

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

CLOUDING CORP.,

Plaintiff,

v.

EMC CORPORATION,  
EMC INTERNATIONAL U.S. HOLDINGS,  
INC., and  
VMWARE, INC.,

Defendants.

C.A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.* in which Plaintiff Clouding Corp. (“Clouding” or “Plaintiff”) makes the following allegations against Defendants EMC Corporation, EMC International U.S. Holdings, Inc. (collectively, “EMC”) and VMware, Inc. (“VMware”).

**BACKGROUND**

This instant Complaint alleges EMC and VMware infringed and continues to infringe the same patents at issue in *Clouding IP, LLC v. EMC Corporation et al*, 13-cv-01455-LPS (D. Del) (“Clouding IP Litigation”) filed on August 17, 2013. The patents asserted here, and in the Clouding IP Litigation were assigned by Symantec Corporation to Clouding IP, LLC. On July 28, 2014, the District Court dismissed the Clouding IP Litigation finding that a lack of prudential standing deprived the District Court of subject matter jurisdiction. On August 10, 2014, Clouding IP, LLC, and Symantec Corporation entered into an amended and restated Patent Purchase Agreement resolving all of the issues identified by the District Court in its July 28, 2014 Order. On August 11, 2014, Clouding IP, LLC moved for reconsideration of the District Court’s dismissal for failing to grant leave for Clouding IP, LLC to amend its pleadings to cure

the alleged defect regarding prudential standing. While the motion for reconsideration was pending and prior to the filing of the instant Complaint, Clouding IP, LLC transferred the patents asserted here and in the Clouding IP Litigation to Clouding Corp.

### **PARTIES**

1. Plaintiff Clouding Corp. is a Delaware corporation with its principal place of business at 11100 Santa Monica Blvd., Ste. 380, Los Angeles, California 90025.

2. On information and belief, Defendant EMC Corporation is a Massachusetts corporation with its principal place of business at 176 South Street, Hopkinton, Massachusetts 01748. On information and belief, EMC Corporation may be served via its registered agent, CT Corporation System, 155 Federal Street, Suite 700, Boston, Massachusetts 02110.

3. On information and belief, Defendant EMC International U.S. Holdings, Inc. is a Delaware corporation with its principal place of business at 176 South Street, Hopkinton, Massachusetts, 01748. On information and belief, Defendant EMC International U.S. Holdings, Inc. may be served via its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

4. On information and belief, Defendant VMware, Inc. is a Delaware corporation with its principal place of business at 3401 Hillview Avenue, Palo Alto, California 94304. On information and belief, VMware, may be served via its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington Delaware 19801.

5. On information and belief, VMware is a subsidiary of EMC. EMC holds approximately 79.8% of VMware's outstanding common stock and 97.2% of the voting power of outstanding common stock.

6. VMware and EMC (collectively, the “Defendants”) are among other things, making, using, offering for sale, and/or selling systems, and products and/or services related thereto, covered by one or more claims of patents owned by Clouding.

**JURISDICTION AND VENUE**

7. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Delaware Long Arm Statute, due to having availed themselves of the rights and benefits of Delaware by engaging in activities, including: (i) incorporating under Delaware law; (ii) conducting substantial business in this forum; and (iii) engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware and in this Judicial District.

9. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). On information and belief, Defendants have engaged in activities including: transacting business in this district, incorporating in this district, and committed acts of patent infringement in this district.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 5,495,607**

10. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-9 above, as if fully set forth herein.

11. Plaintiff Clouding is the owner by assignment of United States Patent No. 5,495,607 (“the ‘607 patent”) titled “Network Management System Having Virtual Catalog

Overview of Files Distributively Stored Across Network Domain.” The ‘607 patent was duly and legally issued by the United States Patent and Trademark Office on February 27, 1996. Clouding is the owner by assignment from Clouding IP, LLC of the ‘607 patent. A true and correct copy of the ‘607 patent is included as Exhibit A.

12. Defendant VMware operates one or more server farms (comprising, *inter alia*, servers and computers on a network) that are located in its data centers in the United States. On information and belief, VMware one or more server farms provide and support cloud computing products and/or services. On information and belief, VMware makes and/or uses a system for monitoring the health of at least some of VMware’s servers and computers over a network in its data centers.

13. On information and belief, Defendant VMware has infringed and continues to infringe the ‘607 patent by, among other things, making, using, offering for sale, and/or selling systems, and products and/or services related thereto, covered by one or more claims of the ‘607 patent. Such systems include, by way of example and without limitation, a system made and/or used by VMware to monitor the health of servers and computers located in its data centers that support the vCloud Hybrid service, which is covered by one or more claims of the ‘607 patent, including but not limited to claim 9. By making, using, offering for sale, and/or selling such systems, and products and/or services related thereto, covered by one or more claims of the ‘607 patent, VMware has injured Clouding and is liable to Clouding for infringement of the ‘607 patent pursuant to 35 U.S.C. § 271.

14. As a result of Defendant VMware’s infringement of the ‘607 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for VMware’s infringement, but in no event less than a reasonable

royalty for the use made of the invention by VMware, together with interest and costs as fixed by the Court.

**COUNT II**  
**INFRINGEMENT OF U.S. PATENT NO. 5,825,891**

15. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-14 above, as if fully set forth herein.

16. Plaintiff Clouding is the owner by assignment of United States Patent No. 5,825,891 (the '891 patent') titled "Key Management for Network Communication." The '891 patent was duly and legally issued by the United States Patent and Trademark Office on October 20, 1998. Clouding is the owner by assignment from Clouding IP, LLC of the '891 patent. A true and correct copy of the '891 patent is included as Exhibit B.

17. Defendants make, use, sell, and offer for sale in the United States products and/or services for cloud computing. On information and believe, at least some of Defendants' cloud computing products and/or services provide or support use of a method for updating a tunnel record.

18. On information and belief, Defendants have infringed and continue to infringe the '891 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '891 patent. Such cloud computing products and/or services include, by way of example and without limitation, EMC's VNX Series, VMware's vCloud Director, and VMware's vCloud Hybrid Service, the use of which are covered by one or more claims of the '891 patent, including but not limited to claim 6. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the '891 patent, Defendants have injured Clouding and are liable to Clouding for infringement of the '891 patent pursuant to 35 U.S.C. § 271.

19. As a result of Defendants' infringement of the '891 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

**COUNT III**  
**INFRINGEMENT OF U.S. PATENT NO. 5,944,839**

20. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-19 above, as if fully set forth herein.

21. Plaintiff Clouding is the owner by assignment of United States Patent No. 5,944,839 (the '839 patent") titled "System and Method for Automatically Maintaining a Computer System." The '839 patent was duly and legally issued by the United States Patent and Trademark Office on August 31, 1999. Clouding is the owner by assignment from Clouding IP, LLC of the '839 patent. A true and correct copy of the '839 patent is included as Exhibit C.

22. Defendants make, use, sell, and offer for sale in the United States products and/or services for cloud computing. On information and believe, at least some of Defendants' cloud computing products and/or services provide or support use of a method for optimizing computer systems.

23. On information and belief, Defendants have infringed and continue to infringe the '839 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '839 patent. Such cloud computing products and/or services include, by way of example and without limitation, EMC's Data Protection Advisor and VMware's vCenter Operations Management Suite, the use of which is covered by one or more claims of the '839 patent, including but not limited to claim 6. By making, using, offering for sale, and/or selling such products and services covered by one

or more claims of the '839 patent, Defendants have injured Clouding and are liable to Clouding for infringement of the '839 patent pursuant to 35 U.S.C. § 271.

24. As a result of Defendants' infringement of the '839 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

**COUNT IV**  
**INFRINGEMENT OF U.S. PATENT NO. 6,631,449**

25. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-24 above, as if fully set forth herein.

26. Plaintiff Clouding is the owner by assignment of United States Patent No. 6,631,449 (the '449 patent') titled "Dynamic Distributed Data System and Method." The '449 patent was duly and legally issued by the United States Patent and Trademark Office on October 7, 2003. Clouding is the owner by assignment from Clouding IP, LLC of the '449 patent. A true and correct copy of the '449 patent is included as Exhibit D.

27. On information and belief, at least some of EMC's cloud computing products and/or services, such as EMC's Data Domain Duplication Storage System, are provided by servers that maintain storage object consistency across nodes.

28. On information and belief, EMC has infringed and continues to infringe the '449 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services patented under the '449 patent. Such cloud computing products and/or services include, by way of example and without limitation, EMC's Data Domain Duplication Storage System, which is covered by one or more claims of the '449 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling cloud computing products

and/or services patented under the '449 patent, EMC has injured Clouding and is liable to Clouding for infringement of the '449 patent pursuant to 35 U.S.C. § 271.

29. As a result of Defendant EMC's infringement of the '449 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for EMC's infringement, but in no event less than a reasonable royalty for the use made of the invention by EMC, together with interest and costs as fixed by the Court.

**COUNT V**  
**INFRINGEMENT OF U.S. PATENT NO 6,738,799**

30. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-29 above, as if fully set forth herein.

31. Plaintiff Clouding is the owner by assignment of United States Patent No. 6,738,799 (the '799 patent") titled "Methods and Apparatuses for File Synchronization and Updating Using a Signature List." The '799 patent was duly and legally issued by the United States Patent and Trademark Office on May 18, 2004. Clouding is the owner by assignment from Clouding IP, LLC of the '799 patent. A true and correct copy of the '799 patent is included as Exhibit E.

32. Defendants EMC and VMware make, use, sell, and offer for sale in the United States products and/or services for cloud computing. On information and believe, at least some of EMC and VMware's cloud computing products and/or services provide or support use of a method for updating records in computer networks.

33. On information and belief, Defendant EMC and VMware have infringed and continue to infringe the '799 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '799 patent. Such cloud computing products and/or services include, by way of example and



without limitation, EMC Avamar and VMware Horizon Image, the use of which are covered by one or more claims of ‘the ‘799 patent, including but not limited to claim 37. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the ‘799 patent, EMC and VMware have injured Clouding and is liable to Clouding for infringement of the ‘799 patent pursuant to 35 U.S.C. § 271.

34. As a result of Defendants EMC and VMware’s infringement of the ‘799 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for EMC and VMware’s infringement, but in no event less than a reasonable royalty for the use made of the invention by EMC and VMware, together with interest and costs as fixed by the Court.

**COUNT VI**  
**INFRINGEMENT OF U.S. PATENT NO. 6,925,481**

35. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-34 above, as if fully set forth herein.

36. Plaintiff Clouding is the owner by assignment of United States Patent No. 6,925,481 (the ‘481 patent”) titled “Technique for Enabling Remote Data Access and Manipulation from a Pervasive Device.” The ‘481 patent was duly and legally issued by the United States Patent and Trademark Office on August 2, 2005. Clouding is the owner by assignment from Clouding IP, LLC of the ‘481 patent. A true and correct copy of the ‘481 patent is included as Exhibit F.

37. Defendants make, use, sell, and offer for sale in the United States products and/or services for cloud computing. On information and believe, at least some of Defendants’ cloud computing products and/or services provide or support use of a method for data access and manipulation from a pervasive device.

38. On information and belief, Defendants have infringed and continue to infringe the '481 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '481 patent. Such cloud computing products and/or services include, by way of example and without limitation, EMC Documentum Mobile and VMware Horizon Mobile, the use of which are covered by one or more claims of the '481 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the '481 patent, Defendants have injured Clouding and is liable to Clouding for infringement of the '481 patent pursuant to 35 U.S.C. § 271.

39. As a result of Defendants' infringement of the '481 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

**COUNT VII**  
**INFRINGEMENT OF U.S. PATENT NO. 7,254,621**

40. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-39 above, as if fully set forth herein.

41. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,254,621 (the '621 patent") titled "Technique for Enabling Remote Data Access and Manipulation from a Pervasive Device." The '621 patent was duly and legally issued by the United States Patent and Trademark Office on August 7, 2007. Clouding is the owner by assignment from Clouding IP, LLC of the '621 patent. A true and correct copy of the '621 patent is included as Exhibit G.

42. Defendants make, use, sell, and offer for sale in the United States products and/or services for cloud computing. On information and believe, at least some of Defendants' cloud computing products and/or services provide or support use of a method for enabling data access and manipulation from a pervasive device.

43. On information and belief, Defendants' have infringed and continues to infringe the '621 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '621 patent. Such cloud computing products and/or services include, by way of example and without limitation, EMC's Documentum Mobile and VMware's Horizon Mobile, the use of which are covered by one or more claims of the '621 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the '621 patent, Defendants have injured Clouding and is liable to Clouding for infringement of the '621 patent pursuant to 35 U.S.C. § 271.

44. As a result of Defendants' infringement of the '621 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

**COUNT VIII**  
**INFRINGEMENT OF U.S. PATENT NO. 7,065,637**

45. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-44 above, as if fully set forth herein.

46. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,065,637 ("the '637 patent") titled "System for Configuration of Dynamic Computing Environments Using a Visual Interface." The '637 patent was duly and legally issued by the

United States Patent and Trademark Office on June 20, 2006. Clouding is the owner by assignment from Clouding IP, LLC of the '637 patent. A true and correct copy of the '637 patent is included as Exhibit H.

47. Defendant VMware makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and belief, at least some of VMware's cloud computing products and/or services provide or support use of a visual interface to configure cloud computing resources.

48. On information and belief, Defendant VMware has infringed and continues to infringe the '637 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '637 patent. Such cloud computing products and/or services include, by way of example and without limitation, VMware's Workstation, the use of which are covered by one or more claims of the '637 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the '637 patent, VMware has injured Clouding and is liable to Clouding for infringement of the '637 patent pursuant to 35 U.S.C. § 271.

49. As a result of Defendant VMware's infringement of the '637 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for VMware's infringement, but in no event less than a reasonable royalty for the use made of the invention by VMware, together with interest and costs as fixed by the Court.

**COUNT IX**  
**INFRINGEMENT OF U.S. PATENT NO. 7,272,708**

50. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-49 above, as if fully set forth herein.

51. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,272,708 (“the ‘708 patent”) titled “System for Configuration of Dynamic Computing Environments Using a Visual Interface.” The ‘708 patent was duly and legally issued by the United States Patent and Trademark Office on September 18, 2007. Clouding is the owner by assignment from Clouding IP, LLC of the ‘708 patent. A true and correct copy of the ‘708 patent is included as Exhibit I.

52. Defendant VMware makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and belief, at least some of VMware’s cloud computing products and/or services provide or support use of a visual interface to configure cloud computing resources.

53. On information and belief, Defendant VMware has infringed and continues to infringe the ‘708 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the ‘708 patent. Such cloud computing products and/or services include, by way of example and without limitation, VMware Workstation 9, the use of which are covered by one or more claims of the ‘708 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the ‘708 patent, VMware has injured Clouding and is liable to Clouding for infringement of the ‘708 patent pursuant to 35 U.S.C. § 271.

54. As a result of Defendant VMware's infringement of the '708 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for VMware's infringement, but in no event less than a reasonable royalty for the use made of the invention by VMware, together with interest and costs as fixed by the Court.

**COUNT XI**  
**INFRINGEMENT OF U.S. PATENT NO. 7,032,089**

55. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-54 above, as if fully set forth herein.

56. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,032,089 ("the '089 patent") titled "Replica Synchronization Using Copy-On-Read Technique." The '089 patent was duly and legally issued by the United States Patent and Trademark Office on April 18, 2006. Clouding is the owner by assignment of the '089 patent. A true and correct copy of the '089 patent is included as Exhibit J.

57. Defendants make, use, sell, and offer for sale in the United States products and/or services for cloud computing. On information and belief, at least some of Defendants' cloud computing products and/or services provide or support synchronizing data maintained in separate storage areas using a copy-on-read technique.

58. On information and belief, Defendants' have infringed and continue to infringe the '089 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '089 patent. Such cloud computing products and/or services include, by way of example and without limitation, EMC Centera FileArchiver and VMware Horizon Mirage, the use of which are covered by one or more claims of the '089 patent, including but not limited to claim 13. By making, using,

offering for sale, and/or selling such products and services covered by one or more claims of the '089 patent, Defendants have injured Clouding and are liable to Clouding for infringement of the '089 patent pursuant to 35 U.S.C. § 271.

59. As a result of Defendants' infringement of the '089 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Clouding respectfully requests that this Court enter:

1. A judgment in favor of Plaintiff Clouding that Defendants have infringed, either literally and/or under the doctrine of equivalents, the '607 patent, the '891 patent, the '839 patent, the '449 patent, the '799 patent, the '481 patent, the '637 patent, the '621 patent, the '708 patent, and the '089 patent;

2. A judgment and order requiring Defendants pay Plaintiff Clouding its damages, costs, expenses, and pre-judgment and post-judgment interest as provided under 35 U.S.C. § 284 for Defendants' infringement of the '607 patent, the '891 patent, the '839 patent, the '449 patent, the '799 patent, the '481 patent, the '637 patent, the '621 patent, the '708 patent, and the '089 patent;

3. A judgment and order that this case is exceptional and requiring Defendants pay Plaintiff Clouding reasonable experts' fees and attorneys' fees pursuant to 35 U.S.C. § 285; and

4. Any and all other relief as the Court may deem appropriate and just under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiff Clouding requests a trial by jury of any issues so triable.

September 10, 2014

BAYARD, P.A.

OF COUNSEL:

Marc A. Fenster  
Brian D. Ledahl  
Dorian S. Berger  
RUSS AUGUST & KABAT  
12424 Wilshire Boulevard, 12th Floor  
Los Angeles, CA 90025  
(310) 826-7474  
mfenster@raklaw.com  
bledahl@raklaw.com  
dberger@raklaw.com

/s/ Vanessa R. Tiradentes  
Richard D. Kirk (rk0922)  
Stephen B. Braerman (sb4952)  
Vanessa R. Tiradentes (vt5398)  
Sara E. Bussiere (sb5725)  
222 Delaware Avenue, Suite 900  
P.O. Box 25130  
Wilmington, DE 19899  
(302) 655-5000  
rkirk@bayardlaw.com  
sbraerman@bayardlaw.com  
vtiradentes@bayardlaw.com  
sbussiere@bayardlaw.com

*Attorneys for Plaintiff Clouding Corp.*