UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

REALTIME DATA LLC d/b/a IXO, Plaintiff, v. COMMVAULT SYSTEMS, INC. AND SPECTRA LOGIC CORPORATION Defendants.	Case No. 6:17-cv-00123-RWS-JDL **JURY TRIAL DEMANDED**

AMENDED COMPLAINT FOR PATENT INFRINGEMENT AGAINST COMMVAULT SYSTEMS, INC. AND SPECTRA LOGIC CORPORATION

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 Realtime Data LLC d/b/a IXO ("Plaintiff," "Realtime," or "IXO") makes the following allegations against Defendants CommVault Systems, Inc. ("CommVault") and Spectra Logic Corporation ("Spectra Logic"):

PARTIES

1. Realtime is a limited liability company organized under the laws of the State of New York. Realtime has places of business at 5851 Legacy Circle, Plano, Texas 75024, 1828 E.S.E. Loop 323, Tyler, Texas 75701, and 66 Palmer Avenue, Suite 27, Bronxville, NY 10708. Realtime has been registered to do business in Texas since May 2011. Since the 1990s, Realtime has researched and developed specific solutions for data compression, including, for example, those that increase the speeds at which data can be stored and accessed. As recognition of its innovations rooted in this technological field, Realtime holds 47 United States patents and has numerous pending patent applications. Realtime has licensed patents in this portfolio to many of the world's leading technology companies.

The patents-in-suit relate to Realtime's development of advanced systems and methods for fast and efficient data compression using numerous innovative compression techniques based on, for example, particular attributes of the data.

2. On information and belief, Defendant CommVault Systems, Inc. ("CommVault") is a Delaware corporation with its principal place of business at 1 CommVault Way, Tinton Falls, NJ 07724-3096. On information and belief, CommVault can be served through its registered agent, Corporation Service Company, 211 E. 7th Street Suite 620, Austin, TX 78701.

3. On information and belief, Defendant Spectra Logic Corporation ("Spectra Logic") is a Delaware corporation with its principal place of business at 6285 Lookout Road, Boulder, CO 80301-3580. On information and belief, Spectra Logic can be served through its registered agent, C T Corporation System, 1999 Bryan St., Ste. 900, Dallas, TX 75201.

4. On information and belief, Spectra Logic markets a joint solution which combines CommVault software with Spectra Logic storage hardware. See, e.g., Ex. E; https://www.spectralogic.com/commvault-joint-solution-overview/; https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599; https://www.slideshare.net/spectralogic/backup-and-archive-doesnt-have-to-be-complicated-and-expensive ("Spectra and CommVault® have joined forces to significantly lower the cost of managing and storing data virtually forever. … Combining CommVault Simpana software, which allows organizations to protect, manage and access information regardless of where the data resides, with Spectra's simply affordable nTier Verde disk and T-Series tape library platforms, provides customers with very affordable storage and effective, easy to manage data protection, backup and archive."); https://s4e.pl/lepszybackup/www.commvault.com/news/postid/510/spectra-logic-commvault-team-to-lower-data-protection-costs.htm ("Spectra Logic and CommVault have teamed up to lower the overall cost of data protection, management and access for

end users by combining both companies' resources into the new CommVault Simpana solution. … The system is composed of the CommVault Windows CommServe and CommVault Media Agent Servers on the front end, with Spectra Logic's nTier Verde and Spectra T-Series tape libraries on the back end. Both companies have tested and validated the solution as part of the Technology Alliance Partner program."); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Solution: Spectra T380 and nTier Verde backed by CommVault Simpana 10: This customer chose a Spectra Logic tape and disk solution to meet their performance and long term retention needs. They installed CommVault Simpana 10 backup software, a Spectra T380 LTO tape library with LTO drives and media and two Spectra nTier Verde disk arrays installed across two locations. They are using several of CommVault's advanced features, including deduplication … Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form.").[1] As further explained below, the CommVault and Spectra Logic joint solution infringes the patents-in-suit. Accordingly, CommVault and Spectra Logic are properly joined in this action under 35 U.S.C. § 299.

JURISDICTION AND VENUE

5. 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).

