

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SimpliVity Corporation,

Plaintiff,

v.

Springpath, Inc.,

Defendant.

C.A. No. 4:15-cv-13345-TSH

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT
(Pursuant to Agreement with Defendant to File Made January 29, 2016)

Plaintiff SimpliVity Corporation (“SimpliVity”) alleges against Defendant Springpath, Inc. (“Springpath”) as follows:

1. This is an action brought by SimpliVity, one of the fastest growing and innovative companies in the data infrastructure industry, against Springpath, a competitor and recent startup who is infringing upon SimpliVity’s patented technology to compete unfairly in the marketplace. SimpliVity seeks a finding of patent infringement by Springpath, as well as relief from that infringement.

JURISDICTION

2. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Springpath at least because it sells and/or offers to sell its infringing product nationwide, including in Massachusetts. Springpath’s Vice President of Sales is located in the Boston, Massachusetts area. Springpath targets customers in

this forum expressly. For example, Springpath is promoting its participation in the upcoming VMUG Boston conference.

4. Springpath has established minimum contacts with this forum such that the exercise of jurisdiction over Springpath would not offend traditional notions of fair play and substantial justice.

VENUE

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1400(b) because Springpath is subject to personal jurisdiction in this district.

PARTIES

SimpliVity:

6. Plaintiff SimpliVity is a Delaware corporation with its principal place of business located at 8 Technology Drive in Westborough, Massachusetts.

7. Today, SimpliVity has over 700 employees, about 300 of which work at SimpliVity's Massachusetts headquarters.

8. SimpliVity was founded in 2009. Its founders recognized, ahead of the curve, that technology for modern data centers was growing increasingly—and excessively—costly and complex. Accordingly, SimpliVity adopted a forward-looking strategy to create and deliver technology that would address the existing technology problems. The strategy included technology for storing and processing data; enhancing data-management efficiency; streamlining data operations; and improving physical storage hardware setup. A team of dozens of engineers, solution architects, and executives invested significant financial resources and over three-and-a-half years of research and development to create SimpliVity's hyperconvergence technology, which is embodied in SimpliVity's OmniStack Data Virtualization Platform Software. SimpliVity's products addressed technology shortcomings by converging the functionalities of

numerous disparate products, including server, storage, data protection and management, into “all-in-one” products.

9. SimpliVity sought and acquired patents to protect its innovation, including U.S. Patent No. 8,478,799 (“the ’799 patent”). The ’799 patent discloses and claims a novel file system and method that specifically addresses the problems caused by traditional storage architectures. The ’799 patent presents a computer technology-based solution to a technology-based problem in computer networks.

10. The ’799 patent’s file system and method solves the problems associated with storing and processing large amounts of data on multi-hardware component systems (e.g., server-based systems, data centers) resulting from moving and sharing data across multiple components. SimpliVity’s ’799 patent describes a system and method for dividing the labor of storing and monitoring changes to data across two file system components: an object store and a namespace file system. The claimed inventions use object fingerprints.

11. According to one embodiment described in the ’799 patent, the object store hosts data in the form of objects, while the namespace file system contains files, directories and so forth using object names to access content and objects as the namespace file system internal data structures. By eliminating the reliance on traditional addressing, this embodiment of the ’799 patent eliminates the inefficiencies of disk-specific operations and solves a troubling technology-based problem. By deriving object names from content and comparing those names instead of the underlying data, the described systems and methods allow for more efficient data de-duplication, which results in increased space efficiency (among other benefits), and improved snapshots or cloning.

12. SimpliVity has incorporated the teachings of the '799 patent in its products. SimpliVity sells its products, based on its foundational OmniStack Data Virtualization Platform, to small, medium, and large for-profit and non-profit civilian and government entities all over the world.

13. The market has responded enthusiastically to SimpliVity's revolutionary technology. SimpliVity's unique, patented technology has enabled SimpliVity to become a leader in the converged IT infrastructure and data center markets of the information technology and services industry.

14. SimpliVity's products have achieved broad market acceptance due in large part to their technical superiority to competing offerings. SimpliVity's patented, hyperconverged infrastructure helped SimpliVity become the first infrastructure company to reach a \$1B valuation in just 23 months.

15. SimpliVity has 37 granted patents and 68 pending patent applications worldwide.

Springpath:

16. Defendant Springpath, Inc. is a Delaware corporation with its principal place of business located at 640 W. California Avenue, Suite 110, in Sunnyvale, California.

17. Springpath was founded in 2012, several years after SimpliVity. Before changing its name to "Springpath," the company was called "Storvisor."

18. Springpath investigated SimpliVity's technology at least as early as 2012. At the 2012 VMworld trade show, a man appeared at SimpliVity's booth and asked a number of specific engineering-related questions about SimpliVity's technology. These inquiries raised suspicions about the man's identity and intentions.

19. When pressed by a SimpliVity employee to reveal his identity, the man stated that he worked for VMware. When asked for a business card, the man provided a VMware card but

revealed that he no longer worked for that company. We now know that the man investigating SimpliVity's technology was Springpath founder Krishna Yadappanavar.

20. Mr. Yadappanavar never disclosed his connection to Springpath or its predecessor, Storvisor.

21. Following Springpath's investigation of SimpliVity's technology, Springpath released its Data Platform product, which mimics SimpliVity's patented technology.

22. Springpath makes, uses, sells, and offers to sell infringing technology, including its Data Platform, to develop and operate computer systems that store and retrieve various kinds of data and converges functionalities of disparate products by leveraging SimpliVity's patented file system and method.

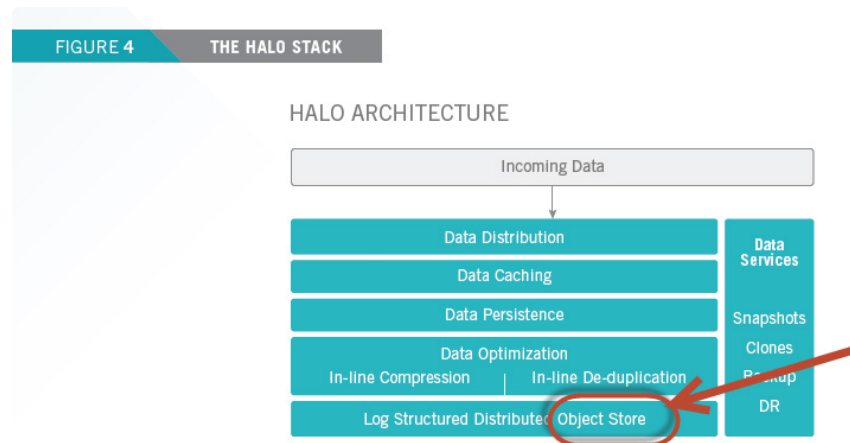
23. Springpath sells the infringing software and provides customers instructions on how to install the software on the customers' hardware. (See Springpath.com, <http://www.springpathinc.com/resources.php> (last visited January 28, 2016) ("Demo Series" of videos demonstrating how to install and use the Data Platform product) last visited January 28, 2016.)

24. In early 2015, Springpath cofounder Mallik Mahalingam described the technical details of the Data Platform product to a group of network engineers and experts at an event called "Tech Field Day." In the presentation, Mr. Mahalingam described Data Platform's file system. Among other admissions, he admitted that Springpath's file system tracks fingerprints:

We track fingerprint and content because our entire file system is based on fingerprints, right, because we do dedupe. So we built our entire file system in fingerprints. Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (last visited January 25, 2016).

25. In his presentation, Mr. Mahaligham did not identify any non-infringing use of Springpath's Data Platform product. Indeed, there is no known use of Springpath's Data Platform product that does not infringe the '799 patent through, for example, the product's use of fingerprints, objects, and object stores.

26. In explaining Springpath's Data Platform, Mr. Mahalingam described the product's use of objects and object stores and that use is confirmed by Springpath data sheets (*e.g.*, Ex. B):



THE PATENT-IN-SUIT

27. U.S. Patent No. 8,478,799 ("the '799 patent") entitled "Namespace File System Accessing an Object Store," was duly and legally issued to SimpliVity on July 2, 2013. A true and correct copy of the '799 patent is attached as Exhibit A.

28. SimpliVity is the sole holder of all right, title, and interest in the '799 patent, including all rights to obtain equitable relief or damages for past or present infringement; all rights to prevent others from making, having made, using, offering for sale, or selling products or services covered by such patents; and all rights to enforce the '799 patent with respect to Springpath.

29. In the data storage industry, novel technologies are frequently patented. Companies such as Springpath that are new to the market and that closely investigate their competitor's products,

can readily search for the competitor's published patent applications and issued patents. These documents provide important technical information.

30. The application that issued as the '799 patent was published on January 27, 2011, and would have been found through basic searching through sites like USPTO.gov. The '799 patent issued July 2, 2013, which means the issued patent would have been easily found through sites like USPTO.gov and Google Patents.

31. Given a reasonable opportunity for discovery, SimpliVity expects to find evidentiary support that Springpath researched SimpliVity's patents, including the '799 patent, to learn about SimpliVity's technology. Such a finding would be consistent with Springpath's other investigations of SimpliVity technology. This patent research resulted in Springpath's pre-suit knowledge of SimpliVity's '799 patent.

32. Claim 1 of the '799 patent reads as follows:

A computer file system for naming and storing of files on one or more computer storage devices, the system comprising:
a namespace file system accessing an object store, the system including a memory and a hardware processor in communication with the memory, the processor for executing program instructions for accessing the object store using object fingerprints, the object store holding files, data and metadata as objects, each object having a globally unique object fingerprint derived from the content of the object and used to access the object store, wherein:
each file object comprising a mapping of object fingerprints for the data objects or metadata objects of the file and the file object having its own object fingerprint derived from the fingerprints of the objects in the file, and wherein the object store further includes:
an inode map object comprising a mapping of file system inode numbers and object fingerprints enabling the inode numbers to stay constant while the object fingerprints change as the file content changes; and
directory objects, each directory object comprising a mapping of inode numbers and file names;
wherein each of the inode map object and directory object has its own object fingerprint derived from the content of the respective object.

33. Claim 19 of the '799 patent reads as follows:

A method comprising:

a namespace file system accessing an object store, the object store holding files, data and metadata as objects, each object having an object fingerprint which is globally unique and derived from its content and used to access the object store; and

each file object comprising a mapping of object fingerprints for the data objects or metadata objects of the file, and the file object having its own object fingerprint derived from the fingerprints of the objects in the file; and

maintaining in the object store an inode map object comprising a mapping of file system inode numbers and object fingerprints enabling the inode numbers to stay constant while the object fingerprints change as the file content changes; and

maintaining in the object store directory objects, each directory object comprising a mapping of inode numbers and file names;

wherein each of the inode map object and directory object has its own object fingerprint derived from the content of the respective object.

FIRST CAUSE OF ACTION
(Infringement of the '799 Patent)

34. SimpliVity realleges and incorporates by reference the preceding paragraphs of this Second Amended Complaint as if fully set forth herein.

Direct Infringement:

35. Springpath directly infringes one or more of the claims of the '799 patent at least by making and using in the United States its infringing product, Springpath's Data Platform—all without authorization.

36. By way of example, Springpath makes, tests, and demonstrates its Data Platform product in an infringing manner in the United States, as evidenced by its videos available on its website and on third-party video websites like YouTube: *See* Springpath.com, <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) ("Demo Series" of videos demonstrating how to install and use the Data Platform product); YouTube,

https://www.youtube.com/channel/UChgwQCOFU9LSMe4Uvz0mO_g (last visited January 25, 2016); Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (last visited January 25, 2016). For example, Springpath's Data Platform product installs and operates a system that infringes claim 1 of the '799 patent, and performs a method that infringes claim 19.

37. Springpath's own descriptions of its Data Platform product (*see, e.g.*, ¶¶ 22-26, 36, above) indicate that the product meets the claim language of at least claims 1 and 19 of the '799 patent.

38. The demonstration videos confirm that Springpath itself has installed the Data Platform product on hardware in an infringing manner. The videos also confirm that Springpath has used its Data Platform product in an infringing manner. (*See* ¶¶ 22-26, 36, above.)

39. Springpath's making and using of the Data Platform product constitutes direct infringement of at least claim 1 of the '799 patent. Springpath's use of the Data Platform product constitutes direct infringement of at least claim 19 of the '799 patent.

Induced Infringement:

40. Springpath has had knowledge of the '799 patent since at least as early as September 15, 2015, when it was served with the first Complaint in this case. That Complaint gave notice of the '799 patent and informed Springpath that its Data Platform product infringed the '799 patent. Discovery will also likely provide evidentiary support to establish that Springpath's investigation of SimpliVity's technology included Springpath's acquiring knowledge of the '799 patent before being served with the first Complaint in this case.

41. Since having knowledge of the '799 patent, Springpath has indirectly infringed the '799 patent by actively inducing infringement by others in violation of 35 U.S.C. §§ 271(b), including

at least by selling, offering to sell, providing the infringing Data Platform product to end-users, resellers, and/or customers; providing instructions on the infringing use of the Data Platform product; and actively enticing its end-users, resellers, and/or customers to install, use, and/or sell the infringing Data Platform product.

42. Springpath makes and then distributes the Data Platform product to its end-users, resellers, and/or customers in the United States.

43. When end-users, resellers, and/or customers use Springpath's Data Platform product as Springpath instructs them to, that use infringes at least claims 1 and 19 of the '799 patent. Springpath end-users, resellers, and/or customers therefore directly infringe at least claims 1 and 19 of the '799 patent by using the accused Data Platform product in violation of 35 U.S.C. § 271(a).

44. For the exemplary reasons explained in ¶¶ 22-26, above, the Data Platform product, when installed on hardware, infringes at least claim 1 of the 799 patent. Springpath end-users, resellers, and/or customers directly infringe at least claim 1 of the '799 patent by installing onto hardware or using the accused Data Platform product installed on hardware in violation of 35 U.S.C. § 271(a). Springpath specifically intends for its customers to use the Data Platform in an infringing manner, and actively entices them to do so. Since at least September 15, 2015, Springpath has had notice of the '799 patent and notice of its infringement, yet Springpath continues to instruct and encourage customers to use the product in an infringing manner. Indeed, Springpath has provided no instructions to customers regarding potential non-infringing uses, as no such non-infringing uses exist.

45. Springpath promotes its customers' infringing systems and uses on its website: *See Case Study, Sigma Designs Cuts Provisioning Time By 99% Using Springpath Software*

Hyperconvergence, *available at* <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) (Ex. C); Case Study, Superior Document Solutions Achieves Always-On Infrastructure & 8X Performance Improvement with Springpath Hyperconvergence Software, *available at* <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) (Ex. D).

46. Springpath's intent to induce infringement is demonstrated through its continued promotion of its Data Platform product since learning of the '799 patent and its infringement.

47. Further, Springpath has not identified any defenses justifying its continued infringement.

48. Despite Springpath's knowledge of infringement, Springpath has continued to encourage its end-users, resellers, and customers to install and use the Data Platform product in an infringing manner, including by installing Data Platform on hardware and operating the Data Platform product.

49. Under the facts already obtained through SimpliVity's reasonable investigation, the Data Platform product has no known substantial non-infringing use. A reasonable opportunity for discovery will likely provide further evidentiary support that Springpath's Data Platform product has no substantial non-infringing use. In its normal and encouraged operation, the Data Platform product infringes as demonstrated by Springpath's own founder Mallik Mahalingam in a video posted online in which he describes both how to use the product, as well as the structure and operation of the product: Video, Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (last visited January 25, 2016); Video, Springpath Data Platform and HALO Architecture Overview, *available at* <http://springpathinc.com/resources.php> (last visited January 26, 2016). Because there are no non-infringing uses of the Data Platform product, Springpath knows that its end-users, resellers,

and customers infringe at least claims 1 and 19 of the '799 patent when they install and use Springpath's Data Platform product.

50. On its website, Springpath instructs its end-users, resellers, and customers on how to use the Data Platform product in an infringing manner, including by installing the Data Platform product onto hardware and setting up the system: *See* Springpath.com, <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) ("Demo Series" of videos demonstrating how to install and use the Data Platform product); YouTube, https://www.youtube.com/channel/UCkgwQCOFU9LSMe4Uvz0mO_g (last visited January 25, 2016). Springpath also provides user guides and product documentation that instruct end-users, resellers, and customers to use Springpath's product in an infringing manner. Springpath.com, <http://www.springpathinc.com/resources.php> (last visited January 25, 2016). Installation of the Data Platform product according to Springpath's instructions results in infringement of at least claim 1 of the '799 patent. Operation of the Data Platform product according to Springpath's instructions results in infringement of at least claim 19 of the '799 patent.

Contributory Infringement:

51. Springpath has had knowledge of the '799 patent since at least as early as September 15, 2015, when Springpath was served with the first Complaint in this case. That Complaint gave notice of the '799 patent and informed Springpath that its Data Platform product infringed the '799 patent. Discovery will also likely provide evidentiary support to establish what can already be inferred—that Springpath's investigation of SimpliVity's technology included Springpath's acquiring knowledge of the '799 patent before being served with the first Complaint in this case.

52. Since having knowledge of the '799 patent, Springpath has indirectly infringed the '799 patent by actively enticing and contributing to the infringement of one or more of the claims of

the '799 patent in violation of 35 U.S.C. §§ 271(c), including at least by selling, offering to sell, and/or providing the infringing Data Platform product with no substantial non-infringing use to end-users, resellers, and/or customers.

53. Springpath makes and then distributes the Data Platform product to its end-users, resellers, and/or customers in the United States.

54. For the exemplary reasons explained in ¶¶ 22-26, above, the Data Platform product, when installed on hardware, infringes at least claim 1 of the '799 patent. Springpath end-users, resellers, and/or customers directly infringe at least claim 1 of the '799 patent by installing onto hardware or using the accused Data Platform product in violation of 35 U.S.C. § 271(a).

55. Springpath promotes its customers' infringing systems on its website: *See* Case Study, Sigma Designs Cuts Provisioning Time By 99% Using Springpath Software Hyperconvergence, *available at* <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) (Ex. C); Case Study, Superior Document Solutions Achieves Always-On Infrastructure & 8X Performance Improvement with Springpath Hyperconvergence Software, *available at* <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) (Ex. D).

56. When installed, Data Platform is a major component of a computer system that practices the '799 patent. Springpath's own public statements indicate that Springpath's Data Platform product has no substantial non-infringing uses and is not a staple article of commerce. In its normal and encouraged operation, the Data Platform product infringes as demonstrated by Springpath's own founder Mallik Mahalingam in a video posted online in which he describes both how to use the product, as well as the structure and operation of the product: Video, Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (last visited January 25, 2016); Video, Springpath Data Platform and

HALO Architecture Overview, *available at* <http://springpathinc.com/resources.php> (last visited January 26, 2016). Mr. Mahalingam's video and the Springpath data sheet do not describe or demonstrate a non-infringing system or a system that is capable of non-infringing uses. Instead, the data sheet and video describe a system whose use necessarily infringes. A reasonable investigation has uncovered no use of the Data Platform product that does not use the infringing technology, and a reasonable opportunity for discovery will likely furnish evidentiary support that indeed there is no such non-infringing use.

57. Because there are no known non-infringing uses of the Data Platform product, Springpath knows that its end-users, resellers, and customers infringe the '799 patent.

58. The Data Platform product is a material part of SimpliVity's invention claimed in the '799 patent. The Data Platform product provides the infringing file system and object store elements that comprise the system claimed in at least claim 1 of the '799 patent.

59. Springpath knows that its accused Data Platform product is especially made or especially adapted for use in an infringement of the '799 patent through, for example, the product's infringing use of fingerprints, objects, and object stores. Springpath has had knowledge of the '799 patent since at least as early as September 15, 2015, when it was served with the first Complaint in this case. That Complaint gave notice of the '799 patent and informed Springpath that its Data Platform product infringed the '799 patent. Nonetheless, Springpath continues to promote its infringing Data Platform product. For example, on a video currently available on YouTube, Springpath founder Mallik Mahalingam describes the specific structure and operation of the infringing product in a video: Video, Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (lasted visited January 25, 2016); Video, Springpath Data Platform and HALO Architecture Overview, *available at*

<http://springpathinc.com/resources.php> (last visited January 26, 2016). Mr. Mahalingam even touts the infringing structure and operation of the Data Platform product. (*See* ¶¶ 24-26, above.) Springpath has had notice of the '799 patent, and notice of Springpath's infringement, from at least as early as September 15, 2015. Despite Springpath's knowledge, Springpath continues to offer for sale and sell its Data Platform product to be implemented or used in an infringing manner.

Willful Infringement:

60. Springpath was notified of the '799 patent and notified of its infringement at least as early as September 15, 2015, when Springpath was served with the first Complaint. The first Complaint informed Springpath of its infringement of the patent-in-suit.

61. Despite its awareness of the patent-in-suit from at least as early as September 15, 2015, Springpath has escalated its infringement. Springpath has continued to offer its infringing Data Platform product technology to the marketplace and to promote its infringing uses through, for example, videos describing how to install and operate the infringing product on Springpath's web site, and videos on YouTube in which Springpath founder Mallik Mahalingam describes and promotes the specific structure and operation of the infringing product. Springpath.com, <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) ("Demo Series" of videos demonstrating how to install and use the Data Platform product); Video, Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (last visited January 25, 2016); Video, Springpath Data Platform and HALO Architecture Overview, *available at* <http://springpathinc.com/resources.php> (last visited January 26, 2016). A reasonable opportunity for discovery will likely provide further evidentiary support of

Springpath's continued knowing, willful, and intentional promotion of its infringing Data Platform product.

62. Springpath's ongoing infringement is objectively reckless at least because Springpath has not presented any willful infringement defense and has otherwise not presented any reasonable infringement or validity defense. To date, the only known defense Springpath has presented consisted of attorney argument at a hearing in the above-captioned matter regarding Springpath's use of fingerprints, but even that argument contradicted statements by Springpath founder Mallick Mahalingam, who stated that Springpath's Data Platform "track(s) fingerprint and content because [its] entire file system is based on fingerprints." Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (lasted visited January 25, 2016).

63. Springpath's infringement is subjectively reckless at least because, despite investigating SimpliVity's competing product (which is covered by the '799 patent), being informed of Springpath's infringement, and not presenting any defenses to SimpliVity's allegations, Springpath has only increased its infringing sales activities and instructions to customers encouraging and resulting in infringement. *See* Springpath.com, <http://www.springpathinc.com/resources.php> (last visited January 25, 2016) ("Demo Series" of videos demonstrating how to install and use the Data Platform product); YouTube, https://www.youtube.com/channel/UChgwQCOFU9LSMe4Uvz0mO_g (last visited January 25, 2016); Springpath HALO Architecture Deep Dive, *available at* <https://www.youtube.com/watch?v=krmkywnz970> (last visited January 25, 2016).

Past Damages:

64. SimpliVity has suffered damages as a result of the infringement of the '799 patent by Springpath, and will suffer additional damages as a result of its continuing infringement. Springpath is therefore liable to SimpliVity under 35 U.S.C. § 284 for past damages, including for infringement occurring before the filing of this suit, before entry of final judgment, and before entry of an injunction, in an amount that adequately compensates SimpliVity for Springpath's infringement, but no less than a reasonable royalty.

Injunctive Relief:

65. Springpath competes directly against SimpliVity. Springpath's infringing Data Platform product, for example, competes directly and openly against SimpliVity's Data Virtualization Platform, which itself practices the '799 patent. Even while infringing on SimpliVity's patented hyperconvergence technology, Springpath purports to be "the pioneer in hyperconvergence." (<http://www.springpathinc.com/>) In the discrete market for hyperconverged technology, sales won by Springpath result in irreparable harm to SimpliVity. Springpath is a new entrant to the market, and SimpliVity filed suit promptly, because the harm to SimpliVity will increase so long as Springpath continues its infringement.

66. As a result of Springpath's unlawful competition in Massachusetts, and elsewhere in the United States, SimpliVity will face lost sales and profits, suffering continued irreparable harm, including lost market share and goodwill.

67. Such unlawful competition is particularly harmful in the data storage business, and cannot be adequately compensated solely by money damages, because initial sales to customers and relationships with business partners frequently create path dependence, with significant

impact on a company's ability to make future sales, recover goodwill, or recoup market share that was taken unlawfully.

68. The balance of hardships weighs in favor of SimpliVity. SimpliVity invested time, money and effort to develop and protect its technology. That technology returns value to SimpliVity precisely because the '799 patent provides the right to exclude SimpliVity's competitors from free-riding on SimpliVity's technology. Depriving SimpliVity of the right to protect the novel technology that it developed at great expense outweighs any purported cognizable harm that Springpath might assert would result from an injunction that prevented Springpath's further infringement of SimpliVity's patented technology.

69. The public has a potent interest in upholding a strong patent system. The patent system incentivizes parties such as SimpliVity to invest time and money in researching and developing products to better serve customers, facilitate business growth, and enhance the United States' economy. The public similarly has a strong interest in encouraging companies such as SimpliVity to disclose such inventions in published patents, rather than hoarding them as trade secrets, because published patents (a) immediately fuel further innovation, and (b) eventually expire, such that the patented technology then becomes part of the public domain. Accordingly, the patent system incentivizes companies like SimpliVity that invested in original research to obtain patents, by providing the patent owner a time-limited monopoly on the use of the resulting novel technology. The public interest in maintaining this strong patent system outweighs any purported interest the public might have in permitting an infringer like Springpath to continue marketing an infringing product.

70. For ongoing and future infringement, SimpliVity will continue to suffer irreparable harm unless this Court permanently enjoins Springpath, its agents, employees, representatives, and all others acting in concert with it, from infringing the '799 patent.

71. In the alternative, SimpliVity is entitled to damages if an injunction is not granted, in an amount consistent with the fact that, for future infringement, Springpath will be adjudicated infringers of a valid patent and, thus, Springpath's future infringement will be willful as a matter of law.

PRAYER FOR RELIEF

WHEREFORE, SimpliVity respectfully requests the following relief:

a) That this Court adjudge and decree that Springpath has been, and is currently, infringing the '799 patent;

b) That this Court award damages to SimpliVity to compensate it for each of the unlawful actions set forth in SimpliVity's Complaint, including damages for Springpath's past infringement of the '799 patent (including for infringement occurring before the filing of this suit, before entry of final judgment, and before entry of an injunction) and, to the extent that an injunction is not entered, lost profits or, at a minimum, a running royalty, for Springpath's ongoing infringement of the '799 patent;

c) That this Court award pre- and post-judgment interest on such damages to SimpliVity;

d) That this Court order an accounting of damages incurred by SimpliVity between the close of fact discovery and the entry of a final, non-appealable judgment;

e) That this Court determine that this patent infringement case is exceptional pursuant to 35 U.S.C. §§ 284 and 285 and award SimpliVity its costs and attorneys' fees incurred in this action;

f) That this Court permanently enjoin Springpath from infringing the '799 patent;

g) That this Court order Springpath to:

- (i) recall and collect from all persons and entities that have purchased any and all products found to infringe the '799 patent that were made, offered for sale, sold, or otherwise distributed in the United States by Springpath or anyone acting on its behalf;
- (ii) destroy or deliver all such infringing products to SimpliVity;
- (iii) revoke all licenses to all such infringing products;
- (iv) disable all web pages offering or advertising all such infringing products;
- (v) destroy all other marketing materials relating to all such infringing products; and
- (vi) destroy all infringing software that exists on hosted systems.

h) That this Court, if it declines to enjoin Springpath from infringing the '799 patent, award damages for future infringement in lieu of an injunction; and

i) That this Court award such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

SimpliVity respectfully requests a trial by jury on all issues triable thereby.

February 5, 2016

Respectfully submitted,

/s/ Sarah J. Guske

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CERTIFICATE OF SERVICE

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/s/ Sarah J. Guske

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