**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

OROSTREAM LLC,	
Plaintiff,	CIVIL ACTION NO. 2:16-cv-1205-JRG
v.	**PATENT CASE**
CARBONITE, INC.,	**JURY TRIAL DEMANDED**
Defendant.	
OROSTREAM LLC,	
Plaintiff,	CIVIL ACTION NO. 2:16-cv-1206-JRG
v.	**PATENT CASE**
CODE42 SOFTWARE, INC.,	**JURY TRIAL DEMANDED**
Defendant.	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AGAINST CODE42 SOFTWARE, INC.**

Pursuant to Fed.R.Civ.P. 15(a)(1)(B), Plaintiff Orostream LLC files this First Amended
Complaint for Patent Infringement against Code42 Software, Inc., and would respectfully show
the Court as follows:

I. THE PARTIES

1.   Plaintiff Orostream LLC ("Orostream" or "Plaintiff") is a Texas limited liability
company with its principal place of business in the Eastern District of Texas at 3401 Custer
Road, Suite 125-B, Plano, Texas 75023.

2.   On information and belief, Defendant Code42 Software, Inc. ("Defendant"), is a
Delaware corporation with a place of business at 1 Main Street, Suite 400, Minneapolis, MN
55414.

II. JURISDICTION AND VENUE

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

4.   On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction, pursuant to due process and the Texas Long Arm Statute, due at least to its substantial business in this forum, including at least a portion of the infringements alleged herein.

5.   Without limitation, on information and belief, within this state, Defendant has used the patented inventions thereby committing, and continuing to commit, acts of patent infringement alleged herein. In addition, on information and belief, Defendant has derived substantial revenues from its infringing acts occurring within the State of Texas and this District. Further, on information and belief, Defendant is subject to the Court's general jurisdiction, including from regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in the State of Texas and in this District. Further, on information and belief, Defendant is subject to the Court's personal jurisdiction at least due to its sale of products and/or services within the State of Texas and within this District. Defendant has committed such purposeful acts and/or transactions in the State of Texas and in this District such that it reasonably should know and expect that it could be haled into this Court as a consequence of such activity.

6.   Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). On information and belief, Defendant has sufficient contacts with the State of Texas and this District such that this Court is a fair and reasonable venue for the litigation of this action. On

information and belief, from and within this District Defendant has committed at least a portion of the infringements at issue in this case. In addition, on information and belief, Defendant has derived substantial revenues from its infringing acts and is subject to personal jurisdiction in this District for at least the reasons identified above, including due at least to its sale of products and/or services within the State of Texas and from this District.

7. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

III. COUNT I
(PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 5,768,508)

8. Plaintiff incorporates the above paragraphs herein by reference.

9. On June 16, 1998, United States Patent No. 5,768,508 ("the '508 Patent") was duly and legally issued by the United States Patent and Trademark Office. The '508 Patent is titled "Computer Network System and Method for Efficient Information Transfer." The application leading to the '508 Patent was filed on April 11, 1997. A true and correct copy of the '508 Patent is attached hereto as Exhibit A and incorporated herein by reference.

10. Orostream is the assignee of all right, title and interest in the '508 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the '508 Patent. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the '508 Patent by Defendant.

11. The '508 patent has been cited as prior art during the prosecution history of over 100 subsequently-issued United States patents, including patents assigned to IBM, Intel, Facebook, Gateway, Hitachi, Microsoft, Nokia, Oracle, and Veritas Software.

12.   **Direct Infringement.** Upon information and belief, Defendant has been and now is directly infringing at least claim 26 of the '508 patent in the State of Texas, in this District, and elsewhere in the United States, by making and/or using a content distribution and backup system over the Internet, including the system and application for the CrashPlan service ("Accused Instrumentality"), which performs a method of connecting an information provider and a user node of a computer network. For example:

What Is CrashPlan?

CrashPlan is designed to automatically back up the **personal files** you store on your computer. With CrashPlan, you can rest assured that no matter what happens to your computer, the photos, movies, music, emails, and documents that mean the most to you are safely backed up and can be restored at any time.

CrashPlan for Home comes in two flavors:

- **CrashPlan for Home without a subscription** is free for personal use (with limited ads). You can use it to back up to folders and drives, other computers you own, or friends' computers.
- **CrashPlan for Home** with a subscription offers additional premium features, like unlimited backup to our online destination, CrashPlan Central. You can restore files backed up to CrashPlan Central from a web browser or your mobile device. Additional premium features include unlimited version retention and priority support from our Customer Champion team.

Compare CrashPlan For Home With And Without A Subscription
See our comparison chart for a complete summary of the differences between CrashPlan for Home with and without a subscription.

(https://support.code42.com/CrashPlan/4/Getting_Started/01_Welcome_To_CrashPlan).

13.   Defendant registers a user when the user signs up for the Accused Instrumentality and also when a client device installs the Accused Instrumentality on a device or accesses the Accused Instrumentality over the Internet. For example:

Overview

The first time you open the CrashPlan app, you're prompted to create your account. The email and password you enter here will be used for all of the computers you back up with CrashPlan. Your email is also tied to your CrashPlan for Home subscription (if you decide to purchase one).

Creating Your Account

Creating an account is as easy as entering your name and email, and choosing a password. Once you click **Create Account,** you're automatically signed in.

(https://support.code42.com/CrashPlan/4/Getting_Started/03_Creating_Your_Account).

14.   The Accused Instrumentality receives a node ID (*e.g.*, an IP address or device information) from the user node. For example,
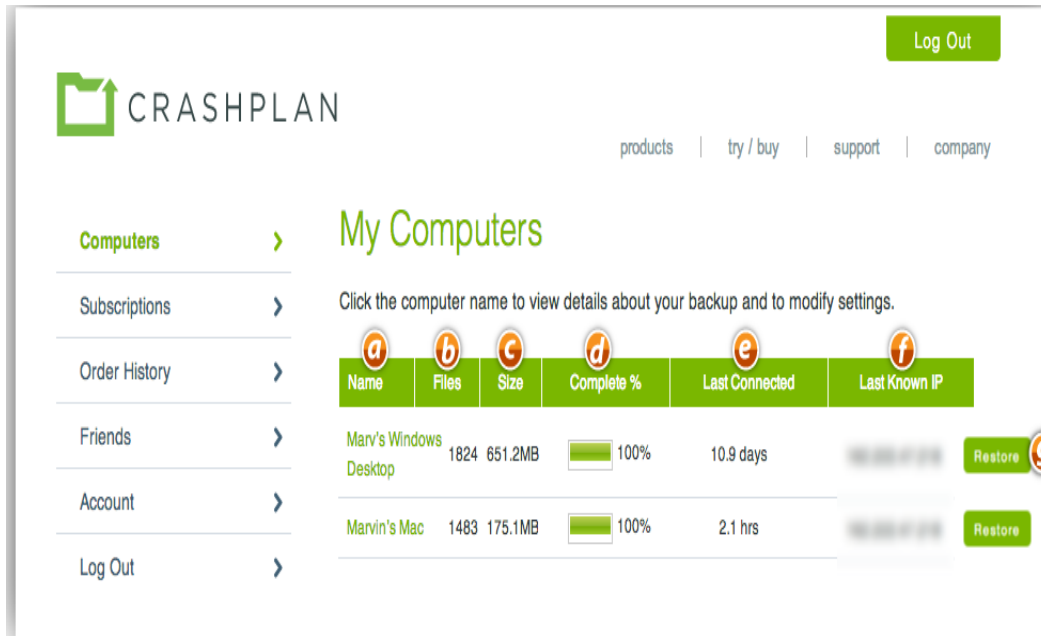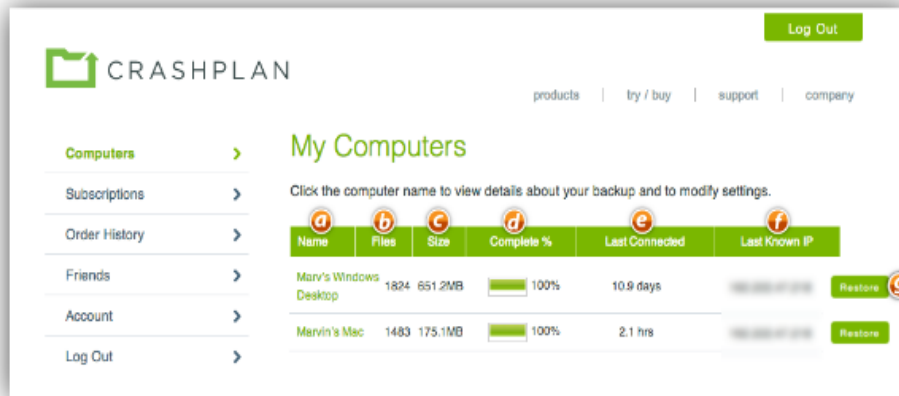

Item		Description
a	Name	Computer name. Click to display more specific details and options for this computer.
b	Files	Number of files this computer is backing up.
c	Size	Size of backup archive.
d	Complete %	Percentage of backup completeness.
e	Last Connected	Identifies amount of time since last backup.
f	Last Known IP	IP address reported the last time the computer connected.
g	Restore	Display screen in which you can select files that you want to restore.

(https://support.code42.com/CrashPlan/4/CrashPlan_App_Reference/CrashPlan_Online_Account_Reference) (red box added).

5

15.   The Accused Instrumentality accesses its master database for the profile information corresponding to the node ID. For example:

(https://support.code42.com/CrashPlan/4/CrashPlan_App_Reference/CrashPlan_Online_Account_Reference) (red box added).

For example:

Computer Details

When you click a computer name link you see these details about that computer.
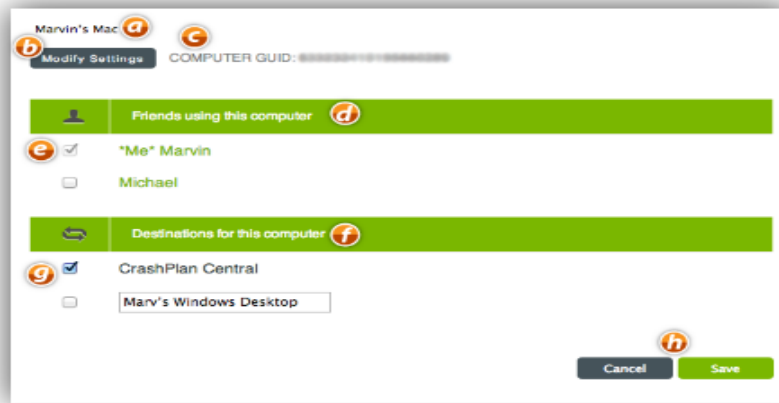
(https://support.code42.com/CrashPlan/4/CrashPlan_App_Reference/CrashPlan_Online_Account_Reference).

16.   The names of files and folders (for a user) are target information references that correspond to a user profile and are transmitted to the user node through the master node (the Accused Instrumentality's access to its online servers). The target information references are pointers to target information to be delivered to the user node, for example the files and folders to be synced (downloaded/transferred) to the user node. For example:

Overview

We recommend using the CrashPlan app to restore files whenever you have access to one of your computers. The CrashPlan web app and the CrashPlan mobile app are convenient for restoring files when you are not near one of your computers. However, the CrashPlan app offers you the most flexibility. This article describes how to restore from the CrashPlan app.

Note: If you need to restore *all* of your files because you recently replaced a computer or the hard drive containing your operating system, refer to our Restoring All Files On A New Computer Or Drive guide instead.

Steps

1. Open the CrashPlan app and go to **Restore.**
2. If there are multiple computers on your account, select the computer containing the files you want to restore.
3. If the selected computer is backing up to multiple destinations, select the backup destination that you want to use for this restore.
4. If you want to restore your files from a previous date, click **most recent** to select the date from a calendar.
5. Select the checkboxes for the folders and files you want to restore.
   Learn more about finding files (including hidden or deleted files) below.
6. Update the restore options to specify the version, permissions, restore location, and naming convention for your restored files.
   ○ Click the links in the description to see your options and change a selection.
   ○ When in doubt, restore using **current permissions.**
7. Click **Restore.**
   Your download begins immediately. The **Restore Status** displays the status of your restored files.

(http://support.code42.com/CrashPlan/4/Restoring/Downloading_Files_From_The_Code42_Cras hPlan_App). For example:

(http://support.code42.com/CrashPlan/4/Restoring/Downloading_Files_From_The_Code42_Cras hPlan_App) (red boxes added).

17.   In order to allow non-target information to transfer without causing additional communication delay, the Accused Instrumentality can be easily configured to use a defined amount of bandwidth and allowing transfer of non-target information without any

8

communication delay.   The non-target information is information other than the target information that is sent by either Defendant or a third party. For example:

(https://support.code42.com/CrashPlan/4/Troubleshooting/Using_CrashPlan_With_Limited_Bandwidth).

18.   Plaintiff has been damaged as a result of Defendant's infringing conduct. Defendant is thus liable to Plaintiff for damages in an amount that adequately compensates Plaintiff for such Defendant's infringement of the '508 patent, *i.e.*, in an amount that by law cannot be less than would constitute a reasonable royalty for the use of the patented technology, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

19.   On information and belief, Defendant will continue its infringement of one or more claims of the '508 patent unless enjoined by the Court. Each and all of the Defendant's infringing conduct thus causes Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

20.   On information and belief, Defendant has had at least constructive notice of the '508 patent by operation of law, and there are no marking requirements that have not been complied with.

9

VI.   JURY DEMAND

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of

any issues so triable by right.

VII.   PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against

Defendant, and that the Court grant Plaintiff the following relief:

a.   Judgment that one or more claims of United States Patent No. 5,768,508 have been infringed, either literally and/or under the doctrine of equivalents, by Defendant;

b.   Judgment that Defendant account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;

c.   That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein;

d.   That Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent No. 5,768,508; and

e.   That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: January 27, 2017   Respectfully submitted,

/s/ David R. Bennett

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**ATTORNEY FOR PLAINTIFF
OROSTREAM LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served by e-mail and/or electronic file transfer on January 27, 2017, to counsel of record for defendant.

/s/ *David R. Bennett*
David R. Bennett