6. This Court has personal jurisdiction over Defendant CommVault in this action because CommVault is registered to do business in Texas, has committed acts within the Eastern District of Texas giving rise to this action, and has established minimum contacts with this forum such that the exercise of jurisdiction over CommVault would not offend traditional notions of fair play and substantial justice. For example, on information

[1] It appears that Spectra Logic deleted the hyperlinks cited in the Original Complaint filed on February 27, 2017. Accordingly, attached for reference as Exhibit E is a copy of some of the deleted content.

and belief, CommVault maintains a place of business in this District at 5810 Tennyson Pkwy., Lincoln Legacy II, Suite 250, Plano, TX 75024 and another place of business in the State of Texas at Frontera Vista Building One, Suite 150, 1100 W. Louis Henna Boulevard, Round Rock, TX 78681. See http://www.commvault.com/contact-us. CommVault, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, offering to sell and selling products and/or services that infringe the asserted patents.

7. This Court has personal jurisdiction over Defendant Spectra Logic in this action because Spectra Logic is registered to do business in Texas, has committed acts within the Eastern District of Texas giving rise to this action, and has established minimum contacts with this forum such that the exercise of jurisdiction over Spectra Logic would not offend traditional notions of fair play and substantial justice. Spectra Logic, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, offering to sell and selling products and/or services that infringe the asserted patents.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Upon information and belief, CommVault and Spectra Logic have each transacted business in the Eastern District of Texas and have committed acts of direct and indirect infringement in the Eastern District of Texas. In addition, on information and belief, Defendant CommVault maintains a place of business in this District and elsewhere in the State of Texas. See http://www.commvault.com/contact-us.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 9,054,728

9. Plaintiff realleges and incorporates by reference paragraphs 1-8 above, as if fully set forth herein.

10. Plaintiff Realtime is the owner by assignment of United States Patent No.

9,054,728 ("the '728 patent") entitled "Data compression systems and methods." The '728 patent was duly and legally issued by the United States Patent and Trademark Office on June 9, 2015. A true and correct copy of the '728 Patent is included as Exhibit A.

11. On information and belief, Spectra Logic has offered for sale, sold and/or imported into the United States products and/or services that infringe the '728 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, a joint solution including both Spectra Logic's Spectra nTier Verde disk and CommVault's Simpana software, CommVault Windows CommServe® Server, and/or CommVault Media Agent Servers (Windows, Unix or Linux), and all versions and variations thereof since the issuance of the '728 patent ("Joint Accused Instrumentality"). See, e.g., Ex. E; https://www.spectralogic.com/commvault-joint-solution-overview/.

12. On information and belief, Spectra Logic has directly infringed and continues to infringe the '728 patent, for example, through its own use and testing of the Joint Accused Instrumentality, which constitute systems for compressing data claimed by Claim 1 of the '728 patent, comprising a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified; and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. Upon information and belief, Spectra Logic uses the Joint Accused Instrumentality, an infringing system, for its own internal non-testing business purposes, while testing the Accused

Instrumentality, and while providing technical support and repair services for the Accused Instrumentality to Spectra Logic's customers.

13. On information and belief, Spectra Logic has had knowledge of the '728 patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, Spectra Logic knew of the '728 patent and knew of its infringement, including by way of this lawsuit.

14. Spectra Logic's affirmative acts of making, using, selling, offering for sale, and/or importing the Joint Accused Instrumentality have induced and continue to induce users of the Joint Accused Instrumentality to use the Joint Accused Instrumentality in its normal and customary way with compatible systems to infringe the '728 patent, knowing that when the Joint Accused Instrumentality is used in its ordinary and customary manner with such compatible systems, such systems constitute infringing systems for compressing data comprising; a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified; and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. For example, Spectra Logic explains to customers the benefits of using the Accused Instrumentality: "CommVault® and Spectra Logic have created a joint solution to address the increasing data protection and archive challenges of a digital world. Working in combination, CommVault Simpana® and Spectra Logic nTier Verde provide a scalable, cost effective, comprehensive data management platform addressing the performance and storage needs required to provide a

backup and archive solution "silver bullet." Simpana software simplifies virtual or physical business critical application protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication, and reduces production system overhead by performing backup, archiving and analytics in a single pass (Simpana OnePass™). … Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators." See, e.g., Ex. E; https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."). Spectra Logic specifically intended and was aware that the normal and customary use of the Joint Accused Instrumentality with compatible systems would infringe the '728 patent. Spectra Logic performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '728 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, Spectra Logic engaged in such inducement to promote the sales of the Joint Accused Instrumentality, *e.g.,* through Spectra Logic user manuals, product support, marketing materials, and training materials to actively induce the users of the accused products and/or services to infringe the '728 patent. Accordingly, Spectra Logic has induced and continues to induce end users of the accused products and/or services to use the accused products and/or services in their ordinary and customary way with compatible systems to make and/or use systems infringing the '728 patent, knowing that such use of the Joint Accused Instrumentality with compatible systems will result in infringement of the '728 patent.

15. Spectra Logic also indirectly infringes at least Claim 1 of the '728 patent by

manufacturing, using, selling, offering for sale, and/or importing the accused products and/or services, with knowledge that the accused products and/or services were and are especially manufactured and/or especially adapted for use in infringing the '728 patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, the Joint Accused Instrumentality is designed to function with compatible hardware to create systems for compressing data comprising; a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified; and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. Because the Joint Accused Instrumentality is designed to operate as the claimed system for compressing input data, the Joint Accused Instrumentality has no substantial non-infringing uses, and any other uses would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental. Spectra Logic's manufacture, use, sale, offering for sale, and/or importation of the Accused Instrumentality constitutes contributory infringement of the '728 patent.

16. The Joint Accused Instrumentality is a system for compressing data, comprising a processor. For example, the Joint Accused Instrumentality must run on hardware containing a processor. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Commvault Software is a software suite comprised of data management modules built on a single unifying code base and is designed to provide a platform to provide

organizations with the ability to protect, manage and access their data and information, regardless of where that data might reside.").

17. The Joint Accused Instrumentality is a system for compressing data, comprising one or more content dependent data compression encoders. For example, the Joint Accused Instrumentality performs source-based deduplication, which results in transmitting and storing fewer bits to represent a data set. See, e.g., Ex. E; https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form.");

18. The Accused Instrumentality comprises a single data compression encoder. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The

compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

19. The Accused Instrumentality analyzes data within a data block to identify one or more parameters or attributes of the data, for example, whether the data is duplicative of data previously transmitted and/or stored, where the analysis does not rely only on the descriptor. See, e.g., http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups").

20. The Accused Instrumentality performs content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified. For example, when the Accused Instrumentality performs source-based deduplication, it does not transmit/store data to the Verde disk storage system that has previously been transmitted/stored. See, e.g., http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves

backup performance while reducing storage and network overhead with source-based deduplication.");

https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups");

21. The Accused Instrumentality performs data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

22. Spectra Logic also infringes other claims of the '728 patent, directly and through inducing infringement and contributory infringement, for similar reasons as explained above with respect to Claim 1 of the '728 patent.

23. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentality, and touting the benefits of using the Accused Instrumentality's compression features, Spectra Logic has injured Realtime and is liable to Realtime for infringement of the '728 patent pursuant to 35 U.S.C. § 271.

24. As a result of Spectra Logic's infringement of the '728 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for Spectra Logic's infringement, but in no event less than a reasonable royalty for the use made of the invention by Spectra Logic, together with interest and costs as fixed by the Court.

CommVault (Simpana)

25. On information and belief, CommVault has offered for sale, sold and/or imported into the United States CommVault products and/or services that infringe the '728 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, CommVault's products and services, including CommVault software (sometimes referred to as "Simpana") versions 8 and later, and all versions and variations thereof since the issuance of the '728 patent ("Accused Instrumentality").

26. On information and belief, CommVault has directly infringed and continues to infringe the '728 patent, for example, through its own use and testing of the Accused Instrumentality, which constitute systems for compressing data claimed by Claim 1 of the '728 patent, comprising a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified;

and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. Upon information and belief, CommVault uses the Accused Instrumentality, an infringing system, for its own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support and repair services for the Accused Instrumentality to CommVault's customers.

27. On information and belief, CommVault has had knowledge of the '728 patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, CommVault knew of the '728 patent and knew of its infringement, including by way of this lawsuit.

28. CommVault's affirmative acts of making, using, selling, offering for sale, and/or importing the Accused Instrumentality have induced and continue to induce users of the Accused Instrumentality to use the Accused Instrumentality in its normal and customary way on compatible systems to infringe the '728 patent, knowing that when the Accused Instrumentality is used in its ordinary and customary manner with such compatible systems, such systems constitute infringing systems for compressing data comprising; a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified; and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. For example, CommVault explains to customers the benefits of using the Accused Instrumentality: "Simpana 8

simplifies the way businesses store and manage rapidly growing amounts of data and can help customers ensure compliance, gain operational efficiencies, and dramatically reduce their data management and related storage expenses by up to 40%." See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html. CommVault also explains, "By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. … In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN." See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."). CommVault specifically intended and was aware that the normal and customary use of the Accused Instrumentality on compatible systems would infringe the '728 patent. CommVault performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '728 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CommVault engaged in such inducement to promote the sales of the Accused Instrumentality, *e.g.,* through CommVault's user manuals, product support, marketing materials, and training materials to actively induce the users of the accused products and/or services to infringe the '728 patent. Accordingly, CommVault has induced and continues to induce end users of the

accused products and/or services to use the accused products and/or services in their ordinary and customary way with compatible systems to make and/or use systems infringing the '728 patent, knowing that such use of the Accused Instrumentality with compatible systems will result in infringement of the '728 patent.

29. CommVault also indirectly infringes the '728 patent by manufacturing, using, selling, offering for sale, and/or importing the accused products and/or services, with knowledge that the accused products and/or services were and are especially manufactured and/or especially adapted for use in infringing the '728 patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, the Accused Instrumentality is designed to function with compatible hardware to create systems for compressing data comprising; a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified; and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. Because the Accused Instrumentality is designed to operate as the claimed system for compressing input data, the Accused Instrumentality has no substantial non-infringing uses, and any other uses would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental. CommVault's manufacture, use, sale, offering for sale, and/or importation of the Accused Instrumentality constitutes contributory infringement of the '728 patent.

30. The Accused Instrumentality is a system for compressing data, comprising

a processor. For example, the Accused Instrumentality must run on hardware containing a processor. See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication").

31. The Accused Instrumentality is a system for compressing data, comprising one or more content dependent data compression encoders. For example, the Accused Instrumentality performs deduplication. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes.");

https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

32. The Accused Instrumentality comprises a single data compression encoder. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block. Software compression method reduces the amount of space needed for storing data."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm … Initial compression rates run as high as 50%"); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When

deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

33. The Accused Instrumentality analyzes data within a data block to identify one or more parameters or attributes of the data, for example, whether the data is duplicative of data previously transmitted and/or stored, where the analysis does not rely only on the descriptor. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes."); https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://kapost-files-

prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

34. The Accused Instrumentality performs content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to

recover data for regulatory compliance or civil litigation purposes."); https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

35. The Accused Instrumentality performs data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block. Software compression method reduces the amount of space needed for storing data."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%"); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media.

… MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

36. CommVault also infringes other claims of the '728 patent, directly and through inducing infringement and contributory infringement, for similar reasons as explained above with respect to Claim 1 of the '728 patent.

37. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentality, and touting the benefits of using the Accused Instrumentality's compression features, CommVault has injured Realtime and is liable to Realtime for infringement of the '728 patent pursuant to 35 U.S.C. § 271.

38. As a result of CommVault's infringement of the '728 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CommVault's infringement, but in no event less than a reasonable royalty for the use made of the invention by CommVault, together with interest and costs as fixed by the Court.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 7,415,530

39. Plaintiff realleges and incorporates by reference paragraphs 1-38 above, as if fully set forth herein.

40. Plaintiff Realtime is the owner by assignment of United States Patent No. 7,415,530 ("the '530 patent") entitled "System and methods for accelerated data storage and retrieval." The '530 patent was duly and legally issued by the United States Patent and Trademark Office on August 19, 2008. A true and correct copy of the '530 patent is included as Exhibit B.

41. On information and belief, Spectra Logic has offered for sale, sold and/or

imported into the United States products and/or services that infringe the '530 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, a joint solution including both Spectra Logic's Spectra nTier Verde disk and CommVault's Simpana software, CommVault Windows CommServe® Server, and/or CommVault Media Agent Servers (Windows, Unix or Linux), and all versions and variations thereof since the issuance of the '530 patent ("Joint Accused Instrumentality"). See, e.g., Ex. E; https://www.spectralogic.com/commvault-joint-solution-overview/.

42. On information and belief, Spectra Logic has directly infringed and continues to infringe the '530 patent, for example, through its own use and testing of the Joint Accused Instrumentality, which constitutes a system comprising: a memory device; and a data accelerator, wherein said data accelerator is coupled to said memory device, a data stream is received by said data accelerator in received form, said data stream includes a first data block and a second data block, said data stream is compressed by said data accelerator to provide a compressed data stream by compressing said first data block with a first compression technique and said second data block with a second compression technique, said first and second compression techniques are different, said compressed data stream is stored on said memory device, said compression and storage occurs faster than said data stream is able to be stored on said memory device in said received form, a first data descriptor is stored on said memory device indicative of said first compression technique, and said first descriptor is utilized to decompress the portion of said compressed data stream associated with said first data block. Upon information and belief, Spectra Logic uses the Joint Accused Instrumentality, an infringing system, for their own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support and repair services for the Accused Instrumentality to Spectra Logic's customers.

43. On information and belief, Spectra Logic has had knowledge of the '530

patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, Spectra Logic knew of the '530 patent and knew of its infringement, including by way of this lawsuit.

44. Upon information and belief, Spectra Logic's affirmative acts of making, using, and selling the Joint Accused Instrumentalities, and providing implementation services and technical support to users of the Joint Accused Instrumentalities, have induced and continue to induce users of the Joint Accused Instrumentalities to use them in their normal and customary way to infringe Claim 1 of the '530 patent by making or using a system comprising: a memory device; and a data accelerator, wherein said data accelerator is coupled to said memory device, a data stream is received by said data accelerator in received form, said data stream includes a first data block and a second data block, said data stream is compressed by said data accelerator to provide a compressed data stream by compressing said first data block with a first compression technique and said second data block with a second compression technique, said first and second compression techniques are different, said compressed data stream is stored on said memory device, said compression and storage occurs faster than said data stream is able to be stored on said memory device in said received form, a first data descriptor is stored on said memory device indicative of said first compression technique, and said first descriptor is utilized to decompress the portion of said compressed data stream associated with said first data block. For example, Spectra Logic explains to customers the benefits of using the Accused Instrumentality: "CommVault® and Spectra Logic have created a joint solution to address the increasing data protection and archive challenges of a digital world. Working in combination, CommVault Simpana® and Spectra Logic nTier Verde provide a scalable, cost effective, comprehensive data management platform addressing the performance and storage needs required to provide a backup and archive solution "silver bullet." Simpana software simplifies virtual or physical business critical application protection with point-in time recovery, improves backup performance while reducing storage and network

overhead with source-based deduplication, and reduces production system overhead by performing backup, archiving and analytics in a single pass (Simpana OnePass™). … Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators." See, e.g., Ex. E; https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."). For similar reasons, Spectra Logic also induces its customers to use the Accused Instrumentalities to infringe other claims of the '530 patent. Spectra Logic specifically intended and was aware that these normal and customary activities would infringe the '530 patent. Spectra Logic performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '530 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, Spectra Logic engaged in such inducement to promote the sales of the Joint Accused Instrumentalities. Accordingly, Spectra Logic has induced and continues to induce users of the accused products and/or services to use the accused products and/or services in their ordinary and customary way to infringe the '530 patent, knowing that such use constitutes infringement of the '530 patent.

45. The Joint Accused Instrumentality evidently includes the memory device and includes the data accelerator, wherein said data accelerator is coupled to said memory device. For example, the Accused Instrumentality stores data on Verde storage systems, which constitute a memory device. See, e.g., https://www.spectralogic.com/commvault-joint-solution-overview/ ("Spectra Logic Verde Disk – Simply Affordable File Storage Spectra Verde was designed from the ground up as a backup and archive storage platform

with 3 simple goals: ease of use, affordability and reliability."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("The nTier Verde disk system can easily expand capacity in place by allowing addition of expansion chassis, and by permitting the use of larger disk drives as they become available.").

46. The Joint Accused Instrumentality receives an incoming stream of data. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("The joint Commvault and Spectra Logic solution consists of the Commvault windows CommServe™ Server which provides policy and configuration management; Commvault Media Agent Servicers (Windows, Unix or Linux), which serve as data transport engines between backup/archive clients and back-end media; and a Spectra VerdeTM Storage Platform, which serves as a nearline Commvault Disk Library."); Ex. E; https://www.spectralogic.com/commvault-joint-solution-overview/

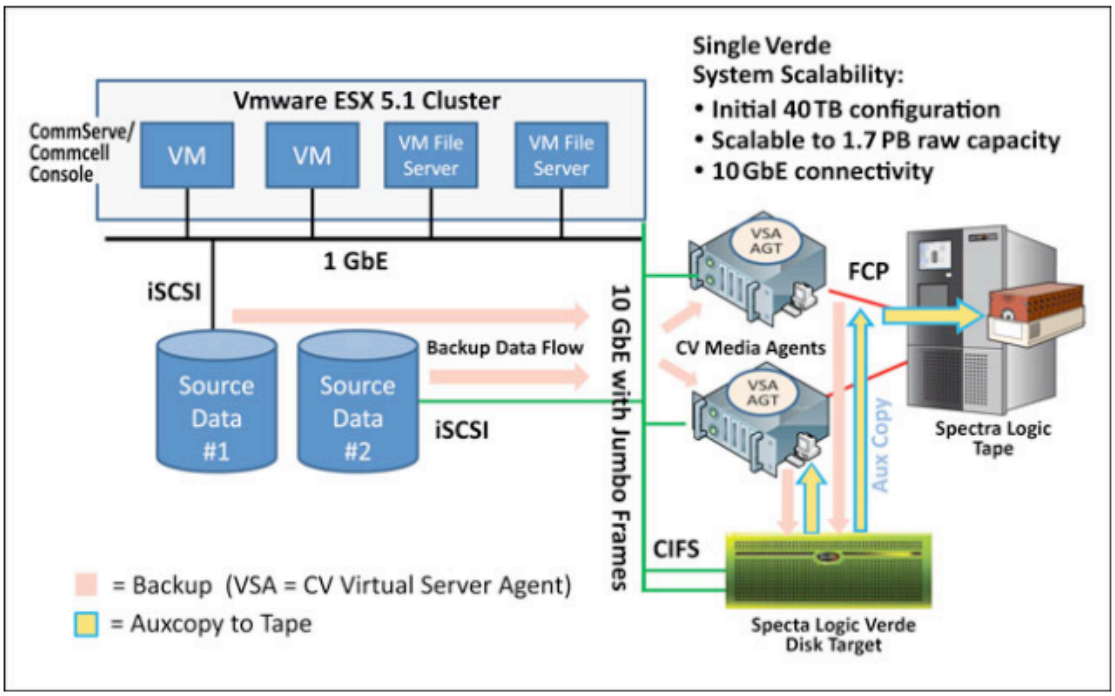

Figure 2: Joint CommVault and Spectra Logic Solution VSA Data Flow Representation

47. The Joint Accused Instrumentality's received data stream will evidently consist of more than one data block.

48. The Joint Accused Instrumentality compresses said data stream to provide a compressed data stream by compressing said first data block with a first compression technique and said second data block with a second compression technique. See, e.g., https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The

compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

49. The first and second compression techniques used by the Joint Accused Instrumentality described above (for example, deduplication and compression) are necessarily different. See, e.g., https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The

compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

50. After compression, said compressed data stream is stored on said memory device. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Spectra Logic® Storage Solutions: Spