  
16 licensee. They no longer have a right to exclude because  
17 they no longer have a company.

18 If we look at the balance of the harms, the  
19 record speak powerfully, Your Honor, that this is the core  
20 of Densify's business. It's key differentiator, and the  
21 entire business is at risk. And if we weigh the burdens on  
22 the different parties, VMware can't even identify a concrete  
23 harm, and it takes the position that the accused technology  
24 is not important. That it is a niche functionality. That  
25 it's not used, it's a niche use case, peripheral to VMware's

1 I wanted to address the terminology points; and  
2 I don't know how to make the Elmo work. Does somebody ...

3 THE COURT: Someone will help.

4 (Ms. Lehman adjusts the Elmo settings.)

5 MR. REICHMAN: This is a VMware document that  
6 was produced by VMware during discovery. And I thought it  
7 encapsulated nicely why we didn't rush out and sue  
8 Turbonomic.

9 VMware characterizes itself as the lion on the  
10 left, and it characterizes Turbonomic as the little baby  
11 kitty on the right. That says it all. Densify is not in  
12 the business of suing people. It only reluctantly brought  
13 this suit when it became a serious commercial threat by the  
14 lion, or as they call themselves, the 800 pound gorilla.

15 MR. JACOBS: Your Honor, could we have the  
16 screen down?

17 THE COURT: You can take it down. It is a  
18 picture of lions and kittens, but we'll take it down.

19 So should I understand you don't dispute  
20 Turbonomic infringes your patent and competes with you?

21 MR. REICHMAN: The competition is different. I  
22 want to explain that, if I may. But, yes, we believe that  
23 they infringe the patent. Of course, we haven't litigated  
24 against them, but that is our belief.

25 That is not a competitive threat to Densify.

1 Here is why. Densify works with VMware, which has  
2 80-90 percent, depending on how you look at the market. It  
3 works in conjunction with VMware's product.

4 So in order for Densify to sell into virtually  
5 all of the big customers it is targeting, it does not have  
6 to displace VMware. They work in conjunction.

7 Turbonomic, on the main, displaces vROps. They  
8 have to come in and kick vROps out so they can provide their  
9 own product. So while they do this host-based placement, it  
10 is not a serious competitive threat for Densify, so that is  
11 why they didn't rush out and sue them.

12 This and the evidence I believe supports  
13 strongly is a competitive threat because this is the  
14 800 pound gorilla in the market.

15 There was a mention of splitting into separate  
16 teams. We didn't look at that information in the August of  
17 2015 e-mail. The e-mails I showed you about whether they  
18 were sharing information were before that. So when he is  
19 saying we're splitting it into separate teams, before he  
20 told that to Densify, they had already been sharing  
21 information with their development teams and the e-mails  
22 that we showed you were all in our briefs.

23 THE COURT: Do you think you demonstrated a  
24 likelihood of success of showing, to the extent it is  
25 relevant, that they developed their infringing accused

Somani - direct

1 last minute, at the end of September, Exxon choosing to not  
2 renew their contract. It was close to [REDACTED]

3 [REDACTED] At that time, we didn't know specifically, we could not  
4 confirm it was due to vROps. We found out after it was.

5 And then the real challenge has now started for  
6 us in 2019. This is a depiction of where we expect to  
7 finish 2019 based on the notifications that we have already  
8 received from companies like Citibank and TD that they're  
9 choosing to not renew with us after switching to vROps.

10 In my opinion, today, this [REDACTED]  
11 [REDACTED] on our book of business is probably the best case  
12 scenario based on the fact that we have a number of  
13 contracts that renew between August and October, [REDACTED]  
14 [REDACTED] of contracts beyond the ones that I just stated, and  
15 that also continues past 2019, between October and December.  
16 A significant amount of our business is at the tail end of  
17 our fiscal year and also at the start of our fiscal year.

18 Q. Mr. Somani, do you have any plans for your company if  
19 a preliminary injunction is not issued today and a trial  
20 awaits until January or later?

21 A. It's tough. I've got 20 years in this company. I  
22 started it with Andrew. Gerry, the CEO, Andrew, and I run  
23 it. Gerry has been with us for 15.

24 [REDACTED]  
25 [REDACTED] We've got [REDACTED] percent of our business

Somani - direct

1 coming up for renewal between now and December.

2 We have VMworld 2019. VMworld has a platform of  
3 north of 20,000 people from our customers, our prospects.

4 As they describe it, the workload optimization  
5 train keeps on rolling and the 800 pound gorilla has the  
6 stage.

7 Many years ago, we did a financing round. We  
8 asked employees if they wanted to participate. Over  
9 [REDACTED] percent put their own money in.

10 We've got 185 employees. (Pause.)

11 Sorry. I dread having to tell them what the  
12 situation is for our company if we don't get a PI. It's not  
13 something I want to talk about. Sorry.

14 MS. BALLARD: Thank you.

15 THE COURT: Cross-examination.

16 MR. JACOBS: Your Honor, I don't want to -- I'm  
17 going to see if I can presume on the Court, do you have a  
18 copy of the supplemental declaration of Jennifer Luh handy?

19 THE COURT: I don't know if I have it handy.

20 MR. JACOBS: Just a second.

21 THE COURT: Does have it information you can't  
22 display in court? Is that the issue?

23 MR. JACOBS: It's a Cirba gap analysis. If  
24 Cirba would agree, we can display it publicly.

25 THE COURT: Why don't you show it to them. If

Somani - redirect

1 This is a competitive table showing Densify  
2 against the competition; true, sir?

3 A. Yes. This was a cloud competitive slide, us against  
4 the cloud vendors.

5 Q. It's a recap of all the comparison that is being done  
6 on the rest of the deck; true, sir?

7 A. For the cloud use case.

8 Q. And in the cloud use case, there is no mention of  
9 vROps having any capability that Densify has; true, sir?

10 A. Yes. In this, yes.

11 MR. JACOBS: Thank you. No further questions.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MS. BALLARD:

15 Q. Yes. I'd like to return to the August 2018 document  
16 that was up, prepared by Mr. Hillier.

17 Was this document Densify's first crack at how  
18 to compete in the face of VMworld 2018?

19 A. That is my understanding. That this was -- I'm  
20 looking at the date -- at the same time, within probably  
21 hours, days of the announcements on the latest capabilities.

22 Q. And how does this, having these modes of comparison  
23 to V 7 worked for you? Has it been successful?

24 A. No. I mean Citi as an example. A longstanding  
25 customer of ours spent millions of dollars with us and chose



Somani - redirect

1 to pull the plug and replace us with Version 7.0. They  
2 decommissioned our software, but in order to do that they  
3 had to upgrade to Version 7 first.

4 TD Bank new executive ownership that took over,  
5 the first thing he asked me to do is justify my existence  
6 because the latest capability from vROps was sufficient for  
7 him.

8 I could go on with other examples.

9 Exxon, at the time in October when we lost them,  
10 we had an inclination that it had to do with vROps. They  
11 would not, they specifically would not tell us, but in April  
12 we confirmed when a former employee had left Exxon, we asked  
13 him, and he said that is accurate, that they replaced us  
14 with vROps.

15 So these are three example customers, but  
16 they're foreshadowing of what is to come.

17 Exxon has dozens of people trained on our  
18 product, using it for years. Citibank had saved millions of  
19 dollars using our software. Our No. 2 largest customer.  
20 Our No. 1 referencing customer. It was a customer that  
21 both companies referenced and talked to during the 2015  
22 acquisition discussions.

23 TD, our longest running customer of all time,  
24 they were [REDACTED] They  
25 were investing time and energy in [REDACTED] They

Somani - redirect

1 intended on paying us on more money; and overnight, they  
2 decided vROps 7.0 was sufficient and we were redundant.  
3 That has been my experience.

4 And the bigger concern of mine right now is we  
5 have VMworld 2019. That is weeks away. VMware has the  
6 platform to talk about the workload optimization training  
7 once again. They're making more investments in cloud where  
8 we do have a little bit of growth, and we've got [REDACTED] percent  
9 of our business coming up for renewal where customers like  
10 the cities are asking their internal budgets for [REDACTED]  
11 [REDACTED] that VMware  
12 is saying is redundant. You already own it as part of  
13 vROps. You already own it.

14 Our [REDACTED] largest customers where we have the  
15 highest concentration of our business, they all own VMware,  
16 they all own vROps. And that is the 800 pound gorilla that  
17 I have to face to say you already own it but pay us anyways.

18 Pay us [REDACTED]  
19 [REDACTED] I  
20 don't see [REDACTED]  
21 [REDACTED] I just -- we will [REDACTED]  
22 [REDACTED]

23 MS. BALLARD: Thank you.

24 THE COURT: All right. We'll stop the clock for  
25 a moment.

1 Densify's case. And if you don't have any questions, I  
2 won't make you late.

3 THE COURT: Okay. I may have more to say today.  
4 I am tied up between 2:00 and 3:00, so you all are free  
5 until 3:00. I do want you back here at 3:00, and we'll let  
6 you know as close to 3:00 whether I will have something more  
7 for you. Understood?

8 MR. REICHMAN: I do understand, Your Honor.

9 MR. JACOBS: Yes.

10 MR. REICHMAN: May we leave our materials over  
11 in the corner?

12 THE COURT: Yes. I think my next in-court  
13 proceeding isn't until -- I'll ask Mr. Looby to look. I  
14 believe it's not until -- (The Court and Deputy Clerk  
15 confer) -- right. No one else is coming into the courtroom  
16 until 4:00. So you are fine until then.

17 MR. REICHMAN: Thank you, Judge.

18 THE COURT: So we'll look for you around 3:00.

19 (Recess taken at 2:02 p.m.)

20 \* \* \*

21 (Proceedings reconvened at 3:39 p.m.)

22 THE COURT: Have a seat.

23 Thank you all for your patience.

24 I am going to just go ahead and rule on the  
25 motions that were argued and not argued today. I think

1 under the circumstances, it's appropriate not to delay my  
2 decision and not to keep anyone in suspense for any longer  
3 than is necessary. I tried to be well prepared coming in,  
4 and you gave thorough presentations on both sides, I got  
5 to question the witnesses to the extent I needed to, and my  
6 decision isn't going to change, so I'm going to just give  
7 you my decision.

8 First, and most principally, we had Densify's  
9 preliminary injunction motion.

10 This motion is denied. I'll try to explain why.

11 The motion is based on an allegation of  
12 infringement under the four asserted claims of the '687  
13 patent, including, and we mostly talked about,  
14 representative claim 7.

15 The standards for a preliminary injunction I  
16 think are not in dispute. I hereby adopt the standards as  
17 set out in the opening brief of the plaintiff. But I do  
18 want to call out just a couple points about the legal  
19 standards.

20 Of course, the plaintiff at a minimum has to  
21 establish a likelihood of success on the merits and also  
22 show that it will likely suffer irreparable harm between now  
23 and the time of trial on the merits.

24 That is a significant burden, both of those  
25 points. The law is clear that if the plaintiff does not

1 prevail on one or both of those at the preliminary  
2 injunction stage, the Court cannot provide the extraordinary  
3 relief of a preliminary injunction. And as I will explain,  
4 I find that the plaintiff has failed to meet its burden on  
5 both of those first two prongs.

6 Because this is a patent infringement based  
7 preliminary injunction motion, the patentee, here the  
8 plaintiff, has to not only show that they're likely to show  
9 infringement by the defendant's accused products but I have  
10 to be comfortable that there is not what is referred to as a  
11 substantial question of invalidity.

12 In order to assess that prong of the likelihood  
13 of success test, there is essentially a burden on the  
14 defendant to persuade me at this stage that it is likely  
15 that when we get to trial, the defendant will persuade the  
16 fact-finder by clear and convincing evidence that the patent  
17 is invalid. So I have considered all of that, and I will  
18 tell you my findings in a moment.

19 Let me turn to that now.

20 So, first, I will address the factor of  
21 reasonable likelihood of success on the merits.

22 Densify has failed to meet its burden on this  
23 first factor; and I say that due to the infringement  
24 showing.

25 The burden is on Densify; and it's not an easy

1 one, especially as this case is only three months old, but  
2 Densify has failed to meet its burden.

3 Dr. Madisetti's declarations are somewhat  
4 conclusory; and they do not persuade the Court that Densify  
5 is likely to show infringement by a preponderance of the  
6 evidence.

7 Today, we have heard from Dr. Madisetti and his  
8 opinion, some of which are new but which I was willing to  
9 hear. They do seem more particularized, but I still am not  
10 persuaded by them to the extent I need to be in order to  
11 find a likelihood of success on the merits.

12 There has been discussion today of whether I  
13 should be, for the infringement analysis, looking at vROps  
14 alone or vROps in combination with DRS. I went back and  
15 looked again at the plaintiff's opening brief. And I do  
16 think that the fairest reading of that is that the only  
17 thing being accused was vROps Version 7 and 7.5.

18 Unless I missed it, and we looked a couple  
19 times, I don't see a single reference to DRS in the opening  
20 brief. Nonetheless, for purposes of the motion, I have  
21 given the plaintiff the benefit of the doubt and have  
22 considered vROps as it functions in conjunction with the  
23 DRS. And, again, I'm not persuaded by the plaintiff even  
24 looking at those combined function allegations.

25 I'm not persuaded vROps with DRS meets all the

1 claim limitations in the asserted claims of the '687 patent.  
2 I say that in part for, and based on the contrary opinion  
3 expressed by Dr. Nieh on behalf of defendant VMware. I do  
4 find at this point that his opinion is more persuasive.

5 I say that for at least several reasons,  
6 including that I am not yet persuaded that the plaintiff  
7 will overcome the following flaws, potential flaws at least  
8 that Dr. Nieh has identified in the infringement read:

9 First, it does not appear at the moment that  
10 vROps and DRS evaluate each virtual machine, each VM against  
11 each other VM -- each of the other VMs.

12 It also does not appear that vROps and DRS  
13 evaluate each virtual guest against each virtual host.

14 It also seems, based on the record to this  
15 point, that vROps 7, 7.5 are disabling all of the DRS  
16 anti-affinity rules when one uses the automatic host-based  
17 functionality, which seems to undermine at least some part  
18 of Dr. Madisetti's theory of infringement.

19 Now, I will acknowledge I do see some potential  
20 holes in the defendant's theory.

21 First, it seems that Dr. Nieh's at least  
22 implicit opinion is that given his validity opinion that DRS  
23 in 2006 did practice all of the claim limitations of the  
24 plaintiff's patent but somehow the new and improved 2017 --  
25 sorry -- 2018-2019 versions do not practice all of those

1 claim limitations. I'm struggling a little bit about how  
2 both of those could be true, but nonetheless the burden here  
3 is very much on the plaintiff when it comes to infringement.  
4 And as I say, and reiterate, Dr. Nieh's opinion on  
5 noninfringement was more persuasive than Dr. Madisetti's  
6 opinion on infringement.

7 In addition, I'm concerned that there may be one  
8 or more material claim construction disputes. For instance,  
9 it seems to me that the parties have a disagreement as to  
10 what is a business constraint as that term is used in the  
11 asserted claims. And nobody has proposed a construction. I  
12 can infer what the competing constructions to some extent  
13 may be.

14 I have no briefing on claim construction. I'm  
15 not able to resolve today a claim construction dispute, but  
16 it does seem to me that there is at least a nonfrivolous  
17 implicit construction of business constraint that would  
18 lead to a conclusion of noninfringement, and that further  
19 supports the decision I have reached today.

20 Because I find that Densify has failed to meet  
21 its burden of showing direct infringement, I also find it  
22 has failed to meet its burden as to indirect infringement.

23 Now when it comes to validity, I have struggled  
24 through the validity arguments, anticipation, obviousness,  
25 and I think it was written description, excuse me, putting



1 aside 101.

2 I do think there is, at a broad level, a  
3 substantial question as to the validity of the patent, but  
4 what I think the Federal Circuit means by that is that I  
5 have to be persuaded that it's likely that defendant will  
6 show clear and convincing evidence by the time we get to  
7 trial, and the latter statement I can't say today.

8 So in the end, I am not making my decision based  
9 on validity. I think there is a substantial question. I  
10 don't know which way, of course, it is likely to come out at  
11 trial, but none of that matters because the plaintiff has  
12 failed to show they're likely to prevail on infringement.

13 I will address the second factor of the  
14 preliminary injunction test. That's irreparable harm. And  
15 I do find, as I already suggested, that Densify has failed  
16 to show it will suffer irreparable harm between now and  
17 trial.

18 Despite repeated statements by counsel and  
19 witnesses today, I'm not persuaded that the company will not  
20 survive without the relief sought. I'm also not persuaded  
21 that the company is going to suffer some other form of  
22 irreparable harm in a way that cannot be compensated and  
23 calculated by the time we get to trial.

24 There has been very little evidence that  
25 VMware's customers desperately want the technology that is

1 accused or that they're using it or that any single customer  
2 has left plaintiff due to the accused functionality of the  
3 accused products.

4           Instead, the telemetry evidence collected by  
5 VMware strongly suggests that the accused functionality is  
6 not even being turned on by all but one or maybe two or  
7 maybe let's say three because we don't have telemetry data  
8 from more than two-thirds or so of the defendant's  
9 customers. It's not being used, the evidence is, by very  
10 many of defendant's customers.

11           I believe I was presented no direct evidence  
12 from plaintiff as to how frequently, how often, which  
13 clients used the specific accused functionality in the  
14 plaintiff's product, that is, the analogous functionality  
15 in the plaintiff's product to what they have accused of  
16 infringement of the defendant's product.

17           It further seems to me in part from my  
18 discussion with Mr. Somani that what plaintiff is saying is  
19 that what is happening in the marketplace is that in perhaps  
20 large numbers, the customers who were formerly customers of  
21 both VMware and Densify are leaving Densify to just be with  
22 VMware because VMware has now replaced the functionality  
23 that they could only get previously from Densify, but yet  
24 because of the time it takes to switch over to extricate  
25 oneself from Densify, to check out how well the functionality

1 works in the accused product and to implement it and to test  
2 it, and to figure out the rules, et cetera, that for many  
3 months, if not up to a year, they are, these customers are  
4 going without the functionality whatsoever. They have given  
5 it up from Densify. They know they can get it from VMware  
6 but they can't do it instantaneously overnight, so there  
7 is some significant interval in which they are voluntarily  
8 choosing, customer after customer after customer, to go  
9 entirely without this functionality; and that seems  
10 inconsistent with what I'm being told about the supposed  
11 centrality in the marketplace to Densify customers/former  
12 customers of the technology that we're talking about.

13 Densify has offered no evidence showing that  
14 consumers purchase vROps 7 or 7.5 specifically for the  
15 allegedly infringing features as opposed to other features.

16 That is crucial. That is a crucial failing  
17 because, as we know, for instance, from the *Apple v Samsung*  
18 decision of the Federal Circuit in 2012, 678 F.3d at 1324,  
19 sales lost to an infringing product cannot irreparably harm  
20 a patentee if consumers buy that product for reasons other  
21 than the patented feature.

22 Fundamentally, there is no persuasive evidence  
23 today, in the record today, about what Densify contends  
24 is driving business decisions, that is, the accused  
25 functionality is actually and meaningfully impacting the

1 decisions of customers.

2 Now, it may be that there is just a discrepancy  
3 between what is happening in the real world and the record  
4 that has been created in this courtroom and in this  
5 litigation and what has been expedited. It is only three  
6 months. And I say that because I listened very carefully to  
7 Mr. Somani. I saw the emotion on his face. I hear what he  
8 is saying, and I believe he believes what he is telling me.

9 He says that my decision today, right now, is  
10 a death sentence for his company. I very much hope that  
11 is not the case. I very deeply and sincerely hope his  
12 prediction about his business, which he knows a whole lot  
13 better than me, I hope he is wrong. I'm sure his employees  
14 and investors hope he is wrong, but I can't make a decision,  
15 the law doesn't allow me to make a decision based on emotion  
16 or my hope or my sympathy for Mr. Somani or his employees.  
17 I have to make my decision based on the evidence; and the  
18 plaintiff has just failed, failed to prove that they're  
19 going to suffer irreparable harm in a way the law recognizes  
20 between now and trial.

21 As I will tell you in just a minute, this trial  
22 is going to be very soon. So if I'm the one that is wrong,  
23 then at least we'll have a chance to deal with that, try to  
24 stop the bleeding, in a colloquial phrase, I suppose, with a  
25 trial in very short order, and by this Court's standards

1 extremely expedited.

2 Before I get there, let me just briefly touch  
3 on the third and the fourth factors. I find they're both  
4 neutral. There are important interests on both sides; and  
5 the argument on the third and fourth factors just briefly.

6 The third factor is the balance of equities.

7 I have already said a lot about the potential  
8 harm but the lack of proof of it to Densify.

9 On the other hand, I'm not persuaded that there  
10 is that much harm or would be that much harm to VMware at  
11 least from the narrow alternative relief that is really the  
12 only relief that I, based on this evidence, would seriously  
13 consider, which would be essentially ordering defendant to  
14 gray out the specific accused functionality in Versions 7  
15 and 7.5. That would require some modification of the source  
16 code, some changes to instruction manuals, some marketing  
17 modifications. So there would be some cost. But I think  
18 that that balance essentially is neutral given again the  
19 failings I have found in the plaintiff's showing, the test  
20 to show irreparable harm.

21 Similarly, the public interest. Of course,  
22 the public has a strong interest in the enforcement of valid  
23 patents and stopping infringement and keeping companies  
24 alive that have valuable intellectual property.

25 On the other hand, the public has a strong

1 interest in lawful competition and not taking products off  
2 the market or requiring them to be modified when there has  
3 been no showing satisfactory to the law that is there  
4 anything wrong about that competition.

5 So the motion for preliminary injunction is  
6 denied.

7 Briefly, the 101 motion. VMware's motion to  
8 dismiss based on Section 101 is also denied. It's a Rule  
9 12(b)(6) motion. It arises under Section 101. I think  
10 we're all well aware of the legal standards that are  
11 applicable. I hereby adopt the standards as set out in  
12 the defendant's opening brief.

13 The Court agrees with Densify that the asserted  
14 claims are directed to improving computer functionality and  
15 are not directed to an abstract idea.

16 The claims are directed to the design of virtual  
17 environments to optimize the placement of virtual machines  
18 on servers. Optimization is achieved through a specific  
19 technique, evaluating each virtual machine against each  
20 server and other virtual machines based on technical  
21 business and workload constraints to provide a design for  
22 host-based placement of virtual machines.

23 The claims at issue constitute a non-abstract  
24 improvement of computer technology which is patent eligible  
25 subject matter.

1           Some of the cases that have set that out and  
2           which I find are analogous to the technology involved here  
3           include the *SAP America* decision of the Federal Circuit in  
4           2018; *Enfish*, Federal Circuit (2016); and *Finjan*, Federal  
5           Circuit (2018).

6           Because VMware has failed to meet its burden of  
7           Step One of *Alice* there is no need to address Step Two.

8           Finally, VMware's motion to strike Dr.  
9           Madisetti's supplemental declaration is also denied.

10          Arguably, this motion is moot at this point  
11          given that I have denied the preliminary injunction.

12          Anyway, this was highly expedited discovery.  
13          While both sides have expressed understandable frustration  
14          how forthcoming the other side has been in making all their  
15          arguments known and making their evidence available to one  
16          another, my feeling is that both sides tried in good faith  
17          to comply with what I ordered.

18          The goal here was that by a time we got to  
19          today, you all would have a full and fair chance to make  
20          your case on the expedited issue that plaintiff brought to  
21          us, and most importantly from my perspective that I would be  
22          able to try my best to decide them and you all have been  
23          able to do that and to put me in that position; and I see no  
24          basis to strike Dr. Madisetti's supplemental declaration.

25          All right. All that said, trial is going to be

1 held next January. I am available to do this trial in the  
2 period between January 13th and January 24th of 2020. That  
3 is about five months from now.

4 The pretrial conference would be January 3rd at  
5 11:00 a.m. The pretrial order is due on December 23rd.

6 That is getting to trial incredibly quickly by  
7 this Court's standards, significantly less than a year.

8 If Densify is really being harmed by the  
9 competition predicated on patent infringement, we will resolve  
10 that and do our best to remedy that as quickly as we possibly  
11 can.

12 I hereby order that the parties meet and confer  
13 and submit a proposed schedule by this Friday. That allows  
14 you to get everything you need done so that you can get that  
15 proposed pretrial order to me by December 23rd. So whatever  
16 else needs to be done, you are going to have to figure out  
17 quickly how we're going to get it done. And I will look at  
18 your proposal on Friday, and if I need to talk to you  
19 thereafter I will let you know.

20 I said a lot. Are there any questions about  
21 that from plaintiff?

22 MR. REICHMAN: No questions, Your Honor.

23 THE COURT: And from defendant?

24 MR. JACOBS: None, Your Honor. Thank you.

25 THE COURT: All right. Thank you all very much.



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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -

CIRBA INC. (d/b/a DENSIFY), and  
CIRBA IP, INC.,

Plaintiffs,

v

VMWARE, INC.,

Defendant.

: CIVIL ACTION  
:  
:  
:  
:  
: NO. 19-742-LPS

- - -

Wilmington, Delaware  
Thursday, September 19, 2019  
*Telephone Conference*

- - -

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES:

- - -

MORRIS JAMES, LLP  
BY: KENNETH L. DORSNEY, ESQ.

and

REICHMAN JORGENSEN, LLP  
BY: WESLEY L. WHITE, ESQ.  
(New York, New York)

and

REICHMAN JORGENSEN, LLP  
BY: CHRISTINE LEHMAN, ESQ.  
(Washington, District of Columbia)

Counsel for Plaintiff

Brian P. Gaffigan  
Registered Merit Reporter

1 to the argument and having considered the Federal Rules of  
2 Civil Procedure 21 and 42(b) and the authorities that have  
3 been cited by the parties, I find that the appropriate  
4 exercise of my broad discretion in this area is to sever  
5 VMware's patent counterclaims for a separate trial.

6 Let me try to explain some of my reasoning.

7 It really begins with the fact that I have set  
8 what is an extraordinarily expedited trial schedule in this  
9 case, and I did so for the reasons that we all discussed at  
10 some length at the PI hearing in August at which I denied  
11 the plaintiff's PI motion.

12 While I found there that there was not  
13 sufficient evidence of irreparable harm sufficient to grant  
14 a preliminary injunction and to order the defendants before  
15 even finding infringement or no invalidity to order the  
16 defendants to stop doing what they were doing, my reasoning  
17 for why that purported harm was not irreparable harm in the  
18 context of a PI included the fact that I could get this case  
19 to a trial on the merits in approximately six months.

20 I did not envision at that time making this  
21 into a case in which both sides were asserting patents. My  
22 belief is, as the plaintiffs are arguing, that we cannot get  
23 this full case that the defendants want to make it ready for  
24 trial in a fair way to both sides and to the Court and keep  
25 the extremely expedited schedule that I have imposed.

1 they have their own patents, even though I have severed the  
2 formal assertion of those patents for another trial.

3 Further, the inability of the defendant to  
4 mount every offense that it wants to as part of its  
5 purported best defense in my view is not a significant  
6 prejudice in the overall context of this case.

7 I'll add to that that I truly do appreciate that  
8 VMware has voluntarily agreed to sever some of its patent  
9 counterclaims. That is great that they have voluntarily  
10 done that, but the implication of all of that is that I am  
11 going to have a second patent trial between these same  
12 parties and, because of that, I think that shows all the  
13 more that there is not any significant prejudice to VMware  
14 to having that second trial be about all of the patents that  
15 they have asserted as opposed to just the one that they have  
16 voluntarily agreed to be the subject of the second trial.

17 There is no indication -- notwithstanding the  
18 use of the word "urgent," there is no indication that there  
19 is any urgency whatsoever to VMware having to try its patent  
20 claims on this super-expedited schedule of a January trial.  
21 I assume that there will be some significant overlap in the  
22 evidence that will be introduced at the first and second  
23 trials, and I'll acknowledge it's regrettable and arguably  
24 less efficient that the parties, the Court, and two separate  
25 juries will have to evaluate at least some of the same

1 I find no reason to reevaluate the findings I  
2 made at the preliminary injunction hearing which lead me to  
3 conclude that delaying trial is not an option that I should  
4 be entertaining, and I'm not.

5 So what that means is that the case is going to  
6 stay the size that it is for purposes of the January trial,  
7 and we're going to have a January trial in January, all of  
8 which implies that I need to grant the plaintiff's motion.

9 I find no significant prejudice to VMware from  
10 severance. Putting aside the first point that I don't believe  
11 there was any hint, suggestion or notice to the Court at the  
12 time that I evaluated the PI motion and discussed with the  
13 parties an expedited trial that the defendant was planning to  
14 try to again turn this into a case in which both sides were  
15 asserting patents and get all of that tried at the same time,  
16 but even putting that aside, the same arguments that defendant  
17 wants to make can all still be made at trial without having to  
18 turn this trial into a case at which the defendant's patents  
19 are being asserted.

20 Now, of course, there may be some evidentiary  
21 rulings between now and trial that may limit what either  
22 party may present at trial, but for today's purposes, as  
23 plaintiffs have noted today and in their briefing, there is  
24 no reason to think that defendants won't be able to tell the  
25 story that they say they want to tell and even to note that

1 evidence, but here, both parties have the right to assert  
2 patents that they contend are infringed by the other, and  
3 as I already noted, two trials are going to be necessary  
4 anyway. And the interest in judicial economy and in  
5 preventing overlap, while important here, is not nearly  
6 the most important factor.

7 So I think I have touched on the factors that  
8 are typically considered in this context. I'll just add the  
9 claims here do not arise out of the same transaction or  
10 occurrence. That is another factor that weighs in favor of  
11 severance.

12 I also find that the claims are sufficiently  
13 discrete such that severance here is appropriate. There  
14 are, of course, not overlapping inventors. The accused  
15 products are different; and the issues of infringement  
16 and validity of the plaintiffs' patents can be resolved  
17 independent of the issues of infringement and validity of  
18 the defendant's patents.

19 So for all these reasons, the Court is granting  
20 the plaintiffs' motion to sever VMware's infringement  
21 counterclaims.

22 Are there any questions about that before I move  
23 on, Ms. Lehman?

24 MS. LEHMAN: No, Your Honor.

25 THE COURT: And Mr. Hung?

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U.S. District Court

District of Delaware

### Notice of Electronic Filing

The following transaction was entered on 3/26/2020 at 11:27 AM EDT and filed on 3/26/2020

**Case Name:** Cirba Inc. et al v. VMware, Inc.

**Case Number:** 1:19-cv-00742-LPS

**Filer:**

**Document Number:** 647(No document attached)

#### Docket Text:

**ORAL ORDER: Having reviewed Densify's Motion to Redact (D.I. 643) and VMware's Response (D.I. 645), IT IS HEREBY ORDERED that the motion (D.I. 643) is GRANTED. The Court is persuaded that Densify has shown good cause for its proposed redactions, and that those limited redactions - regarding which VMware takes no position - involve confidential sensitive business information of the type that should be protected from public disclosure. The redacted version of the transcripts attached as Exhibit B to the motion shall be filed as the public version at the date for release of the electronic transcripts per the Courts policies. ORDERED by Judge Leonard P. Stark on 3/26/20. (ntl)**

1:19-cv-00742-LPS Notice has been electronically mailed to:

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -

CIRBA INC. (d/b/a DENSIFY) and  
CIRBA IP, INC.,  
Plaintiffs,  
v  
VMWARE, INC.,  
Defendant.  
CIVIL ACTION  
:  
:  
:  
:  
:  
:  
NO. 19-742-LPS

- - -

Wilmington, Delaware  
Monday, January 13, 2020  
*Jury Trial - Volume A*

- - -

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge, and a jury  
APPEARANCES: - - -

MORRIS JAMES, LLP  
BY: KENNETH L. DORSNEY, ESQ.

and

REICHMAN JORGENSEN, LLP  
BY: COURTLAND L. REICHMAN, ESQ.,  
SHAWNA L. BALLARD, ESQ.  
(New York, New York)

and

REICHMAN JORGENSEN, LLP  
BY: CHRISTINE LEHMAN, ESQ.  
(Washington, District of Columbia)

and

Valerie G. Gunning  
Official Court Reporter  
Brian P. Gaffigan  
Official Court Reporter

Hillier - direct

1 (The jury entered the courtroom.)

2 THE COURT: Welcome back. We are ready to  
3 proceed.

4 Plaintiffs may call their first witness.

5 MS. LEHMAN: Plaintiffs call Mr. Andrew Hillier,  
6 who is the chief technology officer.

7 THE COURT: Okay.

8 PLAINTIFFS' TESTIMONY

9 ... ANDREW HILLIER, having been duly sworn  
10 as a witness, was examined and testified as follows...

11 THE COURT: Thank you. Good afternoon,  
12 Mr. Hillier.

13 You may approach.

14 (Binders handed to the witness and to the  
15 Court.)

16 DIRECT EXAMINATION

17 BY MS. LEHMAN:

18 Q. Good afternoon, Mr. Hillier.

19 A. Good afternoon.

20 Q. Could you please introduce yourself to the jury?

21 A. Certainly. I'm Andrew Hillier. I'm the CTO and one  
22 of the co-founders of Densify.

23 Q. And I'm going to ask you, and you have not been in  
24 the courtroom today for the opening. I was wondering if you  
25 could give us from your point of view as the founder just

Hillier - direct

1 the overview about the technology that we're going to be  
2 hearing about, just how the virtualization of computers  
3 work?

4 A. Sure. So virtualization is a technology that if you  
5 have physical computers, what it lets you do is make the  
6 computer run software that looks a computer but isn't. So  
7 when you run an application inside it, it thinks it has the  
8 ability to do it itself, and that lets you run multiple  
9 applications on one real computer, and they don't really  
10 know they're not on a real computer.

11 So it lets you run multiple things on  
12 the computer. It lets you move or close applications  
13 between computers. It's called a virtual machine. Virtual  
14 machines run on hosts and it lets you run more work on fewer  
15 servers.

16 Q. And how did you get involved with virtualization of  
17 computers?

18 A. Well it probably was I think first in the 2004/2005  
19 time frame. We were working with big companies that had  
20 massive what they call server farms, lots of computers, big  
21 banks and telephone companies, and they were really  
22 interested -- what happened was, these computers weren't  
23 used very much. They each would have one program running  
24 and they so really want to do what's called consolidation.  
25 They wanted to run more things on fewer computers and there

Hillier - direct

1 because -- not because technically you can't do it, because  
2 the VMs can go anywhere, but because it will cost you a lot  
3 of money if you do that. So it's kind of like you shouldn't  
4 do that even though it's possible.

5 So there was technical, there was business.

6 Then the third one was what we call workload or  
7 utilization. So I can't put so many things on a computer  
8 that it's overloading. It's that simple.

9 So whenever I try to figure out how to combine  
10 all these workloads, you have to look at all these three  
11 things at once. If you miss one of them, then you might  
12 have something that, you know, again, is expensive or isn't  
13 compliant or has all kinds of problems.

14 Q. And now you should have a binder in front of you,  
15 that white notebook.

16 A. Okay.

17 Q. And could you turn to -- there is a document in the  
18 back with the tab DTX-4559.

19 A. Okay. Yes.

20 Q. And could you just identify what that document is for  
21 us?

22 A. This is a white paper that was written by Tom  
23 Yuyitung and myself in August of 2007.

24 MS. LEHMAN: Your Honor, I offer Defendant's  
25 Exhibit 4559.

Hillier - direct

1 MR. JACOBS: No objection.

2 THE COURT: It's admitted.

3 (DTX-4559 admitted into evidence.)

4 BY MS. LEHMAN:

5 Q. So could you just generally describe maybe one more  
6 level of detail? Like, what this paper is about?

7 A. Well, it really -- this paper covered exactly what I  
8 have been describing: how to analyze workload placements  
9 based on the different constraint.

10 Q. So are those constraints discussed in this paper?

11 A. Yes. Yes, they are.

12 MS. LEHMAN: All right. Could we have page 4 of  
13 the paper? It was actually marked page 5 on the bottom.

14 BY MS. LEHMAN:

15 Q. So how did you describe the constraints in your white  
16 paper?

17 A. So, yes. These are the three constraints I  
18 described. At this point, I did a better job than I just  
19 did because it talks about technical being what can go  
20 together, business being what should go together, and  
21 workload constraints is what fits together.

22 So it is kind of a simple way of thinking of  
23 what I described.

24 MS. LEHMAN: And now let's turn to page 22 of  
25 DTX-4559.



Hillier - direct

1 BY MS. LEHMAN:

2 Q. Can you describe for me what is shown and what the  
3 colors mean?

4 A. Sure.

5 This is actually a map. It's that thing I was  
6 describing waving my hands earlier. This is actually what  
7 it looks like in our product.

8 So, again, just to describe it, if you analyze a  
9 bunch of systems, then they will get listed down the left  
10 and across the top in the same order. And they all get  
11 scored against each other.

12 So what you are going to get is this  
13 color-coding where green means things can go together,  
14 yellow means they can't quite go together but maybe if you  
15 did a bit of work they could, then there is orange, and  
16 then there is red which isn't on this diagram. So it gives  
17 you a visualization of how you can combine these different  
18 workloads together.

19 So, for example, this green would be what you  
20 get if you had a business constraint that different  
21 departments in a company couldn't share infrastructure. It  
22 has two green areas that might look like this, just as an  
23 example.

24 MS. LEHMAN: And now let's turn back for a  
25 second to page 15 of DTX-4559.

Hillier - direct

1 BY MS. LEHMAN:

2 Q. And there is another colorful figure there on  
3 page 14.

4 What is shown in this image?

5 A. So this is what we call a cube. And you can kind  
6 of see from the grayed-out parts, it's basically a series  
7 of maps wafered together. And this is really the core  
8 construct of the analysis, is you could put different  
9 constraints, but there might be some workload constraints,  
10 some technical, some business, and they would all get looked  
11 at together.

12 You can kind of think of it like if you shine a  
13 light through it all, what's left is what you can do.

14 So, again, this is how you figure out how to  
15 put -- how to combine servers or where to put servers.

16 Q. And you were telling us earlier about the customer  
17 that you brought a lot of data to, but he was frustrated  
18 with you for not being able to tell him what to do with it.

19 Is this the type of thing he was looking for?

20 A. Yes, this would have -- this would have made that  
21 meeting go much better. In fact, that customer became a  
22 customer after that and used this extensively.

23 Q. So how would a customer go about using the  
24 information that you would get from this analysis?

25 A. Well, that customer would actually use these maps

Hillier - direct

1 quite extensively. They had them up on the screens all  
2 the time. But what we learned was it was not a great  
3 user-interface. It is not a really user-friendly way to go  
4 through all these cells.

5 So we wanted to come up with a different way,  
6 especially when these got big. If there were hundreds or  
7 thousands of systems, this would not be very easy to use.

8 So we wanted to come up with a way to visualize  
9 what was happening in these environments, and it was tricky  
10 because you can't use -- you know, there's charts of, or pie  
11 charts of all these things, they won't really work to show  
12 this information in this way. So we had to kind of come up  
13 with a different way.

14 Q. So now can you turn in that same notebook to  
15 PTX-1963?

16 A. (Witness complies.)

17 Q. And what is shown on PTX-1963?

18 A. This is what we call our control cost.

19 MS. LEHMAN: Your Honor, I offer Plaintiffs'  
20 Exhibit 1963.

21 THE COURT: Any objection?

22 MR. JACOBS: I don't believe it was disclosed to  
23 us.

24 It's withdrawn.

25 THE COURT: Is there no objection, then?

Hillier - direct

1 MR. JACOBS: Yes.

2 THE COURT: Okay. It's admitted.

3 (PTX-1963 admitted into evidence.)

4 BY MS. LEHMAN:

5 Q. Plaintiffs' Exhibit 1963 is up on the screen now. So  
6 can you describe what is shown here on the control console?

7 A. Sure. So you can see it's a window with various  
8 ones. I'll focus on the colorful part because that is where  
9 all the action is.

10 So we call that colorful part the spectrum. The  
11 way we came up with what you see, a lot of systems at once  
12 is what was happening, so we tried to describe what is in  
13 it, and I hope, hopefully, it makes sense because I -- there  
14 is some jargon in here.

15 But you can see the horizontal stripes that are  
16 colorful. The top straight across are the clusters. So in  
17 a virtual environment, it is usually organized into  
18 clusters, which are sets of hosts.

19 So the top tier are the clusters. Those are the  
20 diamonds.

21 The middle tier are the hosts, and those are the  
22 physical servers. Those are the squares that are in those  
23 clusters.

24 And, the color-coding, so the blue is the blue  
25 clusters.

Hillier - direct

1           And, then the bottom circles are the virtual  
2 machines that are running on those hosts in those clusters.

3           So you kind of see everything at once. We call  
4 it a spectrum because you can see across these dots are  
5 rendered based on -- the left is the red zone where there is  
6 not enough infrastructure, not enough server capacity to run  
7 the workload, so you are running hot, as you can see.

8           The far right would be where you have not enough  
9 work or way too much infrastructure. So if things were  
10 running idle, it would be an example.

11           In the middle zone, the green zone, the reason  
12 our customers called it the Goldilocks zone is that it's  
13 just the right zone. So that is kind of where you want to  
14 be in the center of this diagram.

15           And, then the idea is as customers took the  
16 actions that we recommend, the dots all move to the center.  
17 It is kind of gratifying to see it kind of come to the  
18 center.

19           So it is a paradigm where you can see everything  
20 that's going on at once. The dots are spread out. It means  
21 you need to move VMs around. And you can see how it comes  
22 back together. And this became the face of our product.

23 Q.       Well, in looking at PTX-1963 specifically, like how  
24 many machines are you looking at here?

25 A.       So this particular one you can see there are 270 VMs

Hillier - direct

1 on 28 physical servers and four clusters. We had customers  
2 run this up to 5-6,000. I think they even got bigger. It  
3 was really quite effective because once everything is -- the  
4 centers are, you don't care if they pile up. They're good.  
5 You only want to see the ones that are outside the center.

6 So it was customers, like Bank of America, for  
7 example, had huge environments and many clusters, and you  
8 could see it all at once using this visualization.

9 Q. Let's now turn what should be the very first tab in  
10 your binder, is PTX-1001.

11 A. Okay.

12 Q. And can you tell us what that is?

13 A. This is one of the patents that we call the '687  
14 patent.

15 MS. LEHMAN: Your Honor, I offer PTX-1001 into  
16 evidence.

17 MR. JACOBS: No objection.

18 THE COURT: It's admitted.

19 (PTX-1001 admitted into evidence.)

20 BY MS. LEHMAN:

21 Q. And, Mr. Hillier, do you recall actually receiving  
22 the official patent from the Patent Office?

23 A. Yes.

24 Q. And I'm going to hand you a physical copy of U.S.  
25 Patent No. 8,209,687. This is just the Plaintiffs'

Hillier - direct

1 Demonstrative 1.

2 MS. LEHMAN: May I approach, Your Honor?

3 THE COURT: You may approach.

4 (Document passed forward.)

5 THE WITNESS: Thank you.

6 BY MS. LEHMAN:

7 Q. And is that the original copy you received from the  
8 Patent Office?

9 A. Yes, it is.

10 Q. And who are the inventors on this patent?

11 A. Again, it was Tom Yuyitung and myself.

12 Q. And who is Tom?

13 A. Tom is someone I worked with for a very long time.  
14 He is a great engineer. He's really smart and really  
15 methodical. So we worked well together. He kind of  
16 makes -- takes the idea we have and kind of makes them real  
17 and thinks it through.

18 Q. And just at a high level, what is your '687 patent  
19 about?

20 A. This is about exactly what we were discussing. This  
21 talks about ways of analyzing VMs and hosts using technical,  
22 business, workload constraints to figure out where to put  
23 them. That is what this patent is about.

24 Q. And now could you turn to the second exhibit that is  
25 in your binder? It should be PTX-1002.

Hillier - direct

1 A. Okay. Yes.

2 Q. And what is PTX-1002?

3 A. This is another patent. It's the '367 patent.

4 Q. And, again, I have -- I'm going to hand you a ribbon  
5 copy. This is going to be Plaintiffs' Demonstrative No. 2.

6 MS. LEHMAN: If I may approach, Your Honor?

7 THE COURT: You may freely approach.

8 (Document passed forward.)

9 THE WITNESS: Thank you.

10 BY MS. LEHMAN:

11 Q. And is Plaintiffs' Demonstrative 2 the original copy  
12 you received from the Patent Office?

13 A. Yes.

14 Q. And who are the inventors on the '367 patent?

15 A. That one is just myself.

16 Q. And, again, just at a high level, what is that '367  
17 patent about?

18 A. It covers that spectrum that we just discussed, the  
19 way of visualizing and the actions in an environment.

20 Q. So, Mr. Hillier, you talked a little bit about  
21 Densify. But as a co-founder, can you describe how you  
22 actually went about founding the company?

23 A. Sure. It was founded by Riyaz Somani and I in 1999.  
24 We started off as a consulting company, but we transitioned  
25 over to focus more on products.



Hillier - direct

1 Q. All right. So, Mr. Hillier, did Densify ever have  
2 discussions with VMWare about its technology?

3 A. We, we did.

4 Q. And when was the first time?

5 A. The first time was in 2007. We had met him at  
6 briefly, DM World. We actually won an award. And then  
7 there was a bigger meeting set out I guess a couple months  
8 later, in that year.

9 Q. And did you have any thoughts at the time about why  
10 they wanted to meet with you?

11 A. Well, I mean, we had an acquisition discussion, who  
12 was in the meeting and what discussions they were having.  
13 The meeting had development types, product managers,  
14 executives in it, so that's what it appeared to be.

15 MS. LEHMAN: Your Honor, I'm mindful of  
16 the time.

17 THE COURT: I think it's probably a good place  
18 to stop.

19 MS. LEHMAN: Okay.

20 THE COURT: So thank you.

21 Ladies and gentlemen of the jury, I'm going to  
22 let you go in just a couple minutes. Just a few words  
23 before you do.

24 Tomorrow we expect another full day, from 9:00  
25 to 5:00 as I told you, we can order lunch for you, so if you

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -

CIRBA INC. (d/b/a DENSIFY) and  
CIRBA IP, INC., : CIVIL ACTION  
:  
Plaintiffs, :  
v :  
:  
VMWARE, INC., :  
:  
Defendant. : NO. 19-742-LPS

- - -

Wilmington, Delaware  
Tuesday, January 14, 2020  
*Jury Trial - Volume B*

- - -

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge, and a jury  
APPEARANCES: - - -

MORRIS JAMES, LLP  
BY: KENNETH L. DORSNEY, ESQ.

and

REICHMAN JORGENSEN, LLP  
BY: COURTLAND L. REICHMAN, ESQ.,  
SHAWNA L. BALLARD, ESQ.  
(New York, New York)

and

REICHMAN JORGENSEN, LLP  
BY: CHRISTINE LEHMAN, ESQ.  
(Washington, District of Columbia)

and

Valerie G. Gunning                      Brian P. Gaffigan  
Official Court Reporter                      Official Court Reporter

Hillier - direct

1 A. Good morning.

2 Q. We're going to pick up where we left off last  
3 evening, so I want to take you back to 2007 and to what you  
4 had just testified about some meetings with VMware.

5 So in those 2007 meetings you had with VMware,  
6 what happened at those meetings?

7 A. Well, there was -- it was quite a large number of  
8 people on their side. I think it was probably almost 30  
9 people from product management, business development.  
10 Senior executive Raghu Raghuram was there. He is now the  
11 COO of VMware.

12 And we went through our technology where we  
13 discussed those maps and workload placement, and we talked  
14 about business constraints.

15 And then the thing I remember is we didn't  
16 really see eye to eye on the business constraints. We  
17 talked about how it was important to get your host the VMs  
18 go on, and they didn't seem to see that as important. I  
19 think they viewed it more -- at the time VMware viewed it as  
20 one big computer cluster of hosts is one big computer, it  
21 didn't matter where it went. So we talked about how  
22 business constraints, that we analyzed, and it wasn't  
23 important to them, it didn't seem. So that was what we  
24 discussed.

25 Q. And what was the results of the 2007 discussion?

Hillier - direct

1 A. Well, we finished the meeting, and they asked us to  
2 go out in the hallway while they talked. And they talked  
3 for quite a long time. It actually sort of became kind of  
4 humiliating at some point, and then we -- finally, they came  
5 out and showed us, and nothing happened after that.

6 Q. An did there ever come a time when VMware introduced  
7 VM-to-host business constraint features in their products?

8 A. Yes, they did. In 2010, they had a release that  
9 brought out VM-to-host rules and with that, they could do  
10 business constraints.

11 Q. And what was your reaction when you learned they had  
12 business constraints and VM-to-host rules?

13 A. Well, I mean, it was interesting. It was -- that  
14 was I guess what they were talking about earlier. A bit  
15 surprised, but mainly we weren't too worried. We had far  
16 more comprehensive capabilities, so we weren't really that  
17 worried at the time.

18 Q. And were you concerned about DRS as a competitive  
19 threat prior to 2010?

20 A. No, I wasn't.

21 Q. And after 2010, did you have any concern about them  
22 introducing these VM-to-host rules and business constraints  
23 in terms of your patent?

24 A. Well, the patent hadn't been granted yet. So in  
25 2010, I don't think the patent was on our mind. So, I mean,

Hillier - direct

1 yeah, it was there, but not obviously in 2010.

2 Q. And then after 2010, did you become aware of any  
3 Densify customers actually using these DRS VM-to-host  
4 affinity and anti-affinity rules?

5 A. Yes, certainly. Like the examples we talked about  
6 yesterday used these.

7 Q. And what type of constraints did you see Densify's  
8 customers using DRS, affinity and anti-affinity rules for?

9 A. Again, very similar ones to yesterday, although the  
10 NSX ones that we talked about wouldn't have been there  
11 because they didn't exist yet. VMware's time, all the  
12 papers talking about using it for software, to be able to  
13 put software on different hosts and things like that.

14 So it was very similar to what we talked about  
15 yesterday.

16 Q. And did Densify have any more meetings with VMware  
17 after 2010?

18 A. Yes, we did. We had a number of meetings in 2015.

19 Q. And do you recall how many times Densify met with  
20 VMware in 2015?

21 A. Yes. And there was one meeting in late 2014, and  
22 then there were three, I believe, in 2015.

23 Q. And who attended those meetings?

24 A. A wide variety of people. A lot of the product  
25 managers for the vROps group. Raghu Raghuram was there.

Hillier - direct

1 Again, Ajay Singh, Chandra Prathuri, quite a few people.

2 Q. And what were your thoughts at the time about why  
3 VMware wanted to meet with Densify again?

4 A. Well, these were clearly acquisition meetings.  
5 Definitely.

6 Q. And what was discussed during those meetings?

7 A. Well, we shared a lot of information. We shared all  
8 our financials. We shared a lot of details on our customers  
9 and why they buy our product.

10 We went through the technology extensively.

11 At that time, we had moved things forward quite  
12 far, so we had that control console that we talked about  
13 yesterday. That was the main interface.

14 We had pretty powerful software license control  
15 features. So, again, you saw some of those rules yesterday.  
16 Rather than making them by hand, we were able to analyze,  
17 the creative environment, and automatically set all the  
18 rules for software license containment. So, again, a lot of  
19 our customers use that for expensive software or Microsoft  
20 products. So we shared some really big case management on  
21 the savings from that.

22 We talked about our -- of course, our business  
23 constraints, our workload routing capability. So we had the  
24 capability to cycle Hotels.com for computers. It figures  
25 for a new application, where to put it. So that was a big

Hillier - direct

1 thing we talked about as well.

2 Q. And do you have a recollection of how VMware reacted  
3 to your presentation in 2015?

4 A. Yes. I mean, I think it was a great fit. I recall  
5 in a meeting with Raghu Raghuram that we talked about the  
6 software license control and he made the comment that they  
7 could charge \$100 per DM for that figure, which is about  
8 three times what we charged for that feature, so at that  
9 point it seemed to be interested in what we were talking  
10 about.

11 Q. And did anything result in those discussions?

12 A. No, they did not.

13 Q. And were the 2015 talks still going on at the time of  
14 VM World in 2015?

15 A. No. They would have been before VM World.

16 Q. And did VMware discuss any new products that VM World  
17 in 2015?

18 A. Yes, they did. They always released new products at  
19 that show.

20 Q. All right. Could you turn in your binder to the  
21 exhibit marked PTX-1339.

22 A. Okay.

23 Q. And could you identify that document, please?

24 A. This is a, it's a blog from VMware around VMware's  
25 operation of 6.2. I don't see a date on it.

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NO. 19-742-LPS

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Wilmington, Delaware  
Wednesday, January 15, 2020  
*Jury Trial - Volume C*

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Official Court Reporter  
Brian P. Gaffigan  
Official Court Reporter



Somani - direct

1 should take the source code monitor away or if it's okay.  
2 It's up to you.

3 THE COURT: Would it take you more than just a  
4 moment to roll it away?

5 MR. DORSNEY: I think it shows the big screen,  
6 too.

7 MR. REICHMAN: Oh, it does? It shows both?

8 MR. DORSNEY: Yes.

9 MR. REICHMAN: Okay. So maybe it is helpful if  
10 it shows both.

11 THE COURT: Let's leave it there for now.

12 (Documents passed forward.)

13 THE COURT: You may proceed when you are ready.

14 DIRECT EXAMINATION

15 BY MS. BALLARD:

16 Q. Good morning, Mr. Somani. Could you please introduce  
17 yourself to the jury?

18 A. My name is Riyaz Somani. I'm President of Densify.

19 Q. And what is your role in your position as president  
20 of Densify?

21 A. As president, I oversee management of our existing  
22 customers, the technology teams that actually delivers the  
23 product to our customers, and also ensuring the success with  
24 our product, and also aid our sales team and use sales as  
25 well.

Somani - direct

1 Q. What do you spend most of are time doing at Densify?

2 A. I would say that most of my time is spent actually  
3 with customers. I'm really focused on making sure that we  
4 are understanding the requirements, building technology that  
5 meets the requirements, and that we're delivering a solution  
6 that they are successful with, they're happy with, and we're  
7 making them successful.

8 Q. And as an aside, how are you feeling today,  
9 Mr. Somani?

10 A. I'm a bit under the weather. I think I can thank my  
11 CEO for what I've got today, but I'm okay.

12 Q. As a cofounder of Densify, can you briefly describe  
13 your company's origins and how you got to where you are  
14 today from a commercial perspective?

15 A. Sure. Many years ago, I was -- I was working at a  
16 bank. I had started a company previously, a consulting  
17 company, and I had a team of engineers working at a bank.  
18 And,

19 It was just happenstance that they sat Andrew  
20 Hillier next to me, and he was a consultant there as well.  
21 And over time, we built a really good bond and relationship  
22 where I had developed a tremendous amount of respect for his  
23 technical ability, and he saw the entrepreneurial side that  
24 I had, and we shared the same sense of humor and we thought,  
25 you know what? We're going to start something new. And we

Somani - direct

1 did.

2 We started with today's Densify, and in the  
3 early days I remember, you know, we were lucky. We had  
4 success out of the gate. We signed some big customers  
5 like Sun Microsystems and Revco. And in the process, we  
6 were consulting, we were working in all of these large IT  
7 organizations on site, working with their IT departments, we  
8 realized there was a need for a product that could help them  
9 manage the infrastructure, manage their computers easier,  
10 and that is how we started. That is how we started our  
11 product. We started to build that product.

12 But the real breakthrough moment was with  
13 Mr. Hillier's invention. When he came up with host-based  
14 placement, that was a game changer. I'll never forget,  
15 like, when that happened, we started to be able to raise  
16 financing in a significant way. Investors put money in  
17 based on the technology, based on our future.

18 But the thing that I remember most was our  
19 staff. Our staff actually -- they were so excited that they  
20 themselves decided that they wanted to put money in our  
21 company. That they wanted to write a check in. And over  
22 80 percent of them at that time decided to write a check in,  
23 and that was a tremendous amount of responsibility.

24 But we grew the company to a modest 158  
25 employees.

Somani - direct

1                   You know, they signed some really strong  
2 customers, like [REDACTED]  
3 [REDACTED]. This is the nature of customers we  
4 were signing. And, you know, we made them very successful.

5                   So if you take our top 15 customers, our 15  
6 largest customers, they spent over \$85 million in our  
7 technology. So we know that whatever we've developed, what  
8 we've helped our customers with is tremendously valuable to  
9 them. So we have been very happy in that sense.

10 Q.           And what is Densify's core value proposition?

11 A.           I would describe it as -- it's a technical term. It  
12 is "intelligent workload placement."

13                   Basically it's understanding when an application  
14 has VMs, where to best place those VMs, on what computers,  
15 so that they do well, that they live well.

16                   It sounds simple. It's very, very complicated  
17 to do. That's the -- that's Mr. Hillier's invention. The  
18 industry calls it host-based placement.

19 Q.           And who coined the term "host-based placement"?

20 A.           Well, it's interesting. It's actually VMware, I  
21 believe, coined the term "host-based placement."

22 Q.           Why are you using it and adopting it here?

23 A.           At the end of the day, they're the dominant player in  
24 the market. They have such marketing might that if they  
25 come up with a term, then it's in our interest to just

Somani - direct

1 follow and accept it and just refer to our capability as  
2 whatever they call it.

3 Q. Can you explain to the jury what your product does  
4 from a commercial perspective?

5 A. Sure. I know it's really technical, but I'll try to  
6 explain it. I'll put it in terms of the banking.

7 So you're a banking customer and you think about  
8 your bank having to provide all these services to you. So  
9 they have a check-processing system, they have their  
10 automated teller machines, they have a mortgage system for  
11 you. They even have an online banking system for you.

12 So the bank runs all of these applications, and  
13 actually they have hundreds or thousands of applications.  
14 Each one of these applications has a number of worker VMs,  
15 virtual machines, to support that application.

16 So there's 19 departments that have to figure  
17 out how to place those virtual machines on computers so they  
18 live well together.

19 But the thing is that sometimes things get busy  
20 in the daytime, others get busy at nighttime, some get busy  
21 on certain days. How do you make sure if you put all the  
22 VMs on a certain computer you don't run out of computer  
23 resources?

24 Then think about doing this over thousands or  
25 tens of thousands of virtual machines over hundreds of

Somani - direct

1 thousands of computers, and then we are going to layer on  
2 some more constraints.

3 So the IT department is told, in addition to  
4 laying this all out, wait a second. That mobile banking  
5 application, it has to land on computers with access to  
6 certain networks.

7 Oh, and that mortgage system? You've got to  
8 make sure it lands on certain computers with a certain level  
9 of encryption.

10 Then the boss says, wait a second here. But for  
11 all of these applications, we want you to take the VMs and  
12 put them as far apart on different hosts as possible, our  
13 computers as possible, so that if one computer goes down,  
14 the application still stays up.

15 So now you add more and more computers.

16 Then somebody else says, wait a second here.  
17 But we're running out of space in the building. We can't  
18 keep adding computers. We want to run on less computers.  
19 And,

20 Then somebody says, wait, wait, wait one second.  
21 We also have to make sure that your personal credit card  
22 information is never on the same computer, right, as your  
23 personal ID. Because we don't want identity theft.

24 Then the boss says, oh, wait a second. Don't  
25 forget, we also need to pay Microsoft less. We don't want

Somani - direct

1 to pay them and license their technology on every computer.  
2 So the Microsoft VMs? Make sure you put them on less  
3 computers.

4 So there's an IT department that is trying to  
5 figure all of this out. And there's millions, kazillions of  
6 combinations and permutations. That is what Mr. Hillier's  
7 invention, that is what it does. It solves it all. It  
8 solves that problem so that IT department just uses our  
9 technology and it figures it out for them, so that they run  
10 the right amount of computers, they can meet all the  
11 constraints and not have to think about it.

12 That's, that's host-based placement.

13 Q. What percentage of your business is on VMware  
14 platform?

15 A. 87 percent of our business today is on the VMware  
16 platform. The other 13 percent is on other platforms that  
17 we support.

18 So as an example, you might hear the term  
19 "public cloud." So Amazon, Azure are examples of public  
20 cloud. Or IBM is another platform.

21 So 13 percent of our business are on those other  
22 platforms, 87 percent on VMware.

23 Q. So let's get some vocabulary here for the jury.

24 What do you mean by "VMware platform"?

25 A. I mean customers, Densify customers that are running

Somani - direct

1 the VMware Hypervisor as the core. So that is what I mean  
2 by that.

3 Q. Who are Densify's primary competitors in the VMware  
4 platform space?

5 A. Two primary competitors: VMware themselves, and then  
6 a smaller competitor named Turbonomics.

7 Q. As between your company, Turbonomics and VMware, is  
8 there a dominant competitor?

9 A. Yeah. So I would absolutely say that's VMware. I  
10 would describe them as, they're the 800-pound gorilla. They  
11 have 500,000 customers compared to our 87.

12 They're in 99 percent of the Fortune 1000. And  
13 all of our customers have their DRS product, and the  
14 majority of them have their vROps product. So that is --  
15 that is the dominant player.

16 Q. What is it like being in a room trying to sell when  
17 competing against VMware?

18 A. I would start by talking about, before I get in  
19 the room, before I'm allowed in the room -- so VMware has  
20 20-24,000 employees. So when we talk about a customer, a  
21 lot of -- the majority of customers that I personally deal  
22 with, they actually have VMware people on staff at the  
23 customer. So they have a very, very strong influence and  
24 relationship with all of these customers.

25 And, basically a customer asks VMware, they



Somani - direct

1 say, well, can we bot your technology? We paid all of this  
2 money; right?

3 If I need something, I'm going to ask VMware  
4 first: Do you have this capability? If I need this  
5 functionality, I'm going to ask VMware. And it is only when  
6 VMware says no, we don't do that, or we can't do it the way  
7 you want, then I get the opportunity -- then we, Densify,  
8 get the opportunity to enter the room and give a sales  
9 pitch.

10 Until then, we don't even get the shot. And  
11 a lot of the customers, the majority of the customers in  
12 there, they don't even invite us into the room because  
13 VMware is already there, and they are telling them they have  
14 our Densify technology built into their product.

15 Q. So are you saying that your VMware platform customers  
16 already have DRS?

17 A. I am. So all of our VMware customers have DRS --

18 MR. GONZALEZ: Excuse me, Your Honor. I'll  
19 object and move to strike, lacking in foundation and/or  
20 based on hearsay.

21 THE COURT: Any response?

22 BY MS. BALLARD:

23 Q. Mr. Somani, have you done any analysis as to whether  
24 or not your -- or strike that.

25 Mr. Somani, can you explain what information you

Somani - direct

1 have as to whether or not your customers have DRS, your  
2 VMware platform customers?

3 A. Sure.

4 We have -- we have data on our customers in  
5 terms of -- for our managed customers. We have data on our  
6 managed customers, and we can see, you know, what the  
7 configurations are of their VMware platform and whether they  
8 are running DRS or not. It's based on that.

9 I have never personally come across any of our  
10 customers where they don't have DRS either.

11 Q. Does Densify license the rights to use its patents to  
12 third parties?

13 A. Absolutely not. So from a business perspective,  
14 right, we never have and we never would license to a third  
15 party. Especially, especially a dominant player like -- if  
16 you think about VMware in this case, they have 500,000  
17 customers. They've got 24,000 employees. They have such  
18 marketing presence that as soon as they say they have the  
19 technology, they have the Densify technology, it means that  
20 no customers out there are going to come to me or us for our  
21 technology; right? They're just going to go with VMware.

22 So, I mean, it -- it means that we wouldn't be  
23 able to compete against them if we licensed it to them.

24 Q. So how has DRS's presence in the market impacted  
25 Densify?

Lavender - designations

1 was going to stay in base or not.

2 "So I would occasionally get reports from the  
3 third-party risk office if they had any concerns about any  
4 of the technologies that we were using from smaller  
5 companies, and our tech investment banking group would come  
6 to me and ask me for advice on, you know, which companies  
7 looked interesting and which vendors -- strategic vendors we  
8 had might acquire those companies.

9 "So, for example, HP acquired a company that we  
10 had recommended to them. IBM acquired a company we had  
11 recommended to them, and our investment bankers work with  
12 VMware's investment group, and we would often make  
13 recommendations to VMware of companies that they might  
14 consider acquiring to de-risk our use of that company if  
15 they, sort of, ran out of gas, as it were, I would have to  
16 pull them out of the environment.

17 "So from a third-party risk perspective, I would  
18 often recommend companies that we look at -- I can't tell  
19 them to acquire something. I would ask them to look at a  
20 company together with our investment bankers, because that's  
21 what investment bankers do. They're matchmakers.

22 "Question: At the time, did you believe -- why  
23 did you think VMware might be interested in Cirba?

24 "Answer: Well, they're an in infrastructure  
25 provider. Right? I have it widely deployed an across my

## Lavender - designations

1 estate. As I mentioned before, we found some utility from  
2 using Cirba, and it was -- Cirba was calling on to the --  
3 using the VMware products themselves to call their APIs to  
4 collect the information that Cirba was using. So since  
5 Cirba as already writing on top of VMware technology, it's  
6 just seemed like a natural fit that those two technologies  
7 were complimentary.

8 "Question: Did you believe that Cirba offered  
9 solutions that VMware didn't have?

10 "Answer: Again, I wasn't specific about what --  
11 I didn't do a gap analysis or what's sometimes called a SWOT  
12 analysis on that, and, again, our investment bankers would  
13 ask me to recommend things that might have an affinity.  
14 Very VMware's overall, you know, roadmap and trajectory,  
15 that seemed like a natural affinity, from a business  
16 perspective and from a risk perspective.

17 "Question. So are you saying you don't if Cirba  
18 offered solutions that VMware didn't have?

19 "Answer: Well, I thought Cirba was complement  
20 tree to what VMware was already doing, but, again, it  
21 really -- a lot of the data that Cirba was presenting came  
22 from the VMware products, so I think at the time, my  
23 recollection was that vROps had some -- you know, it did  
24 different things and Cirba did different things, so they  
25 were complement tree if you put the two together, right?

Lavender - designations

1 One plus one is greater than two in that case.

2 "Question: What are the types of workloads that  
3 you would use Cirba to manage?

4 "Answer: Well, the one that we already talked  
5 about was -- it was there doing license optimization for  
6 Microsoft SQL server databases when I joined the company.  
7 That's -- that was the primary reason it was purchased by, I  
8 think, [REDACTED].

9 "Question: What features did Cirba offer that  
10 made it worthwhile to add your VMware?

11 "Answer: Well, license management was the one  
12 that was the original use case.

13 "Question: Okay. Is there another use case of  
14 which you're aware?

15 "Answer: Again, we were trying to collect as  
16 much data as we could about the entire environment. But,  
17 again, as I said, it didn't really do the networking data.  
18 We didn't use it for that. It did not originally do the  
19 storage data. We asked them to add that to the product,  
20 which they did.

21 "So, you know, every product in the environment  
22 is never 100 percent of what you want. It takes multiple  
23 technologies, multiple products to operate a complex  
24 environment like that.

25 So it was used -- it was used in the

Lavender - designations

1 environment, but it wasn't exclusively used in the  
2 environment.

3 "Question: You asked VMware for host based  
4 placement features?

5 "Answer: I asked every -- I asked Turbonomics,  
6 I asked Cirba I asked VMware. Again, it's a big customer  
7 with a very demanding environment. It's very common for us  
8 to ask all of our vendors for feature enhancements, and I'm  
9 generally sure that either myself or my team or the IT  
10 operations people regularly asked for additional cane am,  
11 you know, so we call customer driven capability.

12 "Question: The top e-mail is an e-mail from  
13 Travis Kendall to Monica Sharma, dated December 17th, 2014.

14 "Answer: Okay.

15 "Question: I'm going to ask you questions about  
16 John Lee's e-mail on the second page, dated December 17th,  
17 2014, sent at 1:18 a.m.

18 "So a few minutes ago you said you mentioned  
19 asking VMware for affinity rules or --

20 "Answer: We asked VMware for lots of feature  
21 enhancements. I ask all my vendors for feature  
22 enhancements.

23 "Question: Were they important to Citi?

24 "Answer: Well, John Lee is -- he says why  
25 they're important. Right?

Raghuram - designations

1 "Question: At the time of this e-mail, was  
2 VMware the 800-pound gorilla in the capacity management  
3 space?

4 "Answer: Oh. We were not an individual  
5 capacity management company, so I don't know what that  
6 statement actually means. We were a virtualization and a  
7 virtualization management company of which capacity  
8 management was one feature.

9 "Question: Was VMware the 800-pound gorilla in  
10 the virtual management space?

11 "Answer: VMware was the market leader in the  
12 virtual management space, and is the market leader in the  
13 virtual management space.

14 "Question: Is it still the market leader in the  
15 virtual management space?

16 "Answer: Yes, for VMware Hypervisors.

17 "Question: What about for capacity management?

18 "Answer: Capacity management is defined as a  
19 feature of virtualization management. And so we don't think  
20 of that as a separate category where there is distinct  
21 revenues and products assigned to it have VMware.

22 "We are one product that does -- two products  
23 that do virtualization management collectively. One is  
24 called vCenter; and the other one is called vROps. And  
25 capacity management is a feature of vROps.

Raghuram - designations

1 "I mean, to give you an analogy, if you have a  
2 car, right, and it has a navigation system, the navigation  
3 system is a feature of the car. The navigation system is  
4 not a separate space that the car company competes in.

5 "Does it make sense, the analogy?

6 "Answer: So are you aware of vendors that  
7 compete specifically in the capacity management space?

8 "Answer: There are vendors that specialize in  
9 the capacity management space, yes.

10 "Question: And does VMware compete with them?

11 "Answer: VMware -- like I said, the capacity  
12 management feature of vROps competes with the people that  
13 are customers -- companies that are doing pure capacity  
14 management.

15 "Question: So you're saying you don't know if  
16 VMware is the 800-pound gorilla in the capacity management  
17 space?

18 "Answer: I'm saying VMware is the market leader  
19 in virtualization management as a whole, of which capacity  
20 management is a particular feature. So you could infer  
21 that we are the market leader in the capacity management  
22 feature.

23 "Question: If you look at -- do you know who  
24 Michael Beckmann is?

25 "Answer: Michael Beckmann is a VMware employee.



Raghuram - designations

1 "Question: Okay. If you look in his top  
2 e-mail, he calls VM turbo and Cirba ankle biters.

3 "Did VMware consider VM turbo and Cirba ankle  
4 biters at the time?

5 "Answer: The term 'ankle biters,' when we  
6 commonly refer to it, it refers to small companies that are  
7 not the main focus of your customers' attention as compared  
8 to the bigger competitors like Microsoft and others in that  
9 space.

10 "Question: VMware commonly calls companies  
11 'ankle biters'?

12 "Answer: 'Ankle biters' is a term that is used  
13 to describe companies that are focused on the narrow parts  
14 of the overall space that we offer.

15 "Question: Companies that are focused on  
16 specific features?

17 "Answer: Correct.

18 "Question: Does VMware still consider Cirba an  
19 ankle biter?

20 "Answer: VMware considers Cirba as a specialist  
21 company in a narrow space of capacity management.

22 "Question: Is that an ankle biter?

23 "Answer: I would term Cirba as a small  
24 specialist company.

25 "Question: Before you said specialist companies

Raghuram - designations

1 are ankle biters. Is there problem with that term?

2 "Answer: I do not see a problem with that term.

3 What I said specifically previously is that is a term that  
4 is used sometimes within VMware for these smaller companies  
5 that compete in narrower spaces.

6 "Question: And is the term 'ankle biter' used  
7 to describe Cirba within VMware?

8 "Answer: I have -- I don't have any  
9 recollection of how and whether it was used.

10 "Question: Does VMware often set out to destroy  
11 its competitors?

12 "Answer: No.

13 "Question: Do you see where he refers in his  
14 e-mail to 'Project Nail in the Coffin'? Do you see that?

15 "Answer: Yeah.

16 "Question: Are project -- projects like that  
17 common within VMware?

18 "Answer: I do not know what project it is  
19 referring to in this case.

20 "Question: But are similar products -- projects  
21 with titles like 'Nail in the Coffin' common to VMware?

22 "Unidentified Speaker: Objection, vague.

23 "Answer: Not to my knowledge.

24 "Question: Why didn't VMware acquire Cirba in  
25 2015?

Raghuram - designations

1 "Answer: We felt there was a -- what we wanted  
2 to pay and what Cirba's expectations, there was too big a  
3 gap. We did not feel the revenue we could generate from  
4 Cirba justified that kind of money.

5 "Question: How much did VMware want to pay?

6 "Answer: We never came to a specifics on the  
7 pricing, but we felt it would be in the \$200 million sum  
8 range.

9 "Question: And how much did VMware think Cirba  
10 wanted?

11 "Answer: Well, the initial conversation that  
12 cropped up, the leader at the time, Shekar, had with  
13 Cirba's bank, Goldman Sachs, said their expectations were  
14 around \$500 million.

15 "Ms. Green: Let's mark as Exhibits 6 a document  
16 with the Bates label FATHI-000001.

17 "Question: Is it true that VMware would have  
18 been willing to pay \$300 million to acquire Cirba in 2015?

19 "Answer: As a negotiation, we would have  
20 entertained offers in the \$200 million range, and if some --  
21 if Cirba had come back to us and said, hey, will you pay us  
22 \$300 million, we would have thought about it.

23 "Question: What was the management strategy  
24 that you referenced that's on second page?

25 "Answer: The top of the second page?

Raghuram - designations

1 "Question: Yes.

2 "Answer: Yeah. The management strategy is,  
3 like we were talking before, we wanted to be the in-cloud  
4 virtualization management product line, and our goal was to  
5 go build that, and that's what this refers to. And attach  
6 it to -- sell it to customers that have bought our  
7 Hypervisor.

8 "Question: Okay. What was VMware's strategy  
9 with respect to capacity optimization?

10 "Answer: It was to address customers'  
11 requirements for making sure that they're -- when they're  
12 placing applications into virtual environments, they're  
13 making use of -- optimal use of the capacity they purchased.

14 "Question: Did that strategy include host-based  
15 placement?

16 "Answer: That strategy did include host-based  
17 placement.

18 "Question: Did it include software license  
19 control?

20 "Answer: Yeah."

21 (Video clip stopped.)

22 THE COURT: Is this a good place to stop?

23 MS. LEHMAN: Yes, it's a good place to stop.

24 THE COURT: All right. Ladies and gentlemen, we  
25 will pick up there tomorrow morning.

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -  
CIRBA INC. (d/b/a DENSIFY) and  
CIRBA IP, INC., : CIVIL ACTION  
:  
Plaintiffs, :  
v :  
:  
VMWARE, INC., :  
:  
Defendant. : NO. 19-742-LPS  
- - -

Wilmington, Delaware  
Thursday, January 16, 2020  
Jury Trial - Volume D

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge, and a jury

APPEARANCES: - - -

MORRIS JAMES, LLP  
BY: KENNETH L. DORSNEY, ESQ.

and

REICHMAN JORGENSEN, LLP  
BY: COURTLAND L. REICHMAN, ESQ.,  
SHAWNA L. BALLARD, ESQ.  
(New York, New York)

and

REICHMAN JORGENSEN, LLP  
BY: CHRISTINE LEHMAN, ESQ.  
(Washington, District of Columbia)

and

Valerie G. Gunning                      Brian P. Gaffigan  
Official Court Reporter              Official Court Reporter

Raghuram - designations

1 THE COURT: Why don't you remind us who we are  
2 watching and I'll have Mr. Looby turn the lights down.

3 MR. REICHMAN: Yes.

4 This is Mr. Raghuram, Raghu Raghuram, who is the  
5 chief operating officer of VMware, and plaintiffs, Densify,  
6 called him as a witness.

7 THE COURT: We will pick up where we left off.

8 (Designations of Raghu Raghuram continued.)

9 "Ms. Green: Mark this as Exhibit 8, a document  
10 with the Bates label of GS0000880.

11 "Question: Do you recall saying that VMware  
12 would have been interested in purchasing at 200 to 250  
13 million?

14 "Answer: I probably would have said that  
15 because that is what we felt was the value for the company.

16 "Question: Why did VMware decide not to acquire  
17 Cirba in 2016?

18 "Answer: It was fundamentally the same thing.  
19 It was price, and we were also building capabilities that  
20 were organically developed, and we didn't feel like we would  
21 gain in a material way by buying Cirba.

22 "Question: What do you mean by 'organically'?

23 "Answer: Meaning every race of our product, we  
24 improve our product, and we build more and more features  
25 based on customer demands and requirements.

Raghuram - designations

1 "Question: Did VMware decide to develop the  
2 features that Cirba offered?

3 "Answer: We built the features that are driven  
4 by our customer-driven backlog.

5 "Question: And do those features include the  
6 ones that Cirba offered?

7 "Answer: It included the features that  
8 subsequently they released, some of them might have been  
9 features that it's possible were Cirba as well. I'm not  
10 clear on the apples to apples.

11 "Question: When deciding to build these  
12 features, did VMware consider Cirba's intellectual property  
13 rights?

14 "Answer: The way VMware works is I'm not  
15 involved in the individual feature development or the  
16 feature specification. In general, we -- when -- as part of  
17 our overall employee training -- overall employee training,  
18 we tell our employees to respect intellectual property  
19 rights of other companies. For example, we tell them not to  
20 bring over stuff that they had in their previous company, et  
21 cetera, et cetera.

22 "I do not have a recollection of whether  
23 something specific was -- anything -- if the team was told  
24 that, look, do not infringe on Cirba's IP or do infringe on  
25 Cirba's IP. I do -- I was not part of that conversation.

Raghuram - designations

1 "Question: So you don't know if VMware  
2 considered Cirba's intellectual property rights?

3 "Answer: I do not know.

4 "Question: And you don't know if someone said,  
5 you know, copy Cirba?

6 "Answer: I'm in no position to know that.

7 "Ms. Green: Let's mark Exhibit 9, a document  
8 with a Bates label of VMW00107260.

9 "Question: Do you agree with Mr. Wolf's  
10 statement that VMware had no answer for tying orchestration  
11 to factors unrelated to performance and there are several,  
12 software licensing, security compliance constraints,  
13 specific latency constraints between application tiers, et  
14 cetera?

15 "Answer: This is going back a few years. I  
16 don't recall all the details of what specific capability we  
17 had. I would take Chris Wolf's assessment as he is probably  
18 right. I don't know.

19 "Question: Chris Wolf was -- I'm sorry. Go  
20 ahead. Chris Wolf was in the CTO organization, right, at  
21 this time?

22 "Answer: I don't remember the details.

23 "Question: But you think he'd know what he's  
24 talking about?

25 "Answer: He's an informed technical person.



Raghuram - designations

1 "Question: And on Exhibit 3, it says:  
2 'cluster, hosts, VMs.' Right?

3 "Answer: Yeah.

4 "Question: Did VMware copy Cirba's control  
5 console?

6 "Answer: I was not involved in these  
7 discussions. I do not know. VMware's answer -- practice is  
8 to not to explicitly copy. VMware's policy is to address  
9 customer requirements.

10 "Question: Looking at these two exhibits, do  
11 you think VMware copied Cirba's control console?

12 "Answer: I can't tell from this.

13 "Question: Can you point out any other  
14 differences between the two?

15 "Answer: Looking at this one page, like I said,  
16 these are substantially similar; however, what I will --  
17 what I don't know is what were the customer requirements in  
18 terms of what did the customers want us to do.

19 "Question: You think the customer said put  
20 overutilized in red?

21 "Answer: I do not know what the customer said.  
22 What -- what I'm saying is customers tell us what they want,  
23 the kind of information they want, and the teams go and  
24 figure out what to do.

25 "Question: Is it okay for VMware to copy if a

Raghuram - designations

1 customer said, hey, copy Cirba?

2 "Answer: If the customer -- I cannot comment on  
3 what the customer said or not said. That would be a  
4 hypothetical for me.

5 "Question: Does VMware put competitors'  
6 products in the lab to see how they can displace them at  
7 particular customers?

8 "Answer: Like I said, VMware analyzes  
9 customers' requirements and competitors' products all the  
10 time.

11 "Ms. Green: Let's mark as Exhibit 18 a document  
12 with a Bates labeled VMW00022639.

13 "Question: Was Circe a code name for Cirba?

14 "Answer: Circe, yeah.

15 "Question: Was Circe a code name for Cirba?

16 "Answer: Yeah.

17 "Question: Do you agree with me this is a plan  
18 to build out Cirba's feature?

19 "Answer: The slide deck says April update. I  
20 don't know specifically that it is a plan of anything. It  
21 -- it's a list of capabilities that Circe has, vRealize has,  
22 and what it would take to develop that.

23 "Question: Develop it within VMware?

24 "Answer: Yeah.

25 "Question: What does 'TTM' mean?

Raghuram - designations

1 "Answer: Time to market.

2 "Question: So the last one: 'Estimated time to  
3 market for VMW without Circe,' what does that mean?

4 "Answer: It means if we do not buy the -- if we  
5 did not have Circe in-house, then if we were building a  
6 similar capability, what it would take, how long it would  
7 take.

8 "Question: So is this a plan to build out  
9 Cirba's features within VMware?

10 "Answer: No. It does not apply.

11 "Question: Is it a timeline for how long it  
12 would take to build out Cirba's features within VMware?

13 "Answer: No. It is an estimate if we were to  
14 do it. Usually time plans are more detailed than that.

15 "Question: It's an estimate for how long it  
16 would take to build out Cirba's features within VMware?

17 "Answer: It is the author's estimate for how  
18 long it could take.

19 "Question: Is one of the reasons why VMware did  
20 not acquire Cirba was because it could develop Cirba's  
21 capabilities fairly quickly?

22 "Answer: We felt Cirba was -- would be a useful  
23 asset to VMware. If the pricing was lower in the range of  
24 what we think -- thought it was worth, and that is the  
25 principal reason why we did not buy it.

Raghuram - designations

1 "Ms. Green: Let's mark as Exhibit 19, a  
2 document with a Bates label VMW00057196.

3 "Question: This is a follow-up on the e-mail  
4 chain we just briefly looked at, but at the top David Deeths  
5 writes: 'I talked to Ajay and reviewed the deck and it does  
6 look like we can develop most of the Circe capabilities  
7 fairly quickly.'

8 "Do you see that?

9 "Answer: Yeah.

10 "Question: Is that one of the reasons why  
11 VMware did not acquire Cirba in 2016?

12 "Answer: Like I said, any time we look at  
13 whether we want to buy a company, we look at what the  
14 alternatives are and how long would it be taking for us to  
15 build the things that customers care about, the capabilities  
16 that they are looking for.

17 "Question: So is that a 'yes'?

18 "Answer: This is a statement that says we can  
19 build a lot of capabilities due to the normal course of our  
20 product development.

21 "Ms. Green: Mark this as Exhibit 20, a document  
22 with a Bates label VMW00042163.

23 "The page ends in 164.

24 "Where Mr. Kendall writes: 'As I said before,  
25 this would put a bullet in Cirba's head, at least in Citi's

Raghuram - designations

1 eyes, if we get this right.'

2 "Do you see that?

3 "Answer: Uh-huh.

4 "Question: Did VMware understand that  
5 developing Cirba's software license control capabilities  
6 would put a bullet in Cirba's head?

7 "Answer: I don't know specifically what bullet  
8 in Citi's -- Cirba's head, in Citi's eyes what -- exactly  
9 what he is talking about.

10 "Question: Does VMware try to put bullets in  
11 competitors' heads?

12 "Answer: We do not. We try to build products  
13 that address customers, and in the process of addressing  
14 customers needs it might displace other competitors.

15 "Question: Did VMware want to displace Cirba  
16 and all of its competitors?

17 "Answer: We wanted to address Citi's  
18 requirements, which we felt was an important requirement  
19 that other customers would have.

20 "Question: And in so doing, get rid of Cirba?

21 "Answer: We do not dictate what products  
22 customers select. We wanted to create products that address  
23 the customers' needs in a compelling way.

24 "Question: How important was developing  
25 host-based workload placement to competing with Turbonomic?

Singh - designations

1 "Question: And it says that they are  
2 incorporating feedback from you and Mr. -- I keep  
3 pronouncing -- I keep --

4 "Answer: Raghu Raghuram.

5 "Question: Raghuram; is that right?

6 "Answer: Yes.

7 "Question: The third bullet point, 'seven U.S.  
8 patents held with seven U.S. patents pending.'

9 So this is noting that VMware all the way up and  
10 providing it to the CEO is aware of the patents that Cirba  
11 held, right?

12 "Answer: Yes.

13 "Question: Let's turn to page 16 of the same  
14 deck. This refers to 'Circe risks/concerns Plan B.'

15 "What was Plan -- Plan A, I assume, was to  
16 acquire Cirba?

17 "Answer: Yes.

18 "Question: What was Plan B?

19 "Answer: It had clearly listed our three  
20 options here.

21 "Question: Okay.

22 "Answer: One is to just build it within vROps.

23 "Question: Right.

24 "Answer: Other was to acquire other potential  
25 targets, and third is just do nothing.

Singh - designations

1 "Question: The third Plan B option, do nothing,  
2 that's not what VMware did, right?

3 "Answer: Yes.

4 "Question: And the concern at the time is that  
5 there would be a missed market opportunity to innovate,  
6 right?

7 "Answer: Yes.

8 "Question: And the other problem with doing  
9 nothing as it says here is that it leaves us, VMware,  
10 lacking differentiation as to other areas of CMP are  
11 becoming gradually commoditized, right?

12 "Answer: Yes. There is always more  
13 capabilities that we have to constantly evolve to add, yes.

14 "Question: So the concern with do nothing, that  
15 would leave VMware lacking differentiation, right?

16 "Answer: Yes.

17 "Question: And then other acquisition targets.  
18 Did VMware acquire another company as its Plan B here?

19 "Answer: No.

20 "Question: So the build option then, the build  
21 option, the Plan B build option was for VMware to build it  
22 itself as an alternative --

23 "The Court Reporter: Do what?

24 "Question: Plan B was to build something for  
25 itself as an alternative to buying Cirba, right?

Singh - designations

1 "Answer: Plan B was to add capabilities into  
2 vROps that would have the policy components in it.

3 "Question: And that's what VMware did, right?

4 "Answer: Yes.

5 "Question: It went with Plan B; is that right?

6 "Answer: Yes.

7 (Video ends.)

8 MR. REICHMAN: Your Honor, the plaintiff would  
9 like to call its next witness, if we may.

10 THE COURT: Yes.

11 MR. REICHMAN: Plaintiffs call Mr. Pat  
12 Gelsinger, who is the chief executive officer of VMware.  
13 And we have a few exhibits to admit in connection with this,  
14 Your Honor.

15 THE COURT: Okay.

16 MR. REICHMAN: It's PTX -- may I do them all  
17 just at one?

18 THE COURT: Yes.

19 MR. REICHMAN: PTX-1035, PTX-1047, and PTX-1220,  
20 and PTX-1225. And we move to admit these.

21 THE COURT: Any objection?

22 MS. PARK: No objection, Your Honor.

23 THE COURT: Those are all admitted.

24 (Above-referenced exhibits were admitted into  
25 evidence.)



Gelsinger - designations

1 of large teams or products occurring, so it wouldn't be  
2 atypical for those to come up in OPS reviews, but it also  
3 wouldn't be required that my product leaders would be  
4 reviewing such decisions.

5 "And as you can tell, right, reading this, this  
6 is clearly things that are, you know, in some cases  
7 programming capabilities that are already built into our  
8 product line, you know, DRS. To some degree these are  
9 policies building on capabilities that are built into the  
10 VMware product a decade or so earlier. This DRS capability  
11 was one our fundamental inventions a decade earlier, based  
12 in the product line.

13 "So incremental capabilities, building on those  
14 inside of our management product, which, you know,  
15 fundamentally are building optimization, and efficiency  
16 characteristics for our customers, as much detailed  
17 decisions would not typically be brought up to the CEO's  
18 level.

19 "Question: Was there a review about the effect  
20 of enacting these three items on Cirba's patent rights?

21 "Answer: I do not recall, as I've already  
22 testified, any such discussion.

23 "Question: Turn to the page that the Bates  
24 number ends in 128.

25 "In the middle of the page, there is an e-mail

Gelsinger - designations

1 from Travis Kendall in which he writes about a call he had  
2 with Citi to discuss new features in vROps around initial  
3 placement. That Citi was very interested, because it is  
4 chipping away at the Cirba use case. They asked about  
5 license management use and use case and Zubair, who's cc'd,  
6 said it is something that can be achieved through custom  
7 policy. Not sure where those policies are managed.

8 "Did I read that more or less accurately?

9 "Answer: Yes.

10 "Question: And it says, 'Perhaps we can get  
11 in sync on the solution and start pursuing it with Citi.  
12 Thoughts?'

13 "And then, 'As I said before, this would put a  
14 bullet in Cirba's head, at least in Citi's eyes, if we got  
15 this right. They are eager to rationalize tools.'

16 "Did I read that correctly?

17 "Answer: Yes.

18 "Question: Is that a fair description of what  
19 VMware's objective was in its development of vROps?

20 "Answer: So as I've already testified, vROps as  
21 part of our vRealize tool suite is intended to help  
22 customers optimize their infrastructure, optimize their  
23 VMware footprint, optimize their hardware resources in that  
24 environment, so adding capabilities into that product line,  
25 absolutely part of the roadmap activity.

Gelsinger - designations

1 "You know, customers, the last comment, they are  
2 eager to rationalize tools would be a very typical customer  
3 question. Too many management tools. Too much  
4 complexities. You know, please help us have fewer tools  
5 that do more.

6 "As a business practice, we don't put bullets in  
7 customers' heads -- I mean in competitors' heads. You know,  
8 we do compete, just like any good company would. But I  
9 would object to any such characterization.

10 "Question: But that's how your head of the Citi  
11 account described it, putting a bullet in Cirba's head;  
12 correct?

13 "Answer: That is the language that he used in  
14 this e-mail. And as I said, that would be consistent with  
15 how I would want our team to view. Our job is to do a  
16 better job for our customers and let them choose. As I've  
17 already testified, this particular individual has been  
18 demoted to a lesser role at the account. We've brought in a  
19 more senior and capable account manager since then, and I'd  
20 say in part for -- this would be an example of some of the  
21 more immature behavior that we've seen from Travis over  
22 time.

23 "Question: So you'd agree with me that that is  
24 inconsistent with the values that you set for VMware;  
25 correct?

Gelsinger - designations

1 "Answer: You know, as I said, we compete to  
2 win. We compete to do a better job for our customers, but,  
3 you know, that's not how consistent with how we look to  
4 position ourselves, how we -- our values position us and the  
5 language that we want to use describing our competitors.

6 "Question: This is -- these are three pages of  
7 e-mails that relate to Turbonomic, I believe in January of  
8 2015; is that correct?

9 "Answer: Yes.

10 "Question: And I guess reading from the bottom  
11 up there are -- there's discussion about VMTurbo, meaning I  
12 guess Turbonomic, and their sales practices at the time; is  
13 that right?

14 "Answer: It appears that way. I think some of  
15 this also they were pushing the Dell people to get -- or EMC  
16 people -- getting EMC people to push Turbonomic for us.

17 "Question: Let me specifically direct your  
18 attention on the second page to the e-mail from Adrian  
19 Tudor, January 12th, of 2015, where it says, 'These guys  
20 have no shame. They deserve nothing but death.'

21 "Who is Adrian Tudor?

22 "Answer: I don't know. I assume he's somebody  
23 in our field team, but I don't know.

24 "Question: Who is Michael Beckmann?

25 "Answer: Likewise, I don't recall.

Gelsinger - designations

1 "Question: Is an 'attitude they deserve nothing  
2 but death,' is that consistent with the values at VMware,  
3 that statement?

4 "Answer: Generally, no. I mean, obviously  
5 they're being very frustrated by VMTurbo's aggressiveness.  
6 So I think the team is getting rather irritated, which was  
7 our general view of VMTurbo, that they were quite  
8 aggressive, pushing themselves into accounts, using EMC to  
9 try to push VMware to do things, so I think all of us became  
10 rather frustrated with them as a company including Bill Nye,  
11 the CEO but that language is inappropriate even though I  
12 think given some of the emotions I think we were all a  
13 little bit irritated with them as a company.

14 "Question: Would you agree that that language  
15 is inappropriate?

16 "Answer: Yes.

17 "Question: And inconsistent with your values?

18 "Answer: Yes.

19 "Question: The e-mail just above it says,  
20 'Yeah, they're pretty in your face. It's not new that  
21 they'd be taking it to that new level. Our problem is that  
22 we played too nice and never took them seriously. Same goes  
23 for Cirba.'

24 Do you agree with that characterization that  
25 Cirba and VMware should be equated?

Gelsinger - designations

1 "Answer: Yeah, I don't -- I don't know the  
2 context of the discussion adequately to answer that.

3 "Question: But to the -- to the extent that the  
4 sentiment here is that Cirba should be treated the same as  
5 VMTurbo, as in they deserve nothing but death, that would be  
6 an inappropriate suggestion if that's what Mr. Beckmann was  
7 suggesting?

8 "Answer: As I've already testified, I think  
9 such language would be inappropriate, even though, as said,  
10 somewhat understandable given the frustration that  
11 Turbonomic was. Also, we were very frustrated by some of  
12 Turbonomic's sales approaches, and I do think my team was  
13 inadequately competitive, specifically with respect to  
14 Turbonomic, and we were, I think, significantly underfocused  
15 on them as a competitor in that phase of them. Under no  
16 circumstance, did I ever equate Cirba to that same sentence  
17 as our competitive frustration with Turbonomic.

18 "And, in fact, later in time, we had more  
19 specific Turbonomic competitive activities as a company  
20 really to be presenting ourselves more aggressively to our  
21 customers, but under no circumstance did that discussion  
22 ever include Cirba.

23 "Question: And let me direct your attention to,  
24 then, the second e-mail in the chain from Erik Wrobel to  
25 Mr. Beckmann, and to you and Mr. McBride. Second sentence

Gelsinger - designations

1 of which says, 'We are the 800-pound gorilla in the space,  
2 and last thing they need is us telling every one of our  
3 customers that they don't need VMT.' I guess meaning  
4 Turbonomic; is that correct? Did I correctly read that?

5 "Answer: Correctly read. I'm trying -- let  
6 me -- could I take a second and just try to understand?

7 "Question: Okay.

8 "Answer: Since it's phrased a little bit off.

9 "So reading it a little bit more carefully, it  
10 seems like VMT is trying to position themselves as needing  
11 to -- as coexisting with us.

12 "Question: Okay.

13 "Answer: Right. So they're trying to create  
14 some way to position that you need them when you're using us  
15 as well as, and -- and given we're the biggest player in  
16 this space, the 800-pound gorilla, the last thing they need  
17 is telling us they don't need VMT, which was our competitive  
18 stance, that you do not need VMT, and that you shouldn't  
19 install VMT, that the vRealize suite was adequate.

20 "Question: Looking at the -- at the e-mail at  
21 the top, this is from Michael Beckmann in response, and  
22 paragraph beginning 1, he said, 'When I looked back through  
23 the e-mail archives communications for the last year, what I  
24 find is that we often referred to VMT, Cirba and others as  
25 ankle biters, implying that they were more of an annoyance,

Gelsinger - designations

1 downplaying any real business threat.'

2 "Do you see that?

3 "Answer: Yes.

4 "Question: Is -- is that how Cirba is viewed by  
5 VMware, as an ankle biter?

6 "Answer: Well, since I wasn't on this mail  
7 thread at the time, I can give general comment on the  
8 category, if that is what you would like me to do.

9 "Question: I'd like your comment on the  
10 specific term, 'ankle biter.' Is that a fair way of looking  
11 at Cirba?

12 "Answer: You know, I don't know that I would  
13 have used that terminology myself, but generally, there's a  
14 variety of smaller companies trying to play in the  
15 management space of the VMware product line, so a variety of  
16 them, and I would say Cirba is one of those, were smaller  
17 players trying to get into that category.

18 "And, you know, as we just testified, Turbonomic  
19 was the one that in particular we were frustrated about with  
20 respect to their -- some of their competitive behaviors, and  
21 we certainly directed our competitive analysis team to look  
22 at them more carefully.

23 "Question: But Cirba didn't engage in any of  
24 those kind of competitive behaviors that you're complaining  
25 about with regards to Turbonomic, did it?



Gelsinger - designations

1 "Answer: Not that I ever became aware of, but  
2 this view of -- and I think what they're referring to as  
3 ankle biters is a set of smaller players who are working to  
4 get into mapping the VMware environments.

5 "Question: Is -- is that sort of disparaging  
6 description of someone like Cirba, is that, again,  
7 consistent with the values that you set for VMware, that  
8 kind of reference?

9 "Answer: You know, as I testified, this  
10 category was frustrating, because I don't think that we were  
11 competing adequately, but referring to competitors with  
12 disparaging remarks, we would be encouraging our people not  
13 to do."

14 (Video ends.)

15 MR. REICHMAN: Thank you, Your Honor. This  
16 concludes our video depositions, and if it's okay with the  
17 Court, may we take the morning break?

18 THE COURT: I think it's a good time to take a  
19 break before we return to live witnesses.

20 No talking about the case while we're apart and  
21 we'll see you in a little bit.

22 MR. REICHMAN: Thank you.

23 (Jury left courtroom.)

24 THE COURT: We will be in recess.

25 (Brief recess taken.)

Prathuri - direct

1 is that right?

2 A. Yes.

3 Q. Then PTX-1472. PTX-1472 is another one of these  
4 decks that was produced in native. It's okay. Take your  
5 time. 1472.

6 A. Yes.

7 Q. And it's dated October 24th, 2018; is that right?

8 A. Yes.

9 MR. REICHMAN: Your Honor, we move to admit  
10 PTX-1472.

11 MR. HUNG: No objection.

12 THE COURT: It's admitted.

13 (PTX-1472 was admitted into evidence.)

14 BY MR. REICHMAN:

15 Q. And this is a deck that is an operating board update;  
16 right? Do you see it on the first page?

17 A. Yes.

18 Q. Okay. Let's then turn to page 43 of this deck. And  
19 the point of the deck is to give an update to the operating  
20 board on different things going on in the business unit; is  
21 that right?

22 A. Can you repeat the question?

23 Q. The purpose of the operating board update is to  
24 update the operating board on different developments in the  
25 business unit; is that right?

Prathuri - direct

1 A. I'm not sure that's what this document states or this  
2 deck states. The title of the deck is Cloud Health in  
3 VMware.

4 Q. I see. It's breaking off putting together cloud  
5 health in VMware?

6 A. That's correct.

7 Q. Okay. And on this page 43, one of the things it  
8 states on the top here, integrating with WF. And is  
9 Wayfront?

10 A. Yes.

11 Q. And Wayfront was a company that VMware acquired?

12 A. That is correct.

13 Q. It says, integrating with Wayfront dramatically  
14 enhances optimization; is that correct?

15 A. Yes, that's what it is.

16 Q. And it's talking about three bullet points down:  
17 Doesn't require significant change in resourcing for basic  
18 integration.

19 Do you see that?

20 A. Yes.

21 Q. However, all deliverables could be accelerated with  
22 more people -- destroy Densify sooner.

23 Do you see that?

24 A. I see that.

25 Q. Was that part of the plain with Wayfront as of this

Prathuri - direct

1 October 2018 deck?

2 A. Wayfront does monitoring and troubleshooting use  
3 cases. It doesn't do capacity management or planning.

4 Q. But the objective, isn't it, sir, is to destroy  
5 Densify?

6 A. That is what is written here, yes.

7 MR. REICHMAN: Thank you. Pass the witness,  
8 Your Honor.

9 THE COURT: Okay. Cross-examination.

10 MR. HUNG: Your Honor, we'll wait for our own  
11 case to present Mr. Prathuri.

12 THE COURT: You're not going to ask any  
13 questions at this time?

14 MR. HUNG: That's correct.

15 THE COURT: You may step down. Thank you very  
16 much.

17 (Witness excused.)

18 THE COURT: If counsel could retrieve the  
19 binders before you call your next witness.

20 MR. REICHMAN: Yes, sir. Do you have a sense of  
21 the timing until the next break, Your Honor?

22 THE COURT: Now would be pretty early, but do  
23 you need a break?

24 MR. REICHMAN: I think it would be more  
25 efficient. We're only going to 3:00.

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -  
CIRBA INC. (d/b/a DENSIFY) and  
CIRBA IP, INC., : CIVIL ACTION  
:   
Plaintiffs, :   
v :   
:   
VMWARE, INC., :   
: NO. 19-742-LPS  
Defendant. :   
- - -

Wilmington, Delaware  
Friday, January 17, 2020  
*Jury Trial - Volume E*

- - -  
BEFORE: HONORABLE LEONARD P. STARK, Chief Judge, and a jury

APPEARANCES: - - -

MORRIS JAMES, LLP  
BY: KENNETH L. DORSNEY, ESQ.

and

REICHMAN JORGENSEN, LLP  
BY: COURTLAND L. REICHMAN, ESQ.,  
SHAWNA L. BALLARD, ESQ.  
(New York, New York)

and

REICHMAN JORGENSEN, LLP  
BY: CHRISTINE LEHMAN, ESQ.  
(Washington, District of Columbia)

and

Valerie G. Gunning  
Official Court Reporter  
Brian P. Gaffigan  
Official Court Reporter

Bergman - cross

1 Q. And the reason for the April 2019 is that is the date  
2 when the complaint was filed, sir?

3 A. Again, generally, I think that's why it's more a  
4 legal issue that I was asked to run it based on that date.

5 Q. And you've been in court this week and you've said  
6 that Cirba first accused VMware of infringement in  
7 April 2019; is that right, sir?

8 A. That's my understanding, yes.

9 Q. I want to talk to you about the income approach and  
10 the market approach that you've been discussing yesterday  
11 and today and I would like to put up my last slide, please.

12 Okay. So we're talking about the '687 patent  
13 and on the left there's the income approach. You used the  
14 income approach to determine damages if there is  
15 infringement of DRS; right? By DRS?

16 A. That's correct.

17 Q. All right. And on the right-hand side is the market  
18 approach, and you used that approach if VMware is deemed to  
19 infringe the '687 patent through its vROps; is that right?

20 A. That's correct.

21 Q. And this market approach is the one that relies on  
22 the Cirba IP license?

23 A. Yes.

24 Q. Okay. And that's the license from one Cirba entity  
25 to another and for all the company's patents for tax

Bergman - cross

1 purposes; is that right?

2 A. It was more than that, but effectively.

3 Q. And you calculated for the vROps damages, it would be  
4 \$2.07 million.

5 Do you see that?

6 A. I do see that.

7 Q. Now, in your work as a damages expert, you've heard  
8 of the reasonableness check; correct?

9 A. Sure.

10 Q. And you have done that in other cases; is that right?

11 A. I did that in this case.

12 Q. And that might be, for instance, you could take the  
13 market approach and apply it against DRS to see if your  
14 numbers generally come out the same. Right, sir?

15 A. No.

16 Q. Well, let's get to that. Here, you did not rely on  
17 the market approach to check whether your damages of \$233.65  
18 million was reasonable for DRS. True or false?

19 A. I did not.

20 Q. In the Sandvine case we were just discussing, to get  
21 to your damages number, you did a reasonableness check.  
22 Right, sir?

23 A. I don't recall specifically. It wouldn't surprise  
24 me.

25 Q. Okay. You used both the income approach and a market

Green - direct

1 Q. Yes.

2 A. Cirba IP owns the patent.

3 Q. And who owns the trademark?

4 A. The trademark is owned by Cirba Inc.

5 Q. And has Cirba IP ever licensed the Densify patents to  
6 anyone other than Cirba Inc.?

7 A. No, they have not.

8 Q. And were there any restrictions that were placed on  
9 Cirba Inc.'s exclusive use of the Cirba patents?

10 A. There's no restrictions whatsoever.

11 Q. Are the Densify patents worth \$1?

12 A. No. It's called a nominal value, and when two  
13 entities are owned by the same entity and they want to  
14 transfer something between each other, you can transfer  
15 them, but the contract says you have to put some sort of  
16 dollar value, so you put a nominal dollar value. \$1 is not  
17 what the patents are worth.

18 Q. When was the first time you engaged in acquisition  
19 discussions with VMware?

20 A. Well, it was in the 2007 time frame.

21 Q. And did you already have a patent at that time?

22 A. No. We had filed a patent application. As you saw  
23 in the video, it takes a long time, so we were what's called  
24 patent pending at the time.

25 Q. And was that patent application for a patent at issue



Green - direct

1 in this case?

2 A. It was. The '687 patent.

3 Q. What, if anything, did you tell VMware about that  
4 '687 patent application?

5 A. Well, during the 2007 time frame, we were having  
6 early meetings or discussions with VMware, and at the time I  
7 sent an e-mail to the, at the time CEO and co-founder, Diane  
8 Green, and I explained my excitement to work with them and I  
9 discussed our patent pending analytics and I was excited to  
10 show.

11 Q. You mentioned acquisition meetings in 2007; is that  
12 correct?

13 A. Yes.

14 Q. Were these in-person meetings? How did that happen?

15 A. Well, Mr. Hillier and I got on a plane and I think  
16 another gentleman, Mr. David. New company, and off we go to  
17 Palo Alto and we met with VMware in Palo Alto.

18 Q. And what do you remember about the substance of that  
19 meeting?

20 A. Well, we got there and there was 20 to 30 people. It  
21 was quite daunting. And there were high level executives,  
22 high level engineers, and some mergers and acquisitions  
23 people, and we were there. We won an award for our product  
24 at their show, VM World, and we were there to kind of show  
25 our stuff, show our technology.

Green - direct

1 Q. And how did that go?

2 A. You know, so very memorable. I mean, that's a long  
3 time ago, but it's very memorable because it didn't go  
4 neutral and certainly it didn't go well. It kind of went  
5 really -- it felt terrible.

6 The reason it felt terrible is we presented our  
7 technology, and instead of just neutral and asking  
8 questions, there was an argument or discussion starting to  
9 ensue about how we placed virtual machines on hosts.

10 Q. By we, do you mean VMware?

11 A. No. How Densify -- at the time Cirba and our  
12 technology places virtual machines on hosts.

13 Q. And what was this dispute or awkwardness?

14 A. Well, because of our experience, and I believe you  
15 guys -- excuse me. I believe you have heard about that  
16 experience, is that we believe that a virtual machine should  
17 be assigned on a particular host, and we also believed that  
18 there were practical business reasons why you should do  
19 that, and we brought that forward.

20 The response wasn't, oh, okay, that's  
21 interesting. It was, no, we don't agree because if you  
22 place it on a specific host, it kind of removes the purity  
23 of just being able to move that virtual machine within the  
24 cluster and you shouldn't do that.

25 And so you remember that distinctly because the

Green - direct

1 essence was argued against, and when you leave the meeting,  
2 you're looking, wow, you know. Are we wrong? And so that  
3 was the meeting that we had.

4 Q. Did anyone at VMware say, hey, we already invented  
5 this?

6 A. No. Again, it was -- it was we don't agree with you.  
7 That design is wrong. It felt like that. It weren't those  
8 exact words. I just want to say it was argumentative of why  
9 that was the wrong way to do it.

10 Q. Using the terminology of today, how would you  
11 describe the placement approach that you told VMware about  
12 in 2007?

13 A. Well, to be clear, I don't want to overstep. We  
14 didn't call it host based placement then. In fact, we  
15 called it things like intelligent placement, but the essence  
16 of what we were saying is take a virtual machine and  
17 consider each of the hosts that you are going to place it on  
18 because it's important. It has practical reasons to do that  
19 evaluation.

20 Q. And what was the outcome of these discussions?

21 A. No, nothing.

22 Q. No co-developed products?

23 A. No.

24 Q. Or investments by VMware?

25 A. No, no.

Green - direct

1 Q. What, if anything, do you remember about the updates  
2 to DRS in 2010?

3 A. I'm the CEO. I'm not CTO or technical. I do  
4 remember them coming out with the addition of what was  
5 called, you know, VM to host rule that allowed you to  
6 actually place a virtual machine onto a particular host.

7 Q. And was this same approach that VMware had seemingly  
8 rejected in the 2007 meetings?

9 A. Yes.

10 Q. So why didn't you sue them?

11 A. Well, first of all, in 2010 we didn't have patents.  
12 We were in this patent-pending process.

13 Q. Okay. When you got a patent, why didn't you sue  
14 them?

15 A. Suing any company is a daunting endeavor. Believe  
16 me, it's very daunting. Suing a company that owns the  
17 market that you play in, owns the conference and the awards  
18 that you apply for, owns the software that you integrate to,  
19 it's not just something you kind of say, hey, let's sue  
20 them. It's crazy.

21 Second of all, we were very small, and we had an  
22 alternative. And the alternative is, go back and invent and  
23 figure out how to make the chicken better and go out and  
24 keep selling. And that's what we did.

25 Q. So what did you invent?

Green - direct

1 A. Well, I hope today, or over the last few days, you  
2 have learned some of the things that we added to that core  
3 of that '687 patent. And that is, we added things like that  
4 control console. It won an award. It allowed you to  
5 visualize.

6 We added software license optimization. Saved  
7 millions of dollars on all that software.

8 We added automating the programming of the  
9 rules.

10 So we just kept inventing, and lo and behold, we  
11 won these big customers. It was very gratifying.

12 Q. I believe Mr. Riyaz Somani used the word "different  
13 cheaters." Do you agree these words apply?

14 A. Yes. This is what Mr. Somani is calling the  
15 differentiator. Those things that made the '687 patent, at  
16 the core of what we do, that much better.

17 Q. Let's talk about the name of your company for a  
18 moment.

19 A. It's Densify.

20 Q. And what is the name of your product?

21 A. It's Densify.

22 Q. And under what name do you do business?

23 A. We're going to say it again, Densify.

24 Q. What do you call your support services?

25 A. People that support our customers are called

Green - direct

1 group.

2 Q. And did they make him a formal offer?

3 A. They did.

4 Q. And DRS is one of the products included in this suit;  
5 correct?

6 A. It is.

7 Q. So VMware tried to take one of your employees to run  
8 product development for one of the products that is accused  
9 in this suit?

10 A. They did.

11 Q. Mr. Smith, I'm going to ask you what may be a leading  
12 question.

13 Do you regret engaging in any acquisition talks  
14 with VMware?

15 A. At the time, 2015, we were very excited, excited as a  
16 company to engage with what is the holder of the market and  
17 a very successful company.

18 I can tell you now, and it's going through  
19 this process, and particularly sitting through yesterday,  
20 that, you know, you would think I would be very angry. It's  
21 just -- I'm not an angry type of guy. I have some anger,  
22 but mostly it just makes my stomach upset.

23 Q. Mr. Smith, why has Densify asked you to come here  
24 today?

25 A. I guess for my company. I just want VMware to stop,

Bergman - cross

1 and I want us to be able to compete fairly. And, honestly,  
2 I didn't -- I want VMware to pay for the -- for our  
3 technology, so that they can use it.

4 MS. GREEN: Thank you.

5 THE COURT: Cross-examination.

6 CROSS EXAMINATION

7 BY MR. GONZALEZ:

8 Q. Sir, you said that VMware tried to recruit one of  
9 your employees?

10 A. Yes.

11 Q. This is America. You can do that. You can recruit  
12 from a competitor, if you want to. Wouldn't you agree?

13 A. From your partners, yes.

14 Q. And that was in 2015; right?

15 A. Yes, sir.

16 Q. That is five years after we did something in 2010  
17 that you claim is infringing; right?

18 A. Yes.

19 Q. And he never came; right?

20 A. Came?

21 Q. To VMware.

22 A. No, he did not.

23 THE COURT: Mr. Gonzalez, do you want to pass  
24 around binders?

25 MR. GONZALEZ: Not yet.

Smith - redirect

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REDIRECT EXAMINATION

BY MS. GREEN:

Q. Mr. Smith, is [REDACTED] still one of Densify's customers?

A. Absolutely. One of our -- you know, \$4.3 million a year for three years. We just signed another contract for another three years, \$4 million.

Q. And what about [REDACTED]?

A. Huge customer, very satisfied. I know [REDACTED], the CTO very well.

Q. How complex is Densify's product?

A. It's enormously complex, and it's not unheard of us -- for us to have challenges in the field. What keeps our customers is we have that dialog and we fix it, together.

Q. And do customers sometimes have complaints about the product?

A. Can you say that again?

Q. I'm sorry. Did customers sometimes have complaints about products?

A. Of course they did. But we have a really outstanding, what is called a Net Promotor Score. It's, how many times would your customers promote you? And it's off the charts high. It's, like, 56 and it's very good.

Q. Did Mr. Gonzalez show you any e-mails about solving those problems?



Smith - redirect

1 A. No.

2 Q. Did you ever get any awards at VMware about your  
3 product?

4 A. So many, I can't recall them.

5 Q. In 2015, VMware had been using your software since  
6 2010; is that right? Or, sorry. Let me strike that and  
7 withdraw.

8 In 2015, had VMware been using your technology  
9 since 2010?

10 A. Had VMware been using our technologies?

11 Q. Yes. The technology that you guys disclosed in the  
12 2007 acquisition schedule.

13 A. Oh, yes. Of course.

14 Q. And but for that use, do you believe the value of  
15 your company would have been higher?

16 MR. GONZALEZ: Objection, Your Honor. No  
17 foundation. Expert opinion.

18 BY THE WITNESS:

19 A. So the answer is yes --

20 THE COURT: Hold on. I need her response.

21 MS. GREEN: He is the CEO of the company and  
22 very familiar with the evaluations. It is part of his job.

23 THE COURT: I'm going to let him testify to  
24 that.

25 MS. GREEN: Thank you.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

C.A. No. 19-742-LPS

**VERDICT FORM**

**INFRINGEMENT OF U.S. PATENT NO. 8,209,687**

**Question No. 1:**

Has Densify proven, by a preponderance of the evidence, that VMware has literally infringed any of the following claims of the '687 patent?

*"Yes" is a finding for Densify. "No" is a finding for VMware.*

Product	Claim	Answer	
vSphere with DRS	Claim 3	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Claim 7	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
vROps with DRS	Claim 3	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Claim 7	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
VMC on AWS with DRS 2.0	Claim 3	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Claim 7	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

**Question No. 2:**

Has Densify proven, by a preponderance of the evidence, that VMware has actively induced direct infringement of any of the following claims of the '687 patent?

*“Yes” is a finding for Densify. “No” is a finding for VMware.*

Product	Claim	Answer	
vSphere with DRS	Claim 3	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Claim 7	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
vROps with DRS	Claim 3	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Claim 7	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
VMC on AWS with DRS 2.0	Claim 3	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Claim 7	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

**Question No. 3:**

If you have found that VMware directly infringed at least one claim of Densify’s ‘687 patent, or if you have found that VMware has actively induced direct infringement of at least one claim of Densify’s ‘687 patent, has Densify proven, by a preponderance of the evidence, that VMware’s infringement of the ‘687 patent was willful?

*“Yes” is a finding for Densify. “No” is a finding for VMware.*

<input checked="" type="checkbox"/>	Yes (Willful)
<input type="checkbox"/>	No (Not Willful)

**INFRINGEMENT OF U.S. PATENT NO. 9,654,367**

**Question No. 4:**

Has Densify proven, by a preponderance of the evidence, that VMware has literally infringed any of the following claims of the '367 patent?

*"Yes" is a finding for Densify. "No" is a finding for VMware.*

Claim 1	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Claim 9	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Claim 13	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Claim 17	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

**Question No. 5:**

Has Densify proven, by a preponderance of the evidence, that VMware has actively induced direct infringement of any of the following claims of the '367 patent?

*"Yes" is a finding for Densify. "No" is a finding for VMware.*

Claim 1	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Claim 9	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Claim 13	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Claim 17	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

**Question No. 6:**

If you have found that VMware infringed at least one claim of Densify’s ‘367 patent, or if you have found that VMware has actively induced direct infringement of at least one claim of Densify’s ‘367 patent, has Densify proven, by a preponderance of the evidence, that VMware’s infringement of the ‘367 patent was willful?

*“Yes” is a finding for Densify. “No” is a finding for VMware.*

<input checked="" type="checkbox"/>	Yes (Willful)
<input type="checkbox"/>	No (Not Willful)

**VALIDITY OF DENSIFY’S U.S. PATENT NO. 8,209,687**

**Question No. 7:**

Has VMware proven, by clear and convincing evidence, that any of the following claims of the ’687 patent is invalid as anticipated by DRS 2006?

*“Yes” is a finding for VMware. “No” is a finding for Densify.*

Claim 3	Yes _____	No <input checked="" type="checkbox"/>
Claim 7	Yes _____	No <input checked="" type="checkbox"/>

**Question No. 8:**

Has VMware proven, by clear and convincing evidence, that any of the following claims of the '687 patent is invalid because the claimed subject matter would have been obvious to a person of ordinary skill in the art at the time of the claimed invention based on DRS 2006?

*"Yes" is a finding for VMware. "No" is a finding for Densify.*

Claim 3	Yes _____	No <input checked="" type="checkbox"/>
Claim 7	Yes _____	No <input checked="" type="checkbox"/>

**TRADEMARK INFRINGEMENT**

**Question No. 9:**

Do you find that VMware is liable for trademark infringement?

*"Yes" is a finding for Densify. "No" is a finding for VMware.*

Yes _____	No <input checked="" type="checkbox"/>
-----------	--

**DELAWARE DECEPTIVE TRADE PRACTICES ACT**

**Question No. 10:**

Do you find that VMware is liable for deceptive trade practice?

*"Yes" is a finding for Densify. "No" is a finding for VMware.*

Yes _____	No <input checked="" type="checkbox"/>
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**DAMAGES**

**The '687 Patent**

**Question No. 11:**

If you have found that VMware infringed at least one claim of the '687 patent, and if you have found that this same claim is not invalid, what is the dollar amount Densify has proven it is entitled to as a reasonable royalty for past infringement?

\$ 235,724,765

**The '367 Patent**

**Question No. 12:**

If you have found that VMware infringed at least one claim of the '367 patent, what is the dollar amount Densify has proven it is entitled to as a reasonable royalty for past infringement?

\$ 1,112,111

**Trademark Infringement**

**Question No. 13:**

If you have found that VMware is liable for trademark infringement, what is the dollar amount of damages that Densify has proven?

\$ 0

**CONCLUSION**

You have reached the end of the verdict form. Review the completed form to ensure that it accurately reflects your unanimous determinations. All jurors should then sign the verdict form in the space below and notify the Court Security Officer that you have reached a verdict. The Foreperson should retain possession of the verdict form and bring it to the Courtroom in the envelope provided.

Date 1/24/2020

REDACTED

REDACTED



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

*Plaintiffs,*

v.

VMWARE, INC.,

*Defendant.*

C.A. No. 19-742-LPS

REDACTED - PUBLIC VERSION

**DEFENDANT VMWARE'S OPENING BRIEF IN SUPPORT OF  
MOTIONS FOR JUDGMENT AS A MATTER OF LAW, FOR A NEW TRIAL  
AND REMITTITUR, AND TO DISMISS CIRBA INC. FOR LACK OF STANDING**

Dated: March 9, 2020  
Redacted Version: March 16, 2020  
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### TABLE OF ABBREVIATIONS

U.S. Patent No. 8,209,687	“the ’687 patent” or “’687”
U.S. Patent No. 9,654,367	“the ’367 patent” or “’367”
vRealize Operations	“vROps”
Distributed Resource Scheduler	“DRS”
Distributed Resource Scheduler as existed in 2006	“DRS 2006”
Distributed Resource Scheduler as existed in 2010	“DRS 2010”
Fault Tolerance	“FT”
High Availability	“HA”
Transparent Page Sharing	“TPS”
Storage DRS	“SDRS”
Virtual Machine or Virtual Guest	“VM”
Virtual Host	“host”
Preliminary Injunction	“PI”
Trial Transcript <sup>1</sup>	“TT”
Judgment as a Matter of Law	“JMOL”
Declaration of Richard S.J. Hung	“Decl.”

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<sup>1</sup> Citations to the Trial Transcript (“TT”) are to the transcripts of the jury trial held January 13, 2020 through January 24, 2020, filed at D.I. 587 through D.I. 597.

*Microsoft Corp.*, 632 F.3d 1292, 1320 (Fed. Cir. 2011).

Finally, Cirba did not separately calculate damages for each patent claim and product. If JMOL is granted on at least one claim or product, the entire award must be vacated to allow redetermination of damages attributable to any surviving patent claims. *See Omega Patents, LLC v. CalAmp Corp.*, 920 F.3d 1337, 1350-51 (Fed. Cir. 2019) (vacating damages award and granting new damages trial after setting aside infringement judgment for certain claims).

## **VI. CIRBA INC. LACKS STANDING**

Cirba Inc.'s agreement with Cirba IP makes clear that it is a bare licensee. (Decl. Ex. 2 at 1 ( [REDACTED] )); PTX-1249 at 2-3 ( [REDACTED] ).) This is true even though the agreement calls Cirba Inc. an "exclusive licensee." *Textile Prods., Inc. v. Mead Corp.*, 134 F.3d 1481, 1484 (Fed. Cir. 1998) (reference to "exclusive" license "not controlling"). As Cirba Inc. lacks standing to sue for '687 and '367 patent infringement, the Court should dismiss it from this action. Fed. R. Civ. P. 12(b)(1); *see Sicom Sys., Ltd. v. Agilent Techs. Inc.*, 427 F.3d 971, 976 (Fed. Cir. 2005) ("A nonexclusive license confers no constitutional standing"). The alleged harm to Cirba Inc., a non-party, is irrelevant to damages and injunctive relief. *See LTI Holdings Inc. v. Lippert Components Mfg. Inc.*, No. 15-cv-232, 2015 WL 5125172, at \*1 (N.D. Ind. Sept. 1, 2015) (parent "may not sue for injuries to its subsidiary"). If the Court so concludes, this is an additional basis for a new trial, as such harm allegations were central to Cirba's trial presentation and VMware's rebuttal. (*See, e.g.*, TT 1784:17-1785:1, 1886:7-16, 1889:10-1890:18.)

## **CONCLUSION**

JMOL, a new trial, remittitur, and dismissal for lack of standing are warranted.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

C.A. No. 19-742-LPS

JURY TRIAL DEMANDED

PUBLIC REDACTED VERSION



**DECLARATION OF ANDREW HILLIER IN SUPPORT OF DENSIFY'S MOTION FOR  
POST-TRIAL RELIEF (VOL I)**

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*Attorneys for Cirba Inc.  
(d/b/a Densify) and Cirba IP, Inc.*

**Dated: March 9, 2020**

I, Andrew Hillier, hereby declare, under penalty of perjury:

**I. My Background**

1. I am co-founder and Chief Technology Officer (“CTO”) of Cirba Inc. d/b/a Densify and an officer of Cirba IP, Inc. (collectively, “Densify”). Unless otherwise stated, this declaration is based on my personal knowledge including that gained from my experiences, my familiarity with the business, operations, records, and technical matters addressed herein, and my review of business records. I submit this declaration in support of Densify’s motion for post-judgment relief.

2. I [REDACTED]  
[REDACTED]

3. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

4. I am a named inventor on ten U.S. patents in this field, and I am a noted thought leader and speaker in the area of virtual, cloud, and container technologies. For example, I have spoken at numerous industry conferences, including VMworld, Cloud Expo, Computer Measurement Group, Server Blade Summit, Gartner Data Center and Infrastructure & Operations Management (IOM) Conferences, FSI, WSTA and other events. I have also been invited onto expert panels at several of these events.

9. Over the next few years, virtual environments began to evolve and started to gain an industry foothold, and over the next decade became industry standard. As virtualization became more important, Densify's analytics software evolved to use the core of the invention to optimize VMs in running virtual environments. In these environments, decisions must be made regarding which VMs to run on which servers (which can be called "hosts"), and these servers are often configured as logical groups called "clusters." Running too few VMs or applications on a host means that more servers or capacity must be purchased. Running too many VMs or applications can create risk by over-utilizing hardware, i.e., it creates resource contention where VMs compete for the same resources. The inefficiencies and risks can be reduced by optimizing workload placements—subject to technical, business, and workload constraints—and making sure the amount of resources assigned to each VM is commensurate with workload characteristics, allowing clusters to run at high efficiency and low risk. (Note that the term workload can have two different meanings and its meaning must be taken in the context it is used. Workload may refer to utilization data (i.e., the percentage of CPU used) of an application or VM, or it may refer to the application or VM itself.)

10. Densify's technology addresses these needs, and with Densify's analytics, managing virtualized infrastructures to an optimal state can be done with automation. In fact, intelligent automation has become critical as environments scale and become more complex.

11. In this regard, Densify's invention and technology development coincided with the rise of virtualization, and specifically x86-based hypervisors, such as VMware ESX, that enabled multiple workloads to run in "virtual machines" on commodity Intel-based hosts. With virtualization becoming available for more general-purpose workloads, the need to plan migrations into virtual environments, and to perform ongoing optimization of VM placements,

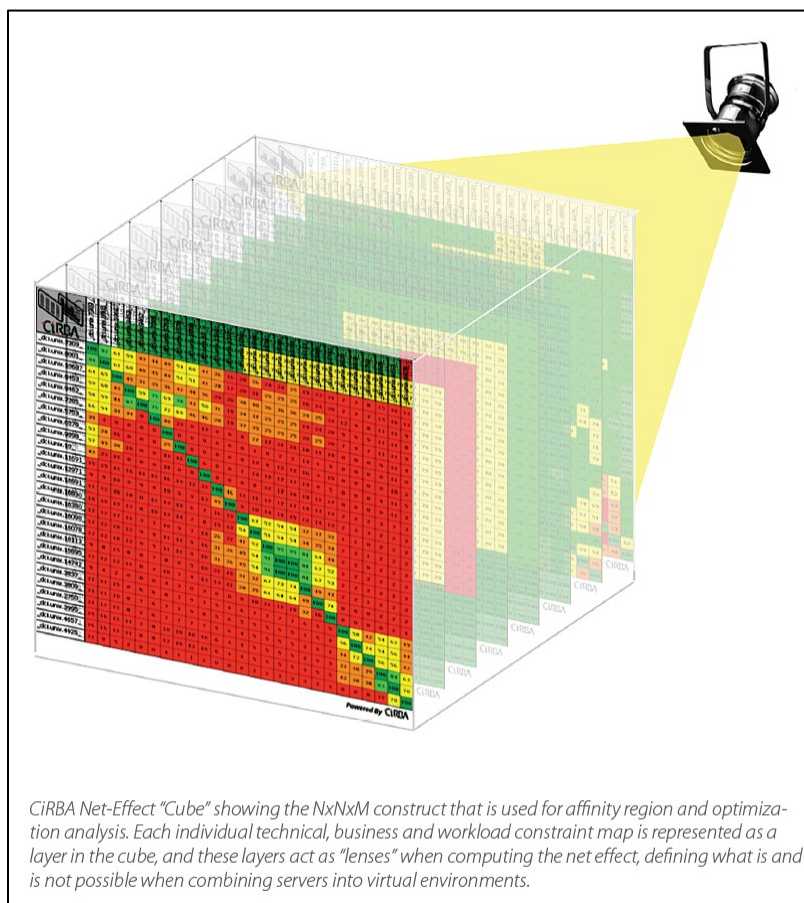


arose as a key industry need. This aligned perfectly with Densify's analysis technology, enabling us to establish ourselves as an early leader in virtual infrastructure optimization. And, because the virtual infrastructure vendors were more focused on the hypervisor technology, and not the business context in which these environments were used, they were not able to recognize the importance of the types of constraints analyzed by Densify. These virtual infrastructure vendors were unable to recognize the need to scrutinize business constraints that govern which VMs can run on which hosts, such as compliance rules, data separation policies, software licensing compliance, etc.

12. Today, Densify's software provides machine learning analytics related to on-premise virtual IT infrastructures and the public cloud. Densify offers a product that optimizes virtual and cloud environments, and to avoid ambiguity, I will refer to this as the "Densify Product." The Densify Product is predictive analytics software that optimizes public cloud, bare metal cloud, and on-premise virtualized environments, performing workload optimization to enable customers to operate with less cloud cost, less infrastructure and better performing applications. The Densify Product includes predictive analytics that anticipate capacity risk, place workloads, and allocate resources to avoid capacity shortfalls, meet compliance and other key operating policies, which results in reducing unnecessary movement of VMs and avoiding performance issues. For example, Densify's software determines the best hosting environments for an application, creates resource reservations, drives predictive VM placement, and automates software license control.

13. The Densify Product is made available to customers either in a Software as a Service (or "SaaS") format where the software is hosted in a public cloud, or alternatively as software delivered for on-premise implementation. The Densify Product (formerly referred to as

Cirba, and also described at various points as Data Center Intelligence and Software Defined Infrastructure Control) optimizes workload placements by analyzing workloads’ resource utilization patterns and the constraining technical, operational and business requirements of the workloads. A visual representation of how the analytics cross-correlate the workloads while respecting the constraints is shown below. This visual is an excerpt from a paper I co-authored with Tom Yuyitung, entitled “VMware Analysis Using Cirba.”



Tom Yuyitung and Andrew Hillier, Cirba Data Center Intelligence, VMware Analysis Using Cirba, White Paper (August 2007), Exhibit 1 (PTX-1065).

14. Densify’s virtual infrastructure optimization software provides significant savings to customers by creating efficiencies that can save large enterprises millions of dollars in

software licensing, hardware and server costs. Densify's customers operate with reduced software licensing and other costs, less infrastructure and better performing applications.

15. The Densify Product contains sophisticated analytics that, among other things, optimize workload placements and rebalance workloads, taking into account business, technical and other constraints. Densify's software has sophisticated predictive analytic capabilities whereby the software analyzes past patterns for purposes of projecting future needs.

16. One key Densify product feature that drives return-on-investment for our customers is our software license control feature, which is a special case of the VM-to-host based placement features offered by the Densify Product. This feature, which significantly reduces licensing costs, is an important differentiator between Densify and our competitors. For large enterprises, this single feature can lead to tens of millions (in USD) in savings. Indeed, for at least one of our key customers, we understand that this single feature saved the customer \$78 million on a five-year renewal with a major software vendor.

17. As a result of the strength and value proposition associated with the Densify Product, Densify has built up a customer following over the years that is based on our inventions that save customers money in running their IT infrastructure. Within about 15 years of our founding, we were the gold standard in the VM optimization space with many large customers, the largest of which had tens of thousands of VMs. We continued to grow and attract new customers as our value proposition was established. We developed an industry reputation for innovative, helpful products that were ahead of the market and, importantly, that saved clients money. Our customers include such companies as [REDACTED]

[REDACTED]

[REDACTED] Attracting prominent corporate customers further enhanced our reputation and allowed Densify to be safe and valued by new customers.

18. For over a decade, Densify has won numerous awards for our innovative VM optimization technology and products. For example,

**In 2019**

- UK Cloud Awards, Most Innovative Enterprise Product (An article announcing this award is attached hereto as Exhibit 2 (PTX-2183)).

**In 2018**

- Enterprise Management Associates (EMA) “Top 3” for Artificial Intelligence and Machine Learning for Optimizing DevOps, IT Operations, and Business (A presentation announcing this award is attached hereto as Exhibit 3 (DSY00052412)).
- Computing’s Cloud Excellence Awards, Best Cloud Management Solution of the Year (A press release announcing this award is attached hereto as Exhibit 4 (PTX-1941)).
- Forrester names Densify as a “Leader” in Cloud Cost Monitoring and Optimization (A press release announcing this recognition is attached hereto as Exhibit 5 (PTX-1940)).

**In 2017**

- Best of VMworld 2017 Gold Winner, Workload Management and Migration (A press release announcing this award is attached hereto as Exhibit 6 (PTX-1942)).
- “Top 10” Cloud Solution Provider and Company of the Month by IT Infra World (A press release announcing this award is attached hereto as Exhibit 7 (DSY00122856)).

**In 2016**

- Gartner lists Densify as a representative vendor for real-time VM placements for cloud infrastructure (A press release announcing this recognition is attached hereto as Exhibit 8 (PTX-1943)).

**In 2015**

- 2015 Virtualization Review Editor's Choice Awards (An article announcing this award is attached hereto as Exhibit 9 (PTX-1944).

**In 2014**

- "Hot products" at VMworld 2014 by Network World (An article announcing this award is attached hereto as Exhibit 10 (PTX-1945).

**In 2013**

- EMA (Enterprise Management Associates) "Vendor to Watch" (An article announcing this award is attached hereto as Exhibit 11 (PTX-1946).

**In 2012**

- TechTarget Best of VMworld 2012 Awards Finalist, Virtualization Management (An article announcing this award is attached hereto as Exhibit 12 (PTX-1947).
- CRN's 2012 Virtualization 100

**In 2011**

- TechTarget Best of VMworld 2011 Awards Runner-up, New Technology (An article announcing this award is attached hereto as Exhibit 13 (PTX-1948).

**In 2009**

- "Companies-To-Watch" – 2009 Deloitte Technology Fast 50™ Awards
- CIO's "10 Virtualization Vendors to Watch in 2009"

**In 2008**

- "Cool Vendor" For Server Virtualization Management by leading analyst firm
- CIO's "10 Virtualization Vendors to Watch in 2008"

**In 2007**

- Best of VMworld 2007 "Gold Award," Capacity Planning, Consolidation Software (A press release announcing this recognition is attached hereto as Exhibit 14 (DSY00158165).

19. The above awards all recognize Densify's workload optimization capabilities, with the majority focused on our virtual infrastructure optimization, and some of the more recent awards also recognizing our leadership in cloud infrastructure optimization.

20. Densify practices the patents-in-suit, Densify's U.S. Patent Nos. 8,209,687 (the "687 patent") and 9,654,367 (the "367 patent"), with sales of embodiments of these patents constituting the core of Densify's business (as indicated by the core use cases described below).

21. In more recent years, Densify has continued to innovate by bringing its optimization technology to cloud, container and hybrid environments.

### **III. VMware's Release Of Infringing Features In vROps 7.0**

22. In the late Fall 2018, Densify became aware that VMware was releasing a new version of vRealize Operations Manager ("vROps"), called vROps 7.0. When I heard and learned what VMware was including in vROps 7.0, I was in disbelief because it included the very features that we had showed and described to VMware 3 years earlier, during one of several rounds of acquisition discussions and negotiations spanning from September 2007 to July 2018, as described in my declaration accompanying Densify's motion for preliminary injunction. VMware had systematically copied almost all of the features from Densify's blueprint diagram shared with VMware during prior discussions.

23. The commercial significance to Densify of the release of vROps 7.0 began to become apparent over the next few months and ultimately reached the point that it threatened significant irreversible harm to Densify's VM optimization business (i.e., the part of Densify's business focused on optimizing on-premises and cloud-based VMware environments). This was further exacerbated with subsequent versions 7.5 and 8.0 released in April 2019 and December 2019 respectively.

24. Prior to vROps 7.0, vROps did not provide a commercially-viable host-based placement feature. vROps 7.0 added the “Automated Host Based Placement” feature, which VMware marketed as allowing customers to use vROps to “teach DRS your business intent and control not only balancing across clusters, but also which host within a cluster the workload will land on.” Thus, VMware, for the first time, appeared to be in a position to provide a commercially viable host-based placement functionality based upon business intent, a feature which featured prominently in Densify’s blueprint as presented to VMware during acquisition discussions. A VMware marketing blog touting the inclusion of the “automated host based placement” feature in vROps 7.0 is attached hereto as Exhibit 15 (PTX-1092).

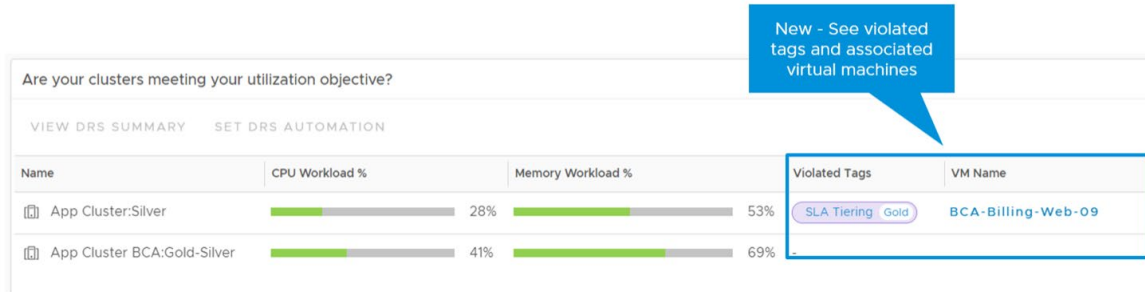
25. In April 2019, VMware launched vROps 7.5. VMware’s release notes for vROps 7.5 touted VMware’s continued improvement of its host-based placement features added to vROps in version 7.0. For example, the advertised new features included:

- A key new user interface that allows customers to “visualize business-intent tag violations for both cluster and host-based placement in workload optimization.”
- The ability “to assess CPU and memory workload for host groups created with host-based intent for efficient placement decisions.”

VMware’s release notes for vROps 7.5 are attached hereto as Exhibit 16 (PTX-1157).

26. For example, below is an image from VMware’s promotional materials for vROps. 7.5, showing the new VMware user interface that visualizes business intent tag violations:

Now, in 7.5, it shows you the tag being violated, the cluster its associated with, AND the VM(s) that is causing the violation! A huge time saver.



Just give in and [download a trial of vRealize Operations 7.5](#) and try it out! You can also find more demos and videos on [vrealize.vmware.com](#). Explore and find out for yourself how Workload Optimization has improved in 7.5!

Exhibit 17 (PTX-1160\_0004).

A copy of the marketing materials for vROps 7.5 is attached hereto as Exhibit 17 (PTX-1160).

27. Further, the below is an image from the same vROps 7.5 promotional materials showing a VMware dashboard highlighting vROps 7.5's new ability to assess CPU and memory workload for host groups associated with host-based intent workload optimization, which potentially enabled users to determine whether fewer or more hosts were needed, further extending the intended overlap between VMware's and Densify's offerings:



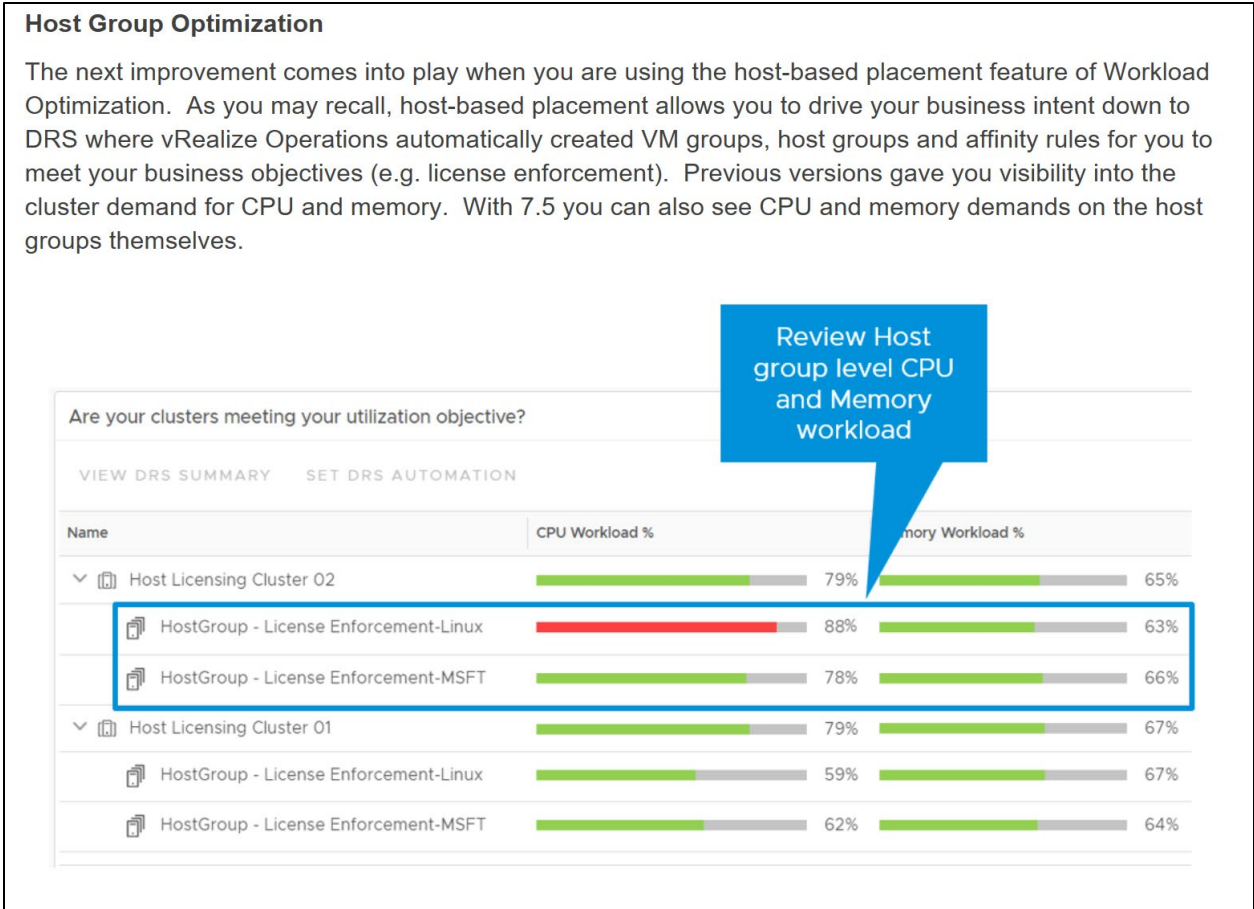


Exhibit 17 (PTX-1160\_0002).

28. In December 2019, VMware launched vROps 8.0. Again, VMware’s release notes for vROps 8.0 touted VMware’s further refinement of its host-based placement features first added to vROps in version 7.0. For example, the advertised new features included:

- “Continuous Performance Optimization,” including “[f]ully automated workload balancing across clusters based on business intent and operational intent for workloads running on a VMware Cloud on AWS environment.”
- “Integrations with vRealize Automation 8.0 for initial and ongoing workload placement.”

A copy of VMware’s release notes for vROps 8.0 is attached hereto as Exhibit 18 (DSY01270124).

29. But despite the marketing hype, the practical use of the host-based placement features first introduced in vROps 7.0—and then allegedly improved upon in vROps 7.5 and 8.0—were ultimately ineffective in providing customers with viable solutions for sophisticated workload placement requirements. Specifically, vROps 7.0 could not support both VM-VM and VM-host rules being in force on the same systems. *See* D.I. 138 at 90:4-91:15, 92:20-93:4; Exhibit 19 at PTX-3256\_0031-0036. Because this forces customers to operate without VM-VM rules, such as application separation rules, if customers want to implement VM-Host rules—including software license control—this appears to be a major factor that limited adoption of this feature. *See* D.I. 138 at 50:10-22, 72:1-15, 91:16-92:19.

#### **IV. The Infringing Features Of DRS 2.0 Will Irreparably Harm Densify**

30. I understand that, in the permanent injunction motion, Densify requests entry of a permanent injunction enjoining and restraining VMware of further infringing the '687 patent. The particular VMware products that I understand are subject to the requested injunctive relief are VMware products that use compute policies to implement the infringing workload optimization and host-based placement features, including VMware's Distributed Resource Scheduler 2.0 (or "DRS 2.0"). I understand that these products are either not released to customers yet, or have been released but have not yet been adopted by customers in any significant quantity, and that the requested injunctive relief does not include the version of DRS first released in 2010 with vSphere 4.1 and currently in use in the vast majority of VMware's customers. According to publicly-available VMware documents, using this original version of DRS will still be a user-selectable option after DRS 2.0 is released, so enjoining DRS 2.0 should have no impact on existing users.

31. As of the filing of this declaration, VMware has not announced any changes to its products that would remove the features found to infringe the '687 Patent.

**A. Relationship Between Densify and VMware's Products in the Marketplace**

32. Historically, VMware competes with Densify, including for long-term enterprise contracts in the workload optimization market, whereby a customer contracts with a supplier (e.g., Densify or VMware) to design the supplier's products into their infrastructure, essentially locking in that third-party's business for the supplier for a period usually lasting years.

33. The Densify Product complements VMware's DRS functionality. Densify also analyzes business requirements and constraints to drive other optimization outcomes beyond DRS, such as how to place VMs to minimize software licensing costs and will automatically program DRS rules to ensure that these business considerations are adhered to as DRS reacts to changing operational conditions. As such, the two products have worked very well together, providing a combination of strategic optimization and tactical responsiveness that is highly valued by customers.

**B. VMware's Compute Policies Implemented in DRS 2.0 and VMware Cloud on AWS Pose a New Competitive Threat**

34. VMware's compute policies, as implemented in DRS 2.0, pose a significant commercial and competitive threat to Densify because VMware offers those products with the infringing features for the first time in a commercially-viable manner for customers with large and complex IT environments.

35. The existing version of DRS as released with vSphere 4.1 supports affinity and anti-affinity rules that allow control over VM placement based on technical and business constraints. These rules use explicitly named hosts and VMs, or groups of named hosts and VMs, to implement the required placement logic. VMware documentation describing DRS affinity rules is attached hereto as Exhibit 20 (PTX-3639\_0097-0102). Because of this, these rules and/or groups must be constantly updated as a virtual environment changes in order to ensure that the

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

Civil Action No. 1:19-cv-00742-LPS

PUBLIC REDACTED VERSION

**DECLARATION OF GERALD WILLIAM SMITH IN SUPPORT OF DENSIFY'S  
MOTION FOR POST-TRIAL RELIEF**

I, Gerald William Smith, hereby declare, under penalty of perjury:

1. I am the Chief Executive Officer at Cirba Inc. d/b/a Densify and Cirba IP, Inc. (collectively, "Densify"). I am an engineer by training. I am also the named inventor several patents. Unless otherwise stated, this declaration is based on my personal knowledge, including that gained from my experiences, my familiarity with the business, operations, records and technical matters addressed herein, and my review of business records. I submit this declaration in support of Densify's motion for post-trial relief.

2. As the CEO of Densify, I have several responsibilities. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. I love what I do.

3. I have been part of two acquisition/partnership discussions with VMware. The first such discussion occurred in 2007. Densify shared high-level information about its technology with VMware shortly after VMworld. To this end, I emailed VMware CEO Dianne Greene about our patent-pending technology, as reflected in Exhibit 1 (DSY00005756) to this declaration. After learning about our technology, VMware asked Densify to engage in talks about a potential partnership. During these talks, we shared confidential information about our intelligent placement technology. Specifically, we emphasized the importance of host-based placement using business constraints. VMware's now-COO Raghu Raghuram participated in these talks. Attached as Exhibit 2 (PTX-1371) is an email from Ryan Day at VMware regarding these talks. I have also attached two other emails as Exhibit 3 (PTX-2546) and Exhibit 4 (PTX-2556), which reflect further conversations regarding such talks. Despite VMware's invitation to

discuss a potential partnership, they did not acquire our patent-pending technology. Indeed, they told us that they did not believe host-based placement based on business intent (*i.e.*, constraints) was a good idea. To our surprise, in 2010, VMware released VM-host affinity and anti-affinity rules within DRS (Distributed Resource Scheduler).

4. Densify engaged in acquisition discussions with VMware again in 2015. During those talks, Raghu Raghuram said VMware could sell Densify's software license optimization feature for \$100/VM/year. Attached to this declaration as Exhibit 5 (PTX-1235) is a true and correct copy of an email between me and Ken Hirsch of Goldman Sachs, which discusses Mr. Raghuram's comment. Attached to this declaration as Exhibit 6 (PTX-1773) is a true and correct copy of a Goldman Sachs PowerPoint that outlines the potential growth of Densify as a company and possible synergies—to the tune of \$6.8 billion—if VMware were to have acquired Densify in 2015. Nothing came of these talks either.

5. After the 2015 acquisition discussions fell apart, Dr. Henry Jurgens, our current Vice President of Product Management and Development, informed me that VMware had tried to recruit him for months during the acquisition discussions. He showed me the emails reflecting these recruitment efforts as well. Attached to this declaration as Exhibit 7 (PTX-2420, PTX-2426, PTX-2428, PTX-2429, PTX-2430, PTX-2440) are the emails reflecting VMware's efforts to recruit Dr. Jurgens. VMware wanted Dr. Jurgens to head development of DRS.

6. [REDACTED]. Attached to this declaration as Exhibit 8 (PTX-2444) is Dr. Jurgens' resume as of 2015, which he shared with VMware. [REDACTED]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

Civil Action No. 1:19-cv-00742-LPS

PUBLIC REDACTED VERSION

[REDACTED]

[REDACTED]

**DECLARATION OF RIYAZ SOMANI IN SUPPORT OF DENSIFY'S MOTION FOR  
POST-TRIAL RELIEF**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. [REDACTED]

[REDACTED]

**II. COMPETITIVE OVERVIEW FOR ON-PREMISE WORKLOAD OPTIMIZATION MARKET**

10. VMware has long been the dominant player in the on-premise workload optimization market. VMware is known for its innovation of what grew to be the dominant VM hypervisor—the technology that enables virtualization. Based on certain industry data, I understand VMware to have something in the order of 80% market share in the hypervisor market when measured as the percent of servers (often referred to as hosts). Consistent with this market position, VMware reports that 99% of Fortune 1000 companies are VMware customers and that it has over 500,000 customers<sup>5</sup> and over 24,000 employees, [REDACTED]

[REDACTED] According to VMware’s public announcements, for the year ending in January 2020, VMware made \$10.81 billion in revenue<sup>6</sup>

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<sup>4</sup> I use the term “VMware platform” to refer to customers who use the VMware hypervisor, the vast majority of whom also purchase vSphere, which includes DRS.

<sup>5</sup> Attached hereto is a true and correct copy of Exhibit 2 (PTX-1752), in which VMware touts these and other aspects of its market dominance.

<sup>6</sup> Attached hereto as Exhibit 3 is a true and correct copy of VMware’s Q4 FY20 Press Release for fiscal year ending January 31, 2020, which is available at: <https://ir.vmware.com/download/companies/vmware/Quarterly%20Reports/Q4FY20%20Earnings%20Press%20Release.pdf>.



[REDACTED] VMware also controls the virtual machine industry trade show: VMworld. Specifically, VMware controls who can speak during attendee sessions and where vendors may place their booths. [REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. In the on-premise virtual machine capacity optimization market, there are three key direct competitors: (1) VMware, (2) Turbonomics (formerly VMTurbo), and (3) Densify.<sup>8</sup> VMware is unquestionably the dominant player of the three. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>7</sup> [REDACTED]

<sup>8</sup> [REDACTED]

[REDACTED]

**V. DENSIFY DOES NOT LICENSE ITS PATENTS TO COMPETITORS**

23. [REDACTED]

**VI. COMPETITIVE IMPACT OF PRE-DRS 2.0 INFRINGING TECHNOLOGY**

24. In 2010, VMware introduced host-based placement into its DRS product in the form of VM-host affinity and anti-affinity rules. Due to VMware’s size, marketing dollars and market power, Densify was not in a market position to convince potential customers to replace the DRS product available from the incumbent vendor (VMware) with Densify’s product. Densify instead focused on selling its optimization product to customers that could benefit from Densify’s more sophisticated, patented optimization analytics. Densify therefore marketed and sold its product as one that would work in conjunction with DRS to provide more sophisticated host-based placement analytics to customers with large and complex IT environments. Indeed, VMware even partnered with Densify on at least one product pitch [REDACTED] emphasizing the

additional functionality that Densify still offered over and above DRS.<sup>15</sup> By doing so, Densify built a growing business that targeted customers with large and complex IT environments that could benefit from Densify's superior product.

25. After the 2015 acquisition discussions between Densify and VMware, in which Densify disclosed key confidential information about its patented host-based placement technology and specific customer use cases associated with that technology, VMware sought to supplement its more rudimentary infringing DRS host-based placement technology with other more sophisticated and automated offerings.

26. For example, the infringing host-based placement technology was included in vROps version 7 and in VMware on AWS's (also called "VMC") compute policies. As for vROps version 7, this was first announced at VMworld in August of 2018 and released in September of 2018.<sup>16</sup> Compute policies within VMware on AWS are also host-based placement technology, and VMware introduced them in roughly the same timeframe. As described in Mr. Hillier's May 2019 declaration, VMware's substantial marketing of these products demonstrated the importance that VMware placed on the competing and infringing host-based placement features offered in those products. However, VMware had some false-starts with the releases of infringing host-based placement technology in VMware on AWS and vROps version 7. VMware on AWS was overpriced and packaged as a cloud product still requiring the VMWare hypervisor. And vROps version 7's touted host-based placement features had a major flaw in that vROps 7 turned off VM-VM affinity and anti-affinity rules when utilized.

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<sup>15</sup> Attached to this declaration as Exhibit 12 (PTX-1033, PTX-1372) are a true and correct copy of email chains [REDACTED]

<sup>16</sup> Attached to this declaration as Exhibit 13 (PTX-1883) is a true and correct copy of a VMware blog post- dated August 27, 2018 discussing the new features in vROps 7.0.

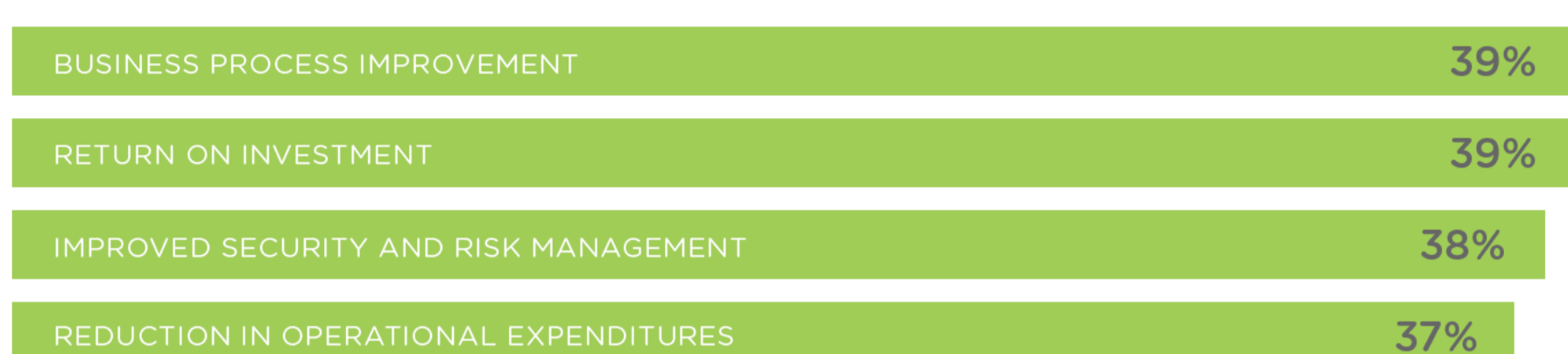
# EXHIBIT 2

# GET THE FACTS ABOUT VIRTUALIZATION



Are you exploring the best way to get started with virtualization? Get the facts about the VMware approach and learn why 8 out of 10 companies choose VMware.

## TOP REASONS WHY IT OWNERS CHOOSE TO VIRTUALIZE



Source: ESG: Virtualization and Cloud Computing Move the SMB Market Forward, 2012

## DID YOU KNOW THAT VMWARE DELIVERS...



**LOWER TOTAL IT OPERATING COSTS**  
91% lower than Hyper-V

**FASTER PROVISIONING**  
78% less time to provision new hosts than Hyper-V



**SIMPLIFIED MANAGEMENT**  
95% less time to provision new storage than Hyper-V

Source: Principled Technologies, Total Cost Comparison: VMware vSphere® vs. Microsoft Hyper-V, 2012

## PURPOSE-BUILT ARCHITECTURE

vSphere is built on a thin hypervisor architecture designed specifically for virtualization. Other providers use a general-purpose OS with a much larger attack surface that potentially leads to a single point of failure.



## HIGH RELIABILITY

When we say vSphere patches are virtually non-existent, we aren't exaggerating.

CRITICAL SECURITY PATCHES REQUIRED FROM MAY 2012 TO APRIL 2013

0

**VMWARE VSPHERE PATCHES**

27

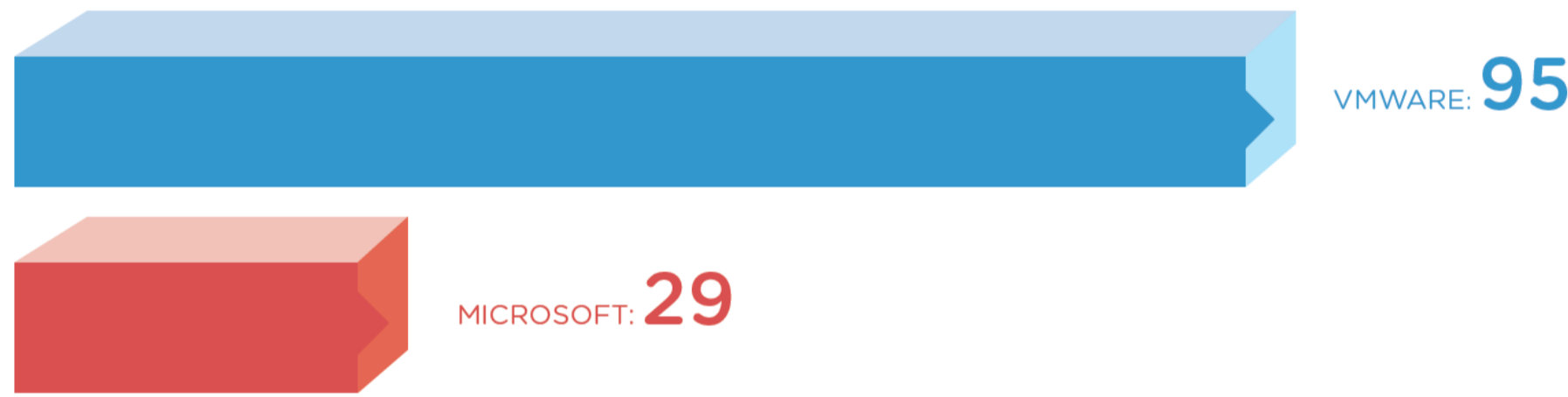
**MICROSOFT HYPER-V PATCHES**

Do you want to have to reboot your data center every Patch Tuesday?

## SUPPORT FOR THE MOST OPERATING SYSTEMS

VMware supports more operating systems than any other x86 bare metal platform. That means you have more flexibility and your investments are protected.

NO. OF OPERATING SYSTEMS SUPPORTED:



## THE RIGHT CHOICE FOR YOUR BUSINESS

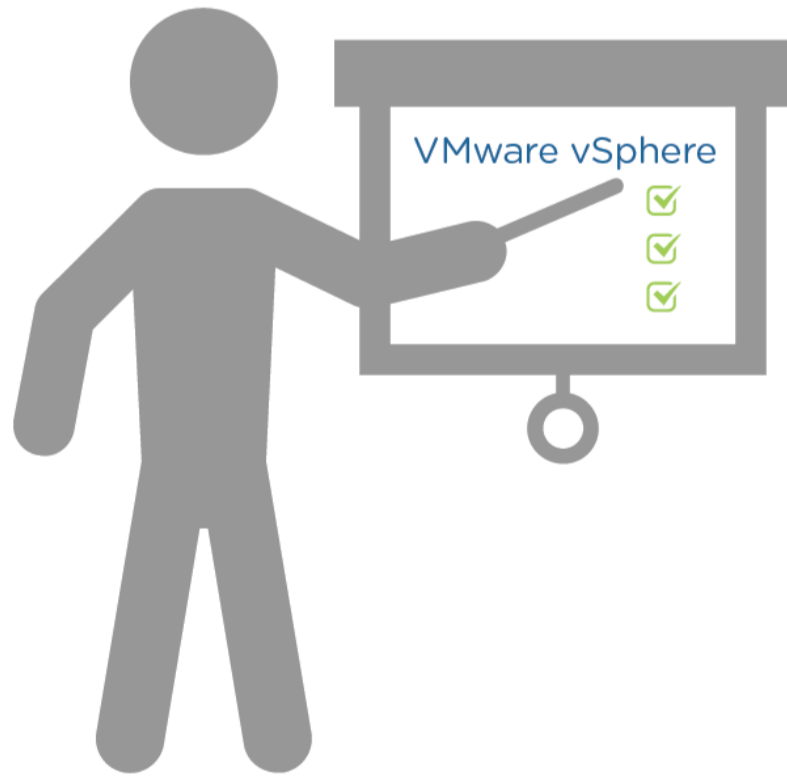
IT professionals worldwide have discovered that VMware really does deliver the best solution, most flexibility and lowest total cost of ownership. Here are just two examples of customers who have switched from Microsoft Hyper-V to VMware vSphere.

### BancVue.

With a heterogeneous IT environment, BancVue needed VMware's agnostic approach to OS support to run their business. What they also got was hosting and energy costs cut by 45%, reduced server costs, and unification of internal IT and data center departments on a common system.



Because improved service availability for customers was critical, Ergomedia switched to vSphere to dramatically improve reliability, availability, and stability. They also experienced CapEx savings, faster implementation of new projects, and quicker disaster recovery.



## THE LEADER IN VIRTUALIZATION

When it comes to your virtualization platform, go with the provider consistently named as the leader by Gartner, IDC, InfoWorld, and other industry analysts and experts'.

**500,000+**  
VMWARE CUSTOMERS

**100%** of FORTUNE 100

**97%** of FORTUNE GLOBAL 500

**100%** of FORTUNE GLOBAL 100

**99%** of FORTUNE 1000

\* InfoWorld - <http://www.infoworld.com/slideshow/24605/infoworlds-2012-technology-of-the-year-award-winners-183313#slide22>

\* Gartner MQ for Server Virtualization - <http://virtualization.info/en/news/2013/07/gartner-releases-its-2013-magic-quadrant-for-x86-server-virtualization-infrastructure.html>

\* IDC - IT Buyer Market Guide: cloud and virtualization System Software; August 2013

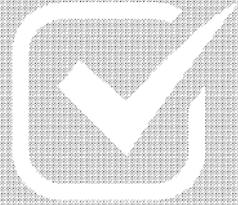
**MORE THAN HALF A MILLION CUSTOMERS WORLDWIDE CHOOSE VMWARE**

LEARN MORE AT [www.vmware.com/getthefacts](http://www.vmware.com/getthefacts)

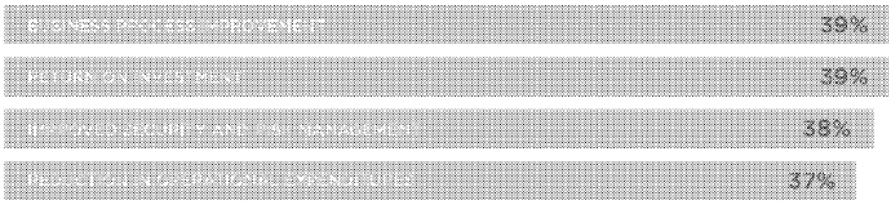


# GET THE FACTS ABOUT VIRTUALIZATION

A FACT SHEET OF THE FACTS ABOUT VIRTUALIZATION. IT'S THE WAY TO LOWER TOTAL COST OF OWNERSHIP, INCREASED EFFICIENCY, AND FASTER PROVISIONING. GET THE FACTS ABOUT VIRTUALIZATION.

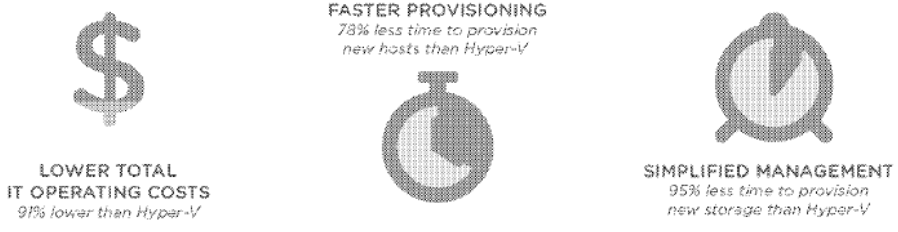


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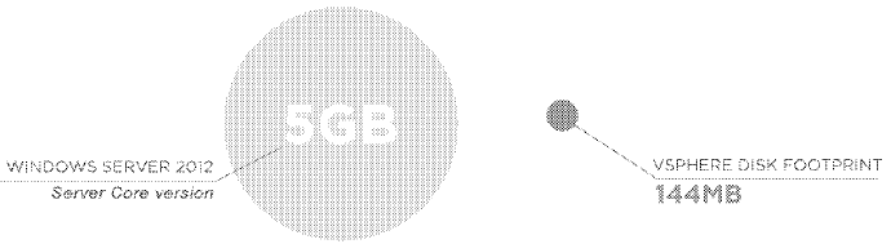
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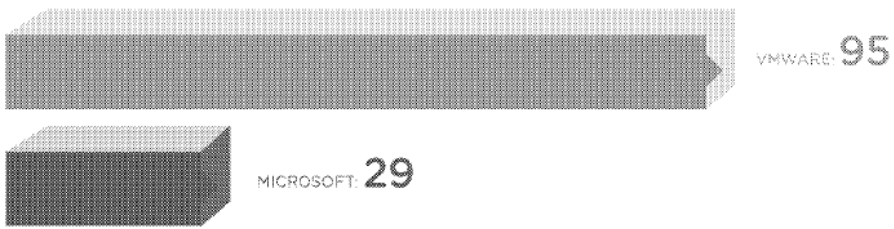


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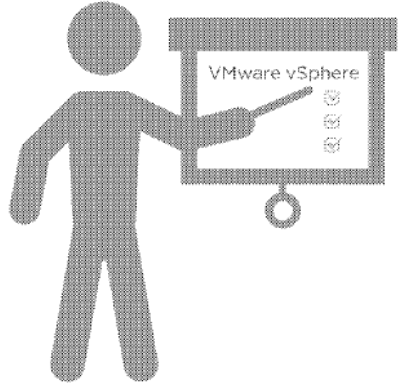
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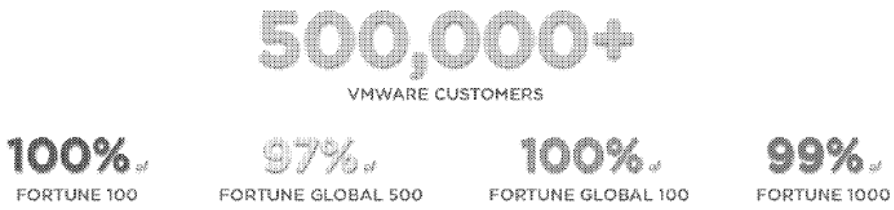
### ergomedia

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<sup>1</sup> InfoWorld - <http://www.infoworld.com/2012/05/24/0524infoworld2012technologyofthecyberweek-winner-1053246342>

<sup>2</sup> Gartner MO for Server Virtualization - <http://virtualization.info/q/news/2013/02/gartner-releases-its-2013-magic-quadrant-for-x86-server-virtualization-infrastructure.html>

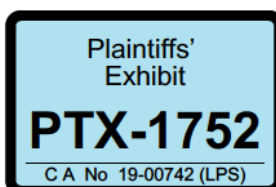
<sup>3</sup> IDC - IT Buyer Market Guide: cloud and virtualization System Software August 2013

MORE THAN HALF A MILLION CUSTOMERS WORLDWIDE CHOOSE VMWARE

LEARN MORE AT [www.vmware.com/getthefacts](http://www.vmware.com/getthefacts)



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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -

CIRBA, INC. (d/b/a DENSIFY) and  
CIRBA IP, INC., : CIVIL ACTION  
 :  
 Plaintiffs, :  
 v :  
 :  
 VMWARE, INC., :  
 : NO. 19-742-LPS  
 Defendant. :  
 - - -

Wilmington, Delaware  
Friday, May 15, 2020  
*Teleconference Oral Argument*

- - -

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES: - - -

MORRIS JAMES, LLP  
BY: KENNETH L. DORSNEY, ESQ.

and

REICHMAN JORGENSEN, LLP  
BY: COURTLAND L. REICHMAN, ESQ.  
(New York, New York)

and

REICHMAN JORGENSEN, LLP  
BY: CHRISTINE LEHMAN, ESQ.  
(Washington, District of Columbia)

and

Brian P. Gaffigan  
Official Court Reporter

1 post-trial ruling before we see how this all shapes up.  
2 But consolidation would just mean a single second date. If  
3 it is consolidated for trial, it would just mean a single  
4 second date for which finality for the whole case would be  
5 achieved.

6 THE COURT: Okay. Thank you.

7 Mr. Reichman, anything else on that motion?

8 MR. REICHMAN: Ms. Lehman was going to present  
9 on the substance.

10 And, Ms. Lehman, is there anything else you want  
11 to add on the substance of whether we should consolidate  
12 independent of this 54(b) issue?

13 MS. LEHMAN: No. I think our position is set  
14 forth in our briefing, Your Honor. Obviously given the  
15 passage of time, should you grant the motion to consolidate,  
16 the parties would have to further meet and confer on a  
17 schedule, but I don't think we need to take up more time  
18 today, unless you have any questions.

19 THE COURT: No, thank you.

20 A couple other issues that I do want to reach.

21 First is the motion to dismiss for lack of  
22 standing. That comes up in the defendant's post-trial  
23 motion, but I guess I wanted to first understand better the  
24 plaintiffs' view on this.

25 Do you deny that the assignment agreement allows



1 Cirba IP to grant licenses to others?

2 MR. REICHMAN: Well, the assignment agreement  
3 was all right, title, and interest. And it's the license  
4 agreement that has that limitation.

5 THE COURT: I may have misstated which  
6 agreement. The question should be, can Cirba IP grant  
7 licenses to others?

8 MR. REICHMAN: Right. No. The license  
9 agreement -- so what happened is, just to pause for a  
10 moment, is all right, title, and interest into the patent  
11 was transferred from Cirba, Inc. to Cirba IP, and then Cirba  
12 IP granted back an exclusive license to Cirba, Inc., and  
13 that license back was exclusive.

14 So, no, it does not have the right to grant  
15 other license.

16 THE COURT: When you say "it," who can grant  
17 further licenses?

18 MR. REICHMAN: Cirba, Inc. The party receiving  
19 the license has the right to sublicense the use of the  
20 products to its customers. And that is what it is defined  
21 as the commercial endeavor. That is when it sells its  
22 product because its customers are obviously using the IP  
23 when they use the product.

24 THE COURT: Who can grant licenses to the  
25 patent?

1 MR. REICHMAN: Cirba IP cannot, the licensor,  
2 only the licensee; and the licensee only to the extent of  
3 licensing customers in connection with its sales of  
4 software.

5 THE COURT: Cirba IP cannot grant licenses under  
6 the agreement; is that right?

7 MR. REICHMAN: Other than to -- under the  
8 license agreement, other than to Cirba, Inc. That's right.

9 THE COURT: And where do I find the prohibition  
10 on Cirba IP being able to grant additional licenses?

11 MR. REICHMAN: In the paragraph 2 of the license  
12 agreement. The license agreement is PTX-1249. And that is  
13 where it says it's an exclusive license, worldwide.

14 THE COURT: It may say it's an exclusive  
15 license, but does it also prohibit Cirba IP from granting an  
16 additional license?

17 MR. REICHMAN: Our point of view is that is what  
18 exclusive means, Your Honor.

19 THE COURT: Do you concede that there is nowhere  
20 in the governing agreement that prohibits Cirba IP from  
21 granting additional licenses?

22 MR. REICHMAN: I don't concede it, and I don't  
23 mean to be contrary because of that exclusive. Outside of  
24 that exclusive, we think there is no express provision that  
25 says what you just said. Our position is that by granting

1 an exclusive right, it means exclusive, and only Cirba gets  
2 that license.

3 THE COURT: If I were to conclude that it's not  
4 an exclusive license in the sense that Cirba IP could still  
5 grant other licenses, does it follow from that that Cirba,  
6 Inc. should be dismissed?

7 MR. REICHMAN: I don't think so. I think Cirba  
8 IP can still be in the case with permissive joinder as a  
9 co-plaintiff. I think that Cirba IP needs to be in the  
10 case, but I think it is still our position is that it is  
11 still okay for Cirba to be in the case, Your Honor.

12 THE COURT: And when you say "Cirba," the  
13 question was about Cirba, Inc. So --

14 MR. REICHMAN: Yes.

15 THE COURT: -- Cirba, Inc. --

16 MR. REICHMAN: That's what I mean, right.

17 THE COURT: Right. Cirba, Inc. could still be  
18 in the case even if I read the agreement contrary to how  
19 your argument.

20 MR. REICHMAN: Yes, Your Honor.

21 THE COURT: And what if I disagree with that and  
22 I dismiss Cirba, Inc. for lack of standing? There is an  
23 argument that that should lead to a new trial. I take it  
24 you disagree. Help me understand why, if I reach those  
25 conclusions, I still wouldn't grant a new trial.

1 MR. REICHMAN: Because I think that the plain  
2 facts have to be presented. That it didn't matter. It's  
3 not a lost profits case. I would agree if we're talking  
4 about lost profits, but what we're talking about is a  
5 reasonable royalty in the case, and the reasonable royalty  
6 would take into account, and the willfulness and all the  
7 different things that we discussed, it would take into  
8 account all the same facts, and so nothing would change.

9 And the jury wasn't distinguishing, nor were  
10 they asked to distinguish, between Cirba IP and Cirba, Inc.,  
11 and so nothing would need to change.

12 THE COURT: Okay. Thank you. Let me give  
13 defendants a chance. It is their motion.

14 Respond to what you heard, please.

15 MR. HUNG: Your Honor, yes, this is Richard  
16 Hung.

17 If you take a look at the license agreement, the  
18 provisions to focus on are provisions 2, 5, and 7. What  
19 provision 2 does, the license, is it grants -- it purports  
20 to grant an exclusive license, but then it makes clear it is  
21 to use and continue in connection with commercial endeavor,  
22 which basically says you are entitled to use this license  
23 with respect to your own customers which effectively is a  
24 bare license.

25 When you look at paragraph 5 of the same

1 agreement, the agreement makes clear that the license  
2 granted is only for purposes of use. It's explicit on this  
3 in paragraph 5.

4 And then you jump to paragraph 8. In case  
5 there is any doubt, this confirms that Cirba IP, Cirba, Inc.  
6 acknowledges that Cirba IP retains all proprietary rights in  
7 the patent, including to license others, et cetera.

8 So reading of paragraph 2 as giving only to  
9 Cirba, Inc. the exclusive right to license to other parties  
10 doesn't make any sense. Clearly, Cirba IP has proprietary  
11 rights. And because the scope of the license is so narrowly  
12 defined in paragraph 2 as to use within the context of the  
13 commercial endeavor, which means to sell to your own  
14 customers, it is effectively a bare license.

15 With respect to the impact on the case, therein  
16 exactly lies the problem. Mr. Reichman just explained that  
17 for purposes of trial, they didn't distinguish as between  
18 Densify and Cirba, Inc. in presenting evidence. But Densify  
19 would not be able to make -- Cirba, Inc. Sorry. Cirba,  
20 Inc. would not be able to make the same argument with  
21 respect to the harm to it.

22 So there's lots of trial testimony about the  
23 harm that Cirba, Inc. allegedly suffered due to VMware's  
24 practice of the patent. And if Cirba IP is a licensing  
25 entity vis-à-vis Cirba, Inc., and Cirba, Inc. were not in

1 the case, then Cirba IP would be constrained with respect to  
2 making those same arguments; and that, of course, would be  
3 impact the damages case.

4 THE COURT: Give me just a general idea -- well,  
5 there isn't one specific example, Mr. Hung, of evidence that  
6 you think would not be admissible if I had granted your  
7 motion to dismiss and we only had the one plaintiff at the  
8 trial.

9 MR. HUNG: So I'll pick sort of an easy example,  
10 Your Honor. I know that there were documents about  
11 competition and/or documents with respect to allegedly  
12 wanting to destroy or alleged harm to Cirba, Inc.

13 Cirba IP is a licensing entity. It wouldn't  
14 have those same arguments because it would be a licensor.

15 Surely it would want to give a license, but its  
16 position as a non-practicing entity as a licensor would  
17 differ. So the sort of competitive-type documents would not  
18 come in. It certainly would be as relevant.

19 THE COURT: Okay. Thank you very much.

20 Mr. Reichman, do you want to respond?

21 MR. REICHMAN: Only if you have any questions,  
22 Your Honor.

23 I mean, I think that the same evidence would  
24 apply. They don't want their exclusive licensee. They're  
25 part of the same corporate family. They don't want them

1 hurt any more than any other company that has an IP wing  
2 like UPS or 3M, all these companies. They don't want the  
3 company with which they're associated from whom they receive  
4 royalties to be injured. So any harm to a sister company is  
5 harm to the licensor. So I think the same exact evidence  
6 would be presented.

7 THE COURT: Okay. One other thing I want to  
8 hear from both of you on with the agreements, there is, I  
9 think, a reference to Canada law and Canada choice of law  
10 provisions.

11 Does that have impact on the motion to dismiss  
12 analysis, Mr. Reichman?

13 MR. REICHMAN: Well, it does in the sense that  
14 Canada law applies that there is some special rule that  
15 needs to be applied; it would need to be under Ontario and  
16 federal law of Canada. But I think as it relates to this  
17 here, we think exclusive license under that law means what  
18 it says; that it is exclusive, Your Honor.

19 THE COURT: Okay. Thank you.

20 Mr. Hung?

21 MR. HUNG: Your Honor, I come out the same way  
22 with respect to, I think the plain reading of paragraph 2,  
23 5, and 7 make quite clear -- or 2, 5, and 8 make quite clear  
24 what needs to be granted and/or not granted to Cirba, Inc.

25 THE COURT: Okay. Thank you.

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I hope that everybody is keeping safe and healthy. I know we all regret we couldn't be together to do this in person; and I do look forward to the day when we are all back in the courtroom, whether it be on this case or some other.

Do enjoy the weekend; and thank you again for the helpful argument. Good-bye.

(Teleconference oral argument ends at 3:25 p.m.)

I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Brian P. Gaffigan  
Official Court Reporter  
U.S. District Court



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

Plaintiffs,

v.

VMWARE, INC.,

Defendant.

Civil Action No. 1:19-cv-00742-LPS

**PUBLIC REDACTED VERSION**

**DENSIFY'S SUPPLEMENTAL LETTER BRIEF  
AS TO VMWARE'S POST-TRIAL MOTIONS**

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**ATTORNEYS FOR PLAINTIFFS CIRBA,  
INC. (d/b/a DENSIFY) and CIRBA IP, INC.**

Dated: June 11, 2020

Dear Chief Judge Stark:

Densify respectfully submits this brief in response to the Memorandum Order of June 3, 2020 (D.I. 752, the “Order”) requesting additional letter briefs on two issues.

## **1. Impact Of Standing Ruling**

### **A. The Impact On Pending Motions**

The effect of the Court’s standing analysis turns in large measure on whether it involves mere statutory standing or goes to the constitutional jurisdiction of the Court (Article III standing). Recent Federal Circuit authority makes clear that “whether one qualifies as a patentee under 35 U.S.C. § 281 is a statutory prerequisite to the right to relief in a patent infringement action, but *does not implicate the district court’s subject matter jurisdiction.*” *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065, 2020 WL 2466231, at \*3 (Fed. Cir. May 13, 2020) (emphasis added). Just two days before oral argument on post-trial motions, *Schwendimann* clarified that the § 281 inquiry is not constitutional, based on the recent *Lone Star* decision, which held that “whether a party possesses all substantial rights in a patent does not implicate standing or subject-matter jurisdiction.” *Id.* (quoting *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225, 1226 (Fed. Cir. 2019)). In doing so, the Federal Circuit aligned itself with the Supreme Court’s decision in *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), and overruled its prior precedents treating the prerequisites of the Patent Act as jurisdictional. *See Schwendimann, supra*, at \*3.<sup>1</sup>

Accordingly, the question of whether Cirba Inc. (“Inc.”) satisfied the prerequisites of § 281 based on the details of its license with Cirba IP, Inc. (“IP”) is one of only “statutory standing,” which does not affect the Court’s jurisdiction. The Court has constitutional jurisdiction over Inc.’s patent claims, and Inc. should not be dismissed from the case.<sup>2</sup> As the Court found, VMware’s motion purported to invoke only constitutional standing, not statutory standing, and depended on this distinction to be timely. D.I. 752 at 3 n.1. There are several implications of this being only a statutory question.

#### **i. VMware Forfeited The § 281 Issue.**

First, and most obviously, VMware forfeited this statutory issue by bringing it up too late and not raising it at trial. In contrast to subject matter jurisdiction, which may be raised at any time, whether a plaintiff meets the statutory prerequisites for bringing an action under the Patent Act must be timely raised and preserved, and can be forfeited. *E.g., Gilda Indus., Inc. v. United States*, 446 F.3d 1271, 1280 (Fed. Cir. 2006). VMware did not raise an objection to Inc.’s standing in its

<sup>1</sup> Although Densify believes that the impact of *Schwendimann* is fairly included in the supplemental briefing the Court has ordered, out of an abundance of caution, Densify will file a motion for reconsideration in light of *Schwendimann*.

<sup>2</sup> While a separate question from § 281, there is, in fact, constitutional standing and subject matter jurisdiction here. There is a case or controversy under the Patent Act, thus the Court has statutory and constitutional authority to adjudicate the case. *Id.* at \*3. Further, “[i]t is settled that in a case involving joined, individual plaintiffs bringing a shared claim seeking a single remedy, Article III’s case-or-controversy requirement is satisfied if one plaintiff can establish injury and standing. *See, e.g., Rumsfeld v. Forum for Acad. & Institutional Rights, Inc. (FAIR)*, 547 U.S. 47, 52 n.2 (2006). In that event, it is immaterial that other plaintiffs might be unable to demonstrate their own standing.” *J.D. v. Azar*, 925 F.3d 1291, 1323 (D.C. Cir. 2019). It is routine, for example, for a court to allow permissive intervention without determining whether the intervenor satisfies Article III or to resolve a case involving multiple plaintiffs without ascertaining whether every plaintiff has Article III standing. Here, IP has Article III standing, so it is immaterial whether Inc. also has constitutional standing.

Answer, nor did it file a Rule 12(b)(6) motion, a Rule 12(c) motion, or a summary judgment motion (nor did it seek leave to do so). VMware listed standing in the Pretrial Order as an issue to be tried, D.I. 439, Ex. 3 at 1-2, but then it did not try the issue. There were no jury instructions on Inc.'s standing, and VMware requested none. VMware made no arguments to the jury as to Inc.'s standing and presented no evidence. It made no oral motion for judgment as a matter of law on this issue. TT 1153-55, 1544-45, 1638-43, 1687-88. Inc.'s statutory standing to sue under § 281 is no different from any other statutory element of a case – any objection must be timely raised or it is forfeited.<sup>3</sup>

### **ii. Cirba Inc. Owns And Controls Cirba IP, Inc., Conferring Standing.**

Even under prior law viewing § 281 as a constitutional question, Inc. need not be dismissed. Courts have recognized that a parent of a wholly-owned subsidiary that owns the patents can have sufficient standing to join a patent infringement action with its patent-owning subsidiary. *See Atmel Corp. v. Authentec, Inc.*, 490 F.Supp.2d 1052, 1055 (N.D.Cal. 2007) (finding implied exclusive license based on the parent's control over the subsidiary, where no other licenses had been granted, the parent alone practiced the patent, and the parent was responsible for its enforcement); *Cognex Corp. v. Microscan Sys., Inc.*, 2014 WL 2989975 at \*5-6 (S.D.N.Y. June 30, 2014); *Kalman v. Berlyn Corp.*, 914 F.2d 1473, (Fed. Cir. 1990), *clarified* 1991 WL 345039 (1991). *See also Franchise Tax Bd. Of Cal. v. Alcan Alum. Ltd.*, 493 U.S. 331, 336-37 (1990) (holding parent company had Article III standing to challenge taxes levied on its wholly-owned subsidiary).

Here, IP is the wholly owned subsidiary of Inc. D.I. 439 at 43. Inc. alone has practiced the patent, [REDACTED], testified that no other licenses had been or would be granted, and [REDACTED]. *See* TT at 1052:5-10 (Smith); D.I. 606 ¶¶ 1, 15, 17; D.I. 616 ¶¶ 1, 23. Given these facts, Inc. had standing to bring this action even if Inc.'s ability to bring a § 281 action were a matter of jurisdiction.

### **iii. Densify's Post-Trial Motions Are Unaffected.**

Densify's damages-related post-trial motions would be unaffected for the reasons discussed above. Also, ongoing royalties, enhanced damages, and interest would not be affected even if IP had been the only patent plaintiff at trial – nothing about those remedies is particular to Inc.

Densify's permanent injunction motion also is unaffected – even under pre-*Lone Star* law, courts allowed the parent of wholly-owned subsidiary that owns the patent to pursue equitable relief even if it lacked the exclusive license necessary to obtain legal relief. *See, e.g., Hologic, Inc. v. Minerva Surgical, Inc.*, 163 F.Supp.3d 118 (D.Del. 2016); *Steelcase, Inc. v. Smart Techs., Inc.*, 336 F. Supp. 2d 714, 718 (W.D. Mich. 2004). Here, like *Hologic*, IP is wholly owned by Inc., which [REDACTED] Inc. can, as a factual matter, enforce the exclusive rights it

<sup>3</sup> Because a § 281 statutory issue was not timely raised, there is no need for the Court to take any steps beyond noting that the objection was forfeited. However, if it had been raised (as it was in *Schwendimann*), the Court would have additional options to address any perceived deficiency under § 281, such as reforming the licensing agreement to reflect the parties' intent to have a fully exclusive license and the reality that the patents have never been licensed to any other entity. *See, e.g., Schwendimann*, at \*5-6 (affirming reformation of contract that previously did not confer sufficient rights under § 281).

<sup>4</sup> The Court need not reach equitable standing given there is subject matter jurisdiction. But if needed, Densify can supplement the permanent injunction record with evidence showing Inc.'s complete control over IP's business decisions, patent enforcement, and licensing policies.

intended to have under the license by virtue of its corporate relationship and shared management. Under these circumstances, Inc. has standing to pursue the motion for permanent injunction.

Densify's request for a permanent injunction would not be materially affected even if IP were the only patent plaintiff. IP's interests as a wholly-owned subsidiary are aligned with Inc., which exclusively sells products practicing the patents in competition with VMware. If Inc. suffers harm, so does IP. The Court can consider in equity that IP seeks to protect the competitive rights of Inc., which is responsible for bringing to market the products covered by the '687 patent.

### **B. The Impact Of The Ruling On Trial**

Even if IP had been the sole patent plaintiff, trial would not have been affected. As a threshold matter, Inc. still would have been a co-plaintiff at trial on its trademark claim.

Everything material about the patent case would have been the same, including the same witnesses and exhibits. *See Pipe Liners, Inc. v. Am. Pipe & Plastics, Inc.*, 893 F. Supp. 704, 706 (S.D. Tex. 1995) (noting the "presence or absence" of the corporate parent would not make a difference because the case involved "the same discovery, the same arguments, and the same trial witnesses"). Infringement and inducement are questions of VMware's products and conduct in relation to the claim limitations, unaffected by IP being the only patent plaintiff. The same is true of willfulness, which turns on VMware's conduct. Validity also has nothing to do with whether IP was the sole plaintiff. The jury considered reasonable royalties, not lost profits. The reasonable royalty analysis would have been the same under the *Georgia Pacific* factors, particularly given that the hypothetical negotiation in 2012 would have been with Inc., the entity that owned the patents at the time of the negotiation, and IP's interests are aligned with its [REDACTED]. Even the surrounding facts would be the same given the corporate relationship between IP and Inc., and IP surely would discuss the harm to Inc. Indeed, Inc. owned the patents until March 21, 2016.

This conclusion is bolstered by the fact that neither party placed any emphasis on the distinction between Inc. and IP at trial. VMware did not distinguish between the two in any meaningful way, consistently referring to the plaintiffs collectively as "Cirba." Plaintiffs referred to both entities as "Densify." No evidence at trial would have been rendered inadmissible if IP was the only patent plaintiff. Indeed, VMware cannot claim prejudice at this point, having not asserted this defense in its Answer or any pretrial motion and having not raised this issue with the Court until 11 days before trial, and even then it did not file a motion or request a pretrial ruling. (D.I. 752 at 10-11 n.4). Any prejudice was of VMware's own making.

Furthermore, as a matter of law, the verdict should stand because the jury found that VMware willfully infringed valid patents and that IP (as well as Inc.) is entitled to a reasonable royalty in the amounts awarded. As stated on the verdict form, the jury found "Densify" (which referred to both Inc. and IP) proved VMware infringed both patents (D.I. 550, Qs 1, 4), that VMware induced infringement of the '687 patent (Q 2), that VMware's infringement was willful (Qs 3, 6), and the amount of a reasonable royalty (Qs 11, 12). The jury also found VMware failed to prove that the '687 patent was invalid. Because the facts at issue in the new trial would be identical to those that have already been decided, the jury's verdict is law of the case, and there is no reason to hold a new trial. *Herber v. Johns-Mansville Corp.*, 785 F.2d 79, 90 (3d Cir. 1986) (jury's findings "are now law of case and must be accepted as true"); *Passaic Valley Sewage Com'rs v. Holbrook, Cabot & Rollins Corp.*, 6 F.2d 721, 723 (3d Cir. 1925) ("The case was submitted and a verdict rendered. Therefore we must accept the verdict of the jury as having established certain facts.").

## **2. Evidence Supporting The "Virtualized Environment" Limitation Of Claim 7**

The Court ordered additional briefing focused on the question of whether there was sufficient

**IN THE UNITED STATES DISTRICT COURT  
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Civil Action No. 1:19-cv-00742-LPS

[REDACTED]

PUBLIC REDACTED VERSION

[REDACTED]

**DENSIFY’S MOTION FOR REARGUMENT AND RECONSIDERATION  
OF THE JUNE 3, 2020 ORDER**

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Cirba Inc. (“Inc.”) and Cirba IP, Inc. (“IP”) (collectively, “Densify”) submit this Motion for Reargument and Reconsideration of the Court’s June 3, 2020 Order (D.I. 752) regarding subject matter jurisdiction. In light of recent Federal Circuit authority, Densify respectfully requests that the Court reconsider and withdraw the June 3 Order, and deny VMware, Inc.’s (“VMware’s”) Rule 12(b)(1) motion for lack of subject matter jurisdiction (D.I. 602 at 25) (“Standing Motion”).

### **NATURE AND STAGE OF PROCEEDINGS**

A jury trial was held in January 2020, and the jury returned a verdict for Densify on its patent infringement claims. (D.I. 549; D.I. 550.) On March 9, 2020, VMware filed a five-sentence motion to dismiss Inc. for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure. (D.I. 602 at 25.) This post-trial Standing Motion was the first time VMware moved to dismiss for lack of subject matter jurisdiction or constitutional standing. Densify opposed the Standing Motion. (D.I. 672 at 24-25.) On May 15, 2020, the Court held a telephone conference on the Standing Motion and the parties’ many other disputes.

On June 3, 2020, the Court granted VMware’s Standing Motion based on an analysis of whether the license agreement between IP and Inc. conferred constitutional standing under 35 U.S.C. § 281, and ordered Inc. dismissed. (D.I. 752.) The Court made clear that VMware’s Standing Motion “relates only to constitutional standing.” *Id.* at 3 n.1. The Court further directed the parties to submit supplemental briefing as to what relief, if any, should be afforded VMware given Inc.’s dismissal. *Id.* at 11-12.<sup>1</sup>

On June 11, 2020, Densify submitted its first supplemental brief in accordance with the Court’s Order. (D.I. 755.) Densify identified recent Federal Circuit law clarifying that the

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<sup>1</sup> The Court also ordered briefing on whether the evidence demonstrated a particular “virtualized environment.” (D.I. 752 at 11-12.)

requirements for suit under § 281 do not implicate the subject matter jurisdiction of the Court or constitutional standing. *Id.* at 1. Densify noted that it intended to file a motion for reargument and reconsideration on this basis. *Id.* at 1 n.1. Densify’s arguments here mirror those in its initial supplemental brief (D.I. 755) and are submitted again to ensure that the Court has the option of reconsidering its June 3 Order.

### **SUMMARY OF ARGUMENT**

Just two days before the May 15, 2020 telephone conference on the parties’ post-trial motions, the Federal Circuit published *Schwendimann v. Arkwright Advanced Coating, Inc.*, 959 F.3d 1065 (2020). In *Schwendimann*, the court made clear that “whether one qualifies as a patentee under 35 U.S.C. § 281 is a statutory prerequisite to the right to relief in a patent infringement action, *but does not implicate the district court’s subject matter jurisdiction.*” *Id.* at 1071 (italics added). Because VMware’s Rule 12(b)(1) Standing Motion was premised only on subject matter jurisdiction (as the Court found), *Schwendimann* is dispositive and controlling. The Court in fact had subject matter jurisdiction over Inc.’s patent claims. Accordingly, Densify respectfully requests that the Court withdraw its June 3 Order (D.I. 752), and deny VMware’s Rule 12(b)(1) Standing Motion.

### **STATEMENT OF FACTS**

There are two patents at issue in this suit: the ’687 patent and the ’367 patent. The ’687 patent was assigned to Inc. (PTX-1001 at 1 (listing “CiRBA Inc.” as assignee).) The ’367 patent was assigned to IP. (PTX-1002 at 1 (listing “Cirba IP Inc.” as assignee).) On March 21, 2016, long after many events underlying this lawsuit, Inc. transferred its rights to the ’687 patent (and many others) to IP. (D.I. 603, Ex. 2; *see also* Decl. of Ariel C. Green (“Green Decl.”), Ex. A at 59:18-20 (Nov. 2019 Dep. of Scott Browne, CFO of Inc. and IP).) In exchange, on the very same day, IP granted Inc. “an exclusive, transferable, worldwide license” to develop, maintain, use, and

sell products that practice IP's patents (including the '687 and '367 patents) in exchange for royalty payments and other services. (PTX-1249, § 2 ("License Agreement"); Green Decl., Ex. A at 111:13-20 [REDACTED]  
[REDACTED]  
[REDACTED] Browne Dep. Tr.); *see also* Green Decl., Ex. A at 59:18-59:25, 60:8-61:7, 62:1-16, 63:17-64:2, 65:14-66:14, 68:13-70:15, 84:13-21, 88:2-89:22, 93:12-97:16, 102:5-103:7, 111:13-25, 122:21-123:4, 126:15-127:8, 147:4-15, 148:5-10, 149:14-151:14, 155:20-157:6, 200:11-201:2, 303:25-304:10.) Densify included both the transfer agreement between Inc. and IP and the License Agreement in its *first* production on June 25, 2019, which was before VMware answered or filed a motion to dismiss the First Amended Complaint. (*See* Green Decl. ¶ 5; D.I. 79 (Jul. 2, 2019 Motion to Dismiss on § 101 grounds); D.I. 150 (Aug. 20, 2019 Answer).) These agreements are the only evidence on which VMware relied in its post-trial Standing Motion. (D.I. 602 at 25 (five-sentence opening); D.I. 685 at 12 (four-sentence reply).)<sup>2</sup>

IP is the wholly owned subsidiary of Inc. (D.I. 439 at 43 ¶ 3; *see also* Green Decl., Ex. A at 65:14-19, 151:4-14.) [REDACTED] (Green Decl., Ex. A at 112:23-25, 200:11-16.) Inc.

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<sup>2</sup> In its supplemental briefing, VMware blames its delay in raising any standing issue on Mr. Browne's November 2019 deposition. (*See* D.I. 754 at 3-4.) As explained in the following section, VMware no longer has a constitutional standing argument after *Schwendimann*. But even if VMware had raised a *statutory* standing argument, it cannot blame Mr. Browne's testimony for raising the issue *after* trial.

VMware did not rely on testimony by Mr. Browne in its Standing Motion. (*See* D.I. 602 at 25; D.I. 685 at 12.) Thus, VMware cannot blame its failure to comply with Rule 12(g)(2) on Mr. Browne's deposition. Moreover, VMware's selected question and answer (D.I. 754 at 4) mischaracterizes Mr. Browne's complete testimony on the issue of what rights were conferred through the License Agreement. Mr. Browne repeatedly testified [REDACTED] (*See, e.g.*, Green Decl., Ex. A at 111:13-20.) In short, Mr. Browne's deposition is hardly an excuse for VMware's long delay.

alone has (lawfully) practiced the patents-at-issue. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and has

always acted as the sole and exclusive licensee [REDACTED] (Trial

Tr. 1052:5-10 (Gerry Smith, CEO of Inc. and IP, testifying); D.I. 606 ¶¶ 1, 15, 17 (Smith Decl.);

D.I. 607 ¶¶ 1, 3 (Decl. of Andrew Hillier, CTO of Inc. ); D.I. 616 ¶¶ 1, 23 (Decl. of Riyaz Somani,

President of Inc. and Officer of IP); Green Decl., Ex. A at 10:12-18, 22:13-23:1, 84:13-21, 88:25-

89:2, 111:13-112:25, 156:22-157:6, 303:25-304:6 (Dep. of Scott Browne, CFO of Inc. and IP).)

**ARGUMENT**

**I. THE § 281 ANALYSIS DOES NOT IMPLICATE THE COURT’S SUBJECT MATTER JURISDICTION.**

“A patentee shall have remedy by civil action for infringement of his patent.” 35 U.S.C. § 281. In *Schwendimann*, the Federal Circuit held that “whether one qualifies as a patentee under 35 U.S.C. § 281 is a *statutory* prerequisite to the right to relief in a patent infringement action, but *does not implicate the district court’s subject matter jurisdiction.*” 959 F.3d at 1071 (emphasis added). Thus, “[a]s long as a plaintiff alleges facts that support an arguable case or controversy under the Patent Act, the court has both the statutory and constitutional authority to adjudicate the matter.” *Id.*

*Schwendimann*’s conclusion that § 281’s statutory requirements do not implicate the subject matter jurisdiction of the Court flows from the Supreme Court’s decision in *Lexmark International Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). There, the Court held that the question of whether a plaintiff falls within the zone of interests prescribed by an act of Congress concerns “statutory standing,” which “does not implicate subject-matter jurisdiction, *i.e.*,

the court’s statutory or constitutional *power* to adjudicate the case.” 572 U.S. at 128 n.4. *Lexmark* concerned whether the plaintiff “fell within the class of plaintiffs whom Congress has authorized to sue under [15 U.S.C.] § 1125(a).” *Id.* at 128. Thus, although *Lexmark* set forth the principle adopted in *Schwendimann*, it did not expressly address the issue of whether 35 U.S.C. § 281’s requirements were jurisdictional or merely “statutory.” *See id.*

The Federal Circuit in *Lone Star Silicon Innovations LLC v. Nanya Tech. Corp.*, 925 F.3d 1225 (Fed. Cir. 2019), applied *Lexmark* to an aspect of jurisdiction under the Patent Act. There, the plaintiff contended “all substantial rights” had been transferred from the patentee to the plaintiff, thus obviating the need to join the patentee under existing Federal Circuit precedent. *See id.* at 1228-29. After concluding the plaintiff lacked all substantial rights, the district court did not permit joinder of the patentee under Rule 19 and dismissed the case for lack of subject matter jurisdiction. *See id.* at 1229, 1236 n.6. The Federal Circuit reversed and remanded, expressly overruling its prior cases that held the “all substantial rights” question under § 281 was constitutional. *Lone Star* stated, “*Lexmark* is irreconcilable with our earlier authority treating § 281 as a jurisdictional requirement.” *Id.* at 1235. Because the plaintiff alleged “that it possess[ed] the sort of exclusionary rights that confer Article III standing” and the agreement between the plaintiff and patentee “suggest[ed] as much,” *id.* at 1234, the Federal Circuit concluded the allegations “satisf[ied] Article III,” *id.* at 1236, and the district court should have considered the plaintiff’s request to join the patentee even though the requirements of § 281 had not been satisfied at the outset, *id.* at 1238-39.

Given the facts underlying *Lone Star*’s holding, whether a plaintiff who lacked exclusionary rights under § 281 at the time of filing nonetheless possessed Article III standing remained unclear. *See, e.g., Unicorn Global, Inc. v. Hillo Am., Inc.*, No. CV19-03028, 2020 WL

2062256, at \*4 (C.D. Cal. Apr. 29, 2020) (continuing to consider exclusive rights under § 281 as a constitutional question after *Lone Star* but before *Schwendimann*). *Schwendimann*, published two days before this Court’s telephone conference on May 15, 2020, definitively answered that question.

In *Schwendimann*, the plaintiff *thought* she had been assigned the rights to a patent at the time of suit but, in fact, had not. *See* 959 F.3d at 1068-70. Only after the defendant filed a motion to dismiss for lack of standing did the plaintiff take corrective action to fix the failed assignment. *Id.* at 1070. Thus, at the time of filing, the plaintiff had *no* legal rights — exclusionary or otherwise — to the patent under § 281. *Id.* The Federal Circuit held that the court nonetheless had Article III jurisdiction over the plaintiff’s claims under the Patent Act. *Id.* at 1075. Thus, because the plaintiff alleged “that she is the owner by assignment of the ’845 patent and Appellants infringed that patent—there is no ‘standing’ issue to be decided in this appeal.” *Id.* at 1071. The Court declared: “[W]hether one qualifies as a patentee under 35 U.S.C. § 281 is a statutory prerequisite to the right to relief in a patent infringement action, but does not implicate the district court’s subject matter jurisdiction.” *Id.* at 1071.

In this case, VMware’s Standing Motion related only to constitutional standing under § 281. (D.I. 752 at 3 n.1 (finding that VMware’s Standing Motion “relates only to constitutional standing”); *see also* D.I. 602 at 25 (VMware’s post-trial brief, stating that its motion was brought under Rule 12(b)(1) (subject matter jurisdiction) and raised constitutional standing).) Indeed, VMware relied (and still relies) on subject matter jurisdiction, which may be raised at any time, for its Standing Motion to be timely. (D.I. 754 at 4 (relying on the fact that constitutional standing

may be raised at “any time” and is “not waivable”).) VMware did not file a motion relating to statutory standing under § 281 before or during trial.<sup>3</sup>

Given *Schwendimann*, it is now clear that VMware’s § 281 argument does not implicate the Court’s subject matter jurisdiction. Accordingly, Densify respectfully requests that the Court withdraw the June 3 Order and deny VMware’s Rule 12(b)(1) Standing Motion.

## **II. THE COURT HAS SUBJECT MATTER JURISDICTION OVER INC.’S CLAIMS.**

There is constitutional standing and subject matter jurisdiction here. Inc. asserted claims for patent infringement under the Patent Act, 35 U.S.C. § 1 *et seq.* (as well as trademark claims under the Lanham Act, 15 U.S.C. § 1051 *et seq.*), alleging it possessed exclusive patent rights under its license with Inc. (D.I. 68 at ¶¶ 9-10 (First Amended Complaint).) This was sufficient to confer subject matter jurisdiction over its patent claims. *See Schwendimann*, 959 F.3d at 1071. The allegation of injury arising under federal law is enough to invoke the subject matter jurisdiction of the federal courts. *See* 28 U.S.C. §§ 1331, 1338. And Inc. had constitutional standing because the concrete and particularized injuries alleged by Inc. were traceable to the patent infringement that Inc. alleged and remain redressable by the Court. *See Lexmark*, 572 U.S. at 125 (“The plaintiff must have suffered or be imminently threatened with a concrete and particularized ‘injury in fact’ that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision.”) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). In any event, Inc. could have been joined in this action because there

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<sup>3</sup> Because VMware did not move for judgment as a matter of law (“JMOL”) on statutory standing under § 281, those unraised arguments are not addressed here. As Densify outlined in its supplemental briefing, VMware forfeited any such objection by not filing a motion pretrial, not raising the issue at trial, not asking for a jury instruction on § 281, and not making an oral JMOL motion at trial. (D.I. 755 at 1-2.) Had VMware made such a motion, the Court would have had a number of additional options in resolving the motion in Inc.’s favor because it was not jurisdictional. (*See* D.I. 755 at 1-2 & 2 n.3.)

is unquestionably subject matter jurisdiction over IP's patent claims. Courts routinely allow permissive intervention without determining whether an intervenor satisfies Article III and resolve cases involving multiple plaintiffs without analyzing whether each of them has Article III standing. *See J.D. v. Azar*, 925 F.3d 1291, 1323 (D.C. Cir. 2019); *see also id.* ("It is settled that in a case involving joined, individual plaintiffs bringing a shared claim seeking a single remedy, Article III's case-or-controversy requirement is satisfied if one plaintiff can establish injury and standing.")

While unnecessary to reach in light of *Schwendimann*, even under pre-*Schwendimann* law, courts have recognized standing to seek both legal and equitable remedies where a licensee has complete control over the patentee and has enjoyed benefits analogous to an exclusive license. *See Atmel Corp. v. Authentec, Inc.*, 490 F. Supp. 2d 1052, 1055 (N.D. Cal. 2007); *see also, e.g., Kalman v. Beryln Corp.*, 914 F.2d 1473, 1480-82 (Fed. Cir. 1990), *clarified*, Nos. 89-1371, 89-1378, 1991 WL 345049 (1991); *Cognex Corp. v. Microscan Sys., Inc.*, No. 13-cv-2027, 2014 WL 2989975, at \*5-6 (S.D.N.Y. June 30, 2014); *Mi-Jack Prods., Inc. v. Taylor Grp., Inc.*, No. 96 C 7850, 1997 WL 441796, at \*7-8 (N.D. Ill. Jul. 30, 1997). Here, Inc. owns all of IP [REDACTED]

[REDACTED] and has always acted as the sole and exclusive licensee [REDACTED]. Therefore, Inc. suffered numerous concrete and particularized injuries from VMware's infringement. (*See, e.g.*, D.I. 68 (First Amended Complaint); D.I. 605 at 1-13 (Densify's opening post-trial brief); D.I. 679 at 1-7, 10-12 (Densify's reply post-trial brief).) And regardless of a party's statutory standing to bring damages claims, the Court has *equitable* jurisdiction to resolve Inc.'s injunctive claims, as discussed in



Densify’s supplemental brief (D.I. 755 at 2-3), for the same reasons that it may seek legal remedies regardless of the Court’s interpretation of the License Agreement. *See, e.g., Hologic, Inc. v. Minerva Surgical, Inc.*, 163 F. Supp. 3d 118, 122 (D. Del. 2016); *Steelcase, Inc. v. Smart Techs., Inc.*, 336 F. Supp. 2d 714, 718 (W.D. Mich. 2004); *see also Franchise Tax Bd. Of Cal. v. Alcan Alum. Ltd.*, 493 U.S. 331, 336-37 (1990).

**CONCLUSION**

Because the Court has subject matter jurisdiction over Inc.’s patent claims, Densify respectfully requests that the Court withdraw the June 3, 2020 Order (D.I. 752), and deny VMware’s Rule 12(b)(1) Standing Motion.

Dated: June 17, 2020

Respectfully submitted,

/s/ Kenneth L. Dorsney

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U.S. District Court

District of Delaware

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**Case Name:** Cirba Inc. et al v. VMware, Inc.

**Case Number:** [1:19-cv-00742-LPS](#)

**Filer:**

**Document Number:** 991(No document attached)

**Docket Text:**

**ORAL ORDER: For the reasons stated at the conclusion of today's teleconference, IT IS HEREBY ORDERED that (i) Plaintiffs' motion for certification under 28 U.S.C § 1292(b) (D.I. 960) is DENIED, and (ii) Plaintiffs' motion for leave to file an amended or supplemental answer and counterclaims (D.I. 976) is GRANTED. IT IS FURTHER ORDERED that, by no later than May 7, the parties shall submit proposed revisions to the current case schedule. ORDERED by Judge Leonard P. Stark on 5/3/21. (ntl)**

**1:19-cv-00742-LPS Notice has been electronically mailed to:**

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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -

CIRBA, INC. (d/b/a DENSIFY) and  
CIRBA IP, INC., : CIVIL ACTION  
 :  
Plaintiffs, :  
 :  
v :  
 :  
VMWARE, INC., :  
 : NO. 19-742-LPS  
Defendant. :

- - -

Wilmington, Delaware  
Monday, May 3, 2021  
*Argument by Telephone Conference*

- - -

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES:

- - -

MORRIS JAMES, LLP  
BY: CORTLAN S. HITCH, ESQ.

and

REICHMAN JORGENSEN LEHMAN & FELDBERG, LLP  
BY: COURTLAND L. REICHMAN, ESQ., and  
KHUE V. HOANG, ESQ.  
(New York, New York)

and

KIRKLAND & ELLIS, LLP  
BY: PAUL D. CLEMENT, ESQ.  
(Washington, District of Columbia)

Counsel for Cirba, Inc. (d/b/a  
Densify) and Cirba IP, Inc.

Brian P. Gaffigan  
Official Court Reporter

1 be all the normal ways that you could prove injury in fact  
2 in any nonpatent case, including competitive injury,  
3 including injury to your subsidiary, and all of those are  
4 sufficient for Article III injury in fact.

5 And I guess I would go even further. I think Your  
6 Honor's own opinion about why Inc.'s participation in the  
7 trial was prejudicial actually demonstrates that Inc. suffered  
8 injury in fact. I guess one of the things that I think you  
9 pointed out was that Inc. has sort of suffered a distinct kind  
10 of harm in the marketplace and I think you suggested that Inc.  
11 may actually be kind of better situated to do show irreparable  
12 harm for versus purposes of an injunction vis-à-vis IP, but  
13 all of that kind of demonstrates that the problem here is not  
14 that Inc. didn't suffer the kind of real world injury in fact  
15 that we think is all that matters for constitutional purposes  
16 after *Lexmark* and after *Lone Star* and *Schwendimann* and the  
17 rest.

18 THE COURT: All right. A couple other  
19 questions.

20 In terms of when VMware raised the standing  
21 issue, do you agree that they did it within three weeks of  
22 obtaining the necessary discovery?

23 MR. CLEMENT: I don't think we agree with that.  
24 I think we would quibble with that.

25 I think we would say that, you know, had access

1 MR. CLEMENT: That would be clear really from  
2 everything the other side said. Because they made this  
3 argument in terms of jurisdictional argument, and like to  
4 this date, Your Honor, they haven't made a (b)(6) motion.  
5 They've never made this argument as a statutory argument.  
6 And they told us before trial, when they first raised this,  
7 that it was a constitutional standing issue.

8 If you look at the pretrial order, when they  
9 talked about jurisdiction, they listed standing. They've  
10 raised the standing issue in the context of that. And  
11 then when they talked about this issue, they talked about  
12 it as constitutional standing. If you look even at their  
13 post-trial motions, their post-trial motions do not cite  
14 Rule 12(b)(6), they cite Rule 12(b)(1).

15 And I think that is important from the  
16 perspective of our client because from the perspective of  
17 our client, if what they're raising is an Article III issue,  
18 which is all they ever raised, then there is no reason to  
19 do it sooner rather than later because a 12(b)(1) motion can  
20 be filed at any time.

21 And the other thing that I think is critical is  
22 if it's a standing issue, there is nothing we can do to fix  
23 it, whereas if it's a statutory issue, it's certainly our  
24 position that it wouldn't be too late to fix it. Because  
25 the only reason people think of like a license as being

1 to the license earlier. I think that three weeks is, if  
2 I'm remembering it right, is key to certain deposition  
3 testimony. And I think that we would say that they actually  
4 would have been on notice to a raise their argument earlier.

5 But to be clear, Your Honor, I think we would  
6 say even more emphatically that that doesn't really matter  
7 because if this is a statutory issue, then under Rule,  
8 12(h)(2), it doesn't matter that they sort of flagged the  
9 issue before trial. Under 12(h)(2), if it's a statutory  
10 issue, they needed to make the objection at trial. They  
11 needed to include it in the Rule 50 motions because it would  
12 not be a (b)(1) motion, it would be a (b)(6). And the only  
13 way you can preserve that at trial is by complying with the  
14 Rule 50 process, and they did none of that.

15 THE COURT: Right. Even if, as here, your  
16 client asks me to defer the issue until post-trial, and I  
17 agreed to do so at your client's request?

18 MR. CLEMENT: Well, Your Honor, it's critical,  
19 though, to understand what issue we agreed to have deferred  
20 until after trial. The issue we agreed to have deferred  
21 until after trial was the Article III issue, not the  
22 statutory issue.

23 THE COURT: Where would that be clear?

24 MR. CLEMENT: That is clear.

25 THE COURT: Okay. Right.

1 something you can't reform in the middle of trial is because  
2 it's jurisdictional and you need to have standing at the outset.

3 So if the issue that they had teed up was  
4 statutory, which they didn't, I don't think my clients would  
5 have said we're fine briefing this afterwards. I mean --

6 THE COURT: When did your, when did your client  
7 first make clear that they thought this was a statutory and  
8 not a constitutional issue?

9 MR. CLEMENT: I don't think we, I don't think we  
10 made that point clear to the Court until the post-trial  
11 motions. But I don't think it was too late by any stretch.  
12 I mean, you can quibble about whether we were too late in  
13 raising *Schwendimann* with respect to Your Honor's initial  
14 motion to consider standing, but it certainly -- whether  
15 this issue is constitutional or statutory is very relevant  
16 to the determination as to whether it is necessary to have  
17 a new trial, and whether it is appropriate to have a new  
18 trial. We certainly raised it by that point. And I would  
19 submit to Your Honor that that's sufficient.

20 And indeed, given that this sort of goes to  
21 whether this issue is sort of jurisdictional, I don't really  
22 think it's something that either side can really waive.

23 THE COURT: All right. And then on 54(b), I  
24 can't figure out whether you are moving alternatively under  
25 54(b). It's just dealt with in a couple of footnotes. And

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1 opened, just begun, and we don't think that really there is  
 2 any factor that would weigh against granting Densify's motion  
 3 in this respect on Rule 15.  
 4 Unless Your Honor has any more questions for me?  
 5 THE COURT: I do not. Thank you.  
 6 Thank you all. I'm going to give you my  
 7 decision on the two motions that were argued, but I want to  
 8 preface by reiterating the "thank you." The briefing was  
 9 good on both motions, the argument of course very helpful,  
 10 and you have answered all of my questions. And I have, of  
 11 course, carefully reviewed everything in advance.  
 12 I'll tell you the decisions, and then I'm going  
 13 to take a little bit of time to.  
 14 Explain why.  
 15 There is two motions from the plaintiff. I'm  
 16 going to just for the most part refer to the plaintiffs as  
 17 "Densify."  
 18 Densify's motion to certify the interlocutory  
 19 appeal, that motion is denied.  
 20 Densify's motion to amend or supplement, that  
 21 motion is granted.  
 22 Let me talk first and principally about the  
 23 motion to certify an interlocutory appeal.  
 24 In my view, at least several of the requirements  
 25 of Section 1292(b) are not satisfied. And I say that and

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1 reach that conclusion because, largely it's because I  
 2 agree with VMware, the defendant's framing of the issue.  
 3 Basically, I agree with the defendant that before the  
 4 Federal Circuit could even get to the question that Densify  
 5 wants me to certify for an interlocutory appeal, it would  
 6 have to make several other rulings which I don't think it  
 7 would make, and therefore I think that makes this case not  
 8 a very good vehicle in the end for the rare relief of an  
 9 interlocutory appeal.  
 10 Let me try to be more concrete. And in talking  
 11 about the question that Densify wants me to certify, I'm  
 12 referring to the question as articulated in the briefing.  
 13 We heard another articulation of the question today. I  
 14 don't think the analysis would come out any differently for  
 15 that question, but I am focused, of course, on the question  
 16 as articulated in the briefing.  
 17 First, I am willing to say I agree with Densify  
 18 that that question is a controlling question of law as it  
 19 would directly determine whether Inc., by which I mean Cirba  
 20 Inc., one of the two plaintiffs, would directly determine  
 21 whether Inc. is a proper party to litigate infringement of  
 22 the '367 and '687 patents.  
 23 And I also agree that in light of recent Federal  
 24 Circuit decisions, principally *Lone Star* and *Schwendimann*,  
 25 there is substantial ground for difference of opinion as to

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1 whether having exclusionary rights is a prerequisite to  
 2 constitutional standing in a patent case.  
 3 So there is a world in which you could say that  
 4 Densify has met its burden on the first two of the three  
 5 requirements for 1292(b), but I don't know if that is really  
 6 quite the right way to look at it, because I don't think the  
 7 Federal Circuit again would be able to reach that question,  
 8 if certified, for at least the following reason:  
 9 Densify failed to make the argument that VMware's  
 10 objections to standing were statutory and not constitutional  
 11 until after I granted VMware's motion to dismiss. And there  
 12 is, in my view, no good reason for Densify to have waited to  
 13 make that argument.  
 14 So I think Densify's arguments were untimely and  
 15 forfeited. By forfeited, I don't mean that Densify will  
 16 never be able to get appellate review of that necessarily,  
 17 but I do think they came too late for my purposes.  
 18 I think at minimum, that's a discretionary  
 19 decision I get to make. I don't think it was an abuse of  
 20 discretion, and I think that becomes a hurdle, perhaps a  
 21 dispositive and impossibly high hurdle for Densify if I  
 22 were to certify. I think the Federal Circuit would not in  
 23 any event get to the issue that Densify wants.  
 24 Further, VMware's challenge to the standing of  
 25 Cirba Inc. in my view was timely even if it was a statutory

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1 challenge and not a constitutional challenge.  
 2 Now, I think I have already made it clear that  
 3 VMware's challenge in the context of this case was timely.  
 4 For instance, D.I. 946 at page 10, note 4. I think I have  
 5 made clear that in my view, the challenge for VMware was  
 6 timely whether it is viewed as a constitutional challenge or  
 7 a statutory challenge or both.  
 8 But to the extent there was any lack of clarity  
 9 in my view on that issue of timeliness, there is no longer  
 10 any lack of clarity. I'm trying to be as clear as I can be.  
 11 VMware's challenge was timely in the circumstances of this  
 12 case.  
 13 VMware raised its objection to Inc.'s standing  
 14 within three weeks of obtaining the necessary discovery,  
 15 including the legal agreement on which standing was  
 16 purported to be based.  
 17 VMware raised its challenge in front of the  
 18 Court in the Proposed Pretrial Order, and the only reason it  
 19 was not pressed either prior to trial or at trial is because  
 20 the Court granted Densify's request to defer briefing and  
 21 litigating the issue until after trial.  
 22 Further, and we can't overlook this, the  
 23 schedule in this case was highly and unusually expedited  
 24 for such a complex patent case between competitors. We  
 25 proceeded to trial within I think nine months of when the

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CIRBA IP, INC. (d/b/a DENSIFY)  
and CIRBA IP, INC.,

*Plaintiffs/Counter-Defendants,*

v.

VMWARE, INC.,

*Defendant/Counter-Plaintiff.*

C.A. No. 19-742-LPS

(Consolidated)

**[PROPOSED] CONSOLIDATED SCHEDULING ORDER**

This 17<sup>th</sup> day of May, 2021, the Court having conducted a Case Management Conference/Rule 16 scheduling and planning conference pursuant to Local Rule 16.2(a) and Judge Stark’s Revised Procedures for Managing Patent Cases (which is posted at <http://www.ded.uscourts.gov>, see Chambers, Judge Leonard P. Stark, Patent Cases) on \_\_\_\_\_, 2021, and the parties having determined after discussion that *Cirba Inc. et al. v. VMware, Inc.*, C.A. No. 19-742-LPS and *VMware, Inc. v. Cirba Inc.*, C.A. No. 20-272-LPS (collectively, “consolidated actions”) cannot be resolved at this juncture by settlement, voluntary mediation, or binding arbitration; and in light of the Court’s Order (D.I. 946), the consolidated actions including the following pending claims and counterclaims:

- VMware’s counterclaims against Cirba Inc. for infringement of U.S. Patent Nos. 8,336,049, 8,875,266, 9,521,151, and 10,069,752;<sup>1</sup>

<sup>1</sup> As the parties previously agreed (D.I. 889 at 14), in view of the Court’s holding that the phrase “remote resource allocation module” in the ’752 patent is indefinite (D.I. 840 at 3), neither party shall seek further discovery that is solely related to the ’752 patent. VMware reserves its right to seek further discovery solely related to the ’752 patent if “remote resource allocation module” is subsequently determined to be not indefinite.

- VMware’s claims against Cirba Inc. for infringement of U.S. Patent Nos. 9,379,995, 9,766,945, 10,025,638, and 10,261,842;
- Cirba IP’s and Cirba Inc.’s counterclaims against VMware for infringement of U.S. Patent Nos. 10,523,492 and 10,951,459; and
- Cirba IP’s claims against VMware for infringement of U.S. Patent Nos. 8,209,687 and 9,654,367 (new trial).

IT IS HEREBY ORDERED that all papers shall be filed in Civil Action No. 19-742-LPS and that the following schedule shall apply to the consolidated actions:

1. Good cause would need to be shown and a Court order obtained following briefing and an opportunity to be heard to modify the scheduling order in the original case. Except by order of the Court or Special Master or as otherwise agreed to by the parties, fact discovery on Cirba’s original affirmative claims—tried in January 2020—is closed. The parties will present specific issues to the Court as they become ripe, including potential supplementation of expert discovery and the admissibility or inadmissibility of evidence used during the first trial in light of the Court’s post-trial rulings.

2. **Rule 26(a)(1) Initial Disclosures and E-Discovery Default Standard.** Unless otherwise agreed to by the parties, the parties shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) and disclosures under Paragraph 3 of the Court’s Default Standard for Discovery on or before **May 25, 2021**. If they have not already done so, the parties are to review the Court’s Default Standard for Discovery, Including Discovery of Electronically Stored Information (“ESI”) (which is posted at <http://www.ded.uscourts.gov>: see Other Resources, Default Standards for Discovery, and is incorporated herein by reference). To the

by the Court. No separate briefing shall be submitted on *in limine* requests, unless otherwise permitted by the Court.

22. **Jury Instructions, Voir Dire, and Special Verdict Forms.** Where a case is to be tried to a jury, pursuant to Local Rules 47 and 51 the parties should file (i) proposed voir dire, (ii) preliminary jury instructions, (iii) final jury instructions, and (iv) special verdict forms **three (3) business days** before the final pretrial conference. This submission shall be accompanied by a courtesy copy containing electronic files of these documents, in WordPerfect or Microsoft Word format, which may be submitted by e-mail to Judge Stark's staff.

23. **Trial.** This matter is scheduled for a **fifteen (15) day**<sup>11</sup> jury trial beginning at 9:30 a.m. on ~~Density's proposal: April 24, 2023~~ ~~VMware's proposal: July 31, 2023~~ with the subsequent trial days beginning at 9:00 a.m. Until the case is submitted to the jury for deliberations, the jury will be excused each day at 4:30 p.m. The trial will be timed, as counsel will be allocated a total number of hours in which to present their respective cases.

24. **Judgment on Verdict and Post-Trial Status Report.** Within **seven (7) days** after a jury returns a verdict in any portion of a jury trial, the parties shall jointly submit a form of order to enter judgment on the verdict. At the same time, the parties shall submit a joint status report, indicating among other things how the case should proceed and listing any post-trial motions each party intends to file.

25. **Post-Trial Motions.** Unless otherwise ordered by the Court, all **SIDES** are limited to a maximum of 40 pages of opening briefs, 40 pages of answering briefs, and 20 pages

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<sup>11</sup> The parties' proposed trial length is based on the issues currently in the consolidated actions but is subject to change if the issues are narrowed during litigation (*e.g.*, resolved by motions for summary judgment).



of reply briefs relating to any post-trial motions filed by that side, no matter how many such motions are filed.



UNITED STATES DISTRICT CHIEF JUDGE

# VMware (VMW)

## \$162.00

-0.07 (-0.04%)

As of June 9 4:00:00 PM EST

1D 5D 1M 6M YTD 1Y 5Y Max

Open:162.87 High:163.40 Low: 161.83 Close:162.00



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### VMWARE (VMW) STOCK KEY DATA

#### Summary

#### Key Data

PREVIOUS CLOSE	162.00
OPEN	162.00
DAY'S RANGE	161.83 x 163.40
VOLUME	1,281,900
52-WEEK RANGE	126.79 x 172.00
MARKET CAP	\$67.87B
PERF. RATIO (TTM)	32.7%
FORWARD P/E	23.4
ADJUSTED EPS (TTM)	4.9
DIVIDENDS PER SHARE	N/A
DIVIDEND YIELD	N/A

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EX-DIVIDEND DATE Dec 31, 20

**Valuation Measures**

P/E RATIO (TTM)	32.7
FORWARD P/E	23.4
PRICE TO SALES (TTM)	5.6
PRICE TO BOOK VALUE (TTM)	7.7
PRICE TO TANGIBLE BOOK VALUE (TTM)	N/A
TOTAL ENTERPRISE VALUE TO EBIT (TTM)	29.1
TOTAL ENTERPRISE VALUE TO EBITDA (TTM)	21.8
TOTAL ENTERPRISE VALUE TO TOTAL REVENUE (TTM)	5.6

Markets data provided by [S&P](#) and by [Xignite](#)



VMware, Inc. engages in the provision of cloud infrastructure and business mobility. Its products include Software-Defined Data Center, Hybrid Cloud Computing, and End-User Computing. It supports modernizing data centers, integrating public clouds, empowering digital workspaces and transforming security. The company was founded by Diane Greene, Mendel Rosenblum, Scott Devine, Edward Wang and Edouard Bugnion in 1998 and is headquartered in Palo Alto, CA.

Industry	<b>IT Software &amp; Services</b>	Founded	<b>1998</b>
Country/Territory	<b>United States</b>	Chief Executive Officer	<b>Zane C. Rowe</b>
Employees	<b>34,000</b>	Sales	<b>\$11.8B</b>
Headquarters	<b>Palo Alto, California</b>		

As of May 13, 2021

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#383 **Global 2000 2021**

#868 Sales

#308 Profit

#1097 Assets

#231 Market value

**Best Employers for Diversity 2021**

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