

**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.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiffs Cirba, Inc. (d/b/a Densify) and Cirba IP, Inc. (collectively, “Densify”) file this Complaint against Defendant VMware, Inc. (“VMware”), and respectfully allege as follows:

**NATURE OF THE ACTION**

1. Densify is a quintessential start-up success story. Through innovation and years of hard work, Densify has earned recognition for having set the standard in the industry for cloud and virtual infrastructure optimization. Global 5000 organizations use Densify’s software to reduce costs, operate with less infrastructure, and achieve better application performance.

2. Densify is an industry leader. For the past decade, Densify has won praise as a “Best Cloud Management Solution of the Year,” “EMA Top 3,” “Leader in Cloud Cost Monitoring,” “Best of VMworld 2017 Gold Winner,” “Top 10 Cloud Solution Provider,” “Editors’ Choice,” “Hot Product,” “Vendor to Watch,” “Companies to Watch,” “Top 10 Virtualization Vendors to Watch,” “Cool Vendor,” among other recognitions.

3. For years, Densify’s products have led the industry in optimization, competing effectively based on its innovations and foundational patent protection. Its products have saved

customers millions of dollars in hardware and software licensing costs, increasing efficiency and decreasing risk.

4. Densify's technology offerings were so compelling that VMware took Densify's ideas and intellectual property, brazenly infringing the patents with products that worked the same way, looked strikingly similar, and even were advertised using the "Densify" trademarks.

5. Rather than innovating on its own, VMware has systematically copied Densify's technology. VMware has used Densify's technology as a blueprint to close in on Densify's lead as one of the best optimization solutions in the market. VMware's infringement has gradually increased over time, copying more and more of the features of Densify's product—the most significant to date being the recent releases of its flagship product, vROps, and its movement into the hybrid cloud space. With these recent developments, VMware is imminently threatening Densify's virtual infrastructure optimization IP, and VMware recently has indicated it intends to leverage its infringing technology to move into Densify's cloud infrastructure optimization business.

6. Densify has no recourse but to file this action to stop VMware's misuse of its intellectual property. Densify has invested years and millions of dollars to develop and commercialize products embodying its intellectual property. VMware is a multi-billion dollar global player that dominates the virtual infrastructure market; 99% of *Fortune 1000* companies reportedly are VMware customers. If VMware's unauthorized use of Densify's intellectual property is not stopped, VMware can use its market power and dominant position to outspend Densify and swamp Densify's marketing and sales of products embodying Densify's patented technology. Densify cannot fairly compete against a behemoth like VMware unless its intellectual property is respected.

7. Densify, which has not licensed its patents to competitors, has chosen to compete in the marketplace and is entitled to do so based on the exclusivity afforded by its patents. The disclosure of innovation in patents is not intended to facilitate unauthorized use, but rather to incentivize public disclosure for the benefit of all, in return for the promise to inventors of exclusive rights for a limited period of time. Meaningful consequences are needed to protect Densify's exclusive rights.

8. In the end, this case is about ensuring a level playing field so smaller competitors like Densify can compete fairly based on their hard work and protected innovations against larger companies like VMware.

9. Accordingly, Densify brings this action under the patent laws, 35 U.S.C. § 1 *et seq.*, the Trademark Act of 1946 (the Lanham Act), 15 U.S.C. § 1051 *et seq.*, Delaware law, and common law. Densify seeks to stop VMware's infringement of its patents and other intellectual property so that it may compete on the strength of the breakthrough products it worked so hard to create.

### **THE PARTIES**

10. Cirba, Inc. (d/b/a Densify) is a Canadian privately-owned corporation headquartered in Markham, Ontario. Densify's principal place of business is located at 400 – 179 Enterprise Boulevard Markham, Ontario L6G 0E7 Canada. In addition to Markham, Densify has operations in New York, London, and Melbourne. Cirba, Inc. is the exclusive licensee of the patents asserted in this case.

11. Cirba IP, Inc. is Canadian privately-owned corporation headquartered in Markham, Ontario. Cirba IP is located at 400 – 179 Enterprise Boulevard Markham, Ontario L6G 0E7 Canada. Cirba IP, Inc. is a wholly-owned subsidiary of Cirba, Inc. Cirba IP, Inc. owns all right,

title, and interest in and to the patents asserted in this case, and has exclusively licensed them to Cirba, Inc.

12. VMware, Inc. is a publicly traded corporation organized and existing under the laws of the State of Delaware. VMware's headquarters are located at 3401 Hillview Ave, Palo Alto, California. VMware also has offices in Colorado, Georgia, Massachusetts, Texas, Virginia, and Washington, among other offices located in twenty countries around the world.

### **JURISDICTION AND VENUE**

13. This is a civil action asserting claims of patent infringement of U.S. Patent Nos. 8,209,687 ("the '687 patent") and 9,654,367 ("the '367 patent") (collectively, the "Asserted Patents"), unfair competition under the Lanham Act, 15 U.S.C. § 1125(a), deceptive trade practices under Delaware Code Title 6 § 2532, and common law trademark infringement.

14. This Court has subject matter jurisdiction over this case under 28 U.S.C. §§ 1331 and 1338, 15 U.S.C. § 1121, and 28 U.S.C. § 1367(a).

15. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b). VMware has offered and sold and continues to offer and sell its infringing products and services in this district. On information and belief, VMware sells and offers to sell the infringing products and services to developers, partners, or customers in this district, such as the University of Delaware, ADP, Alliant, Rent-a-Center, Cardinal Health, and the Make-A-Wish Foundation of America. VMware has committed acts of patent infringement in this district, is incorporated in this district, and does business in this district.

16. This Court has personal jurisdiction over VMware. VMware is incorporated in Delaware and has purposely availed itself of the privileges and benefits of the laws of the State of Delaware. VMware has continuous and systematic business contacts with the State of Delaware. VMware, directly and/or through subsidiaries or intermediaries, conducts its business extensively

throughout Delaware, by shipping, distributing, offering for sale, selling, and advertising its products and services in the State of Delaware and in this district. VMware, directly and/or through subsidiaries or intermediaries, has purposefully and voluntarily placed its infringing products and services into this district and into the stream of commerce with the intention and expectation that they will be purchased and used by consumers in this district.

## **BACKGROUND**

### **A. Densify And Its Technology**

17. Densify was founded in 1999. It is a software company that provides machine learning analytics products related to on-premise information technology (“IT”) infrastructure and the public cloud. It is a company built on innovation of products that save its customers millions of dollars in software licensing and computing infrastructure costs by making their utilization of servers more efficient. Densify has grown to over 180 employees and counts among its customers many of the world’s most prominent and sophisticated companies. Densify has been recognized for its innovations; it has won numerous industry awards and has been granted patents on its technology by the U.S. Patent and Trademark Office (“PTO”). These accomplishments have attracted significant investment in Densify, which is used to innovate new products that make its customers’ businesses run more efficiently, reliably, and profitably.

18. Many companies deploy their own IT infrastructure, including computing, storage and networking equipment, on premises. Generally, computing environments are designed to run at least one workload that performs business functions and consumes compute resources, e.g., resources related to central processing units (“CPUs”), memory, disk, network, and other hardware. The workloads run on computing systems such as servers that supply the computing resources. Each computing system has a finite capacity of resources.

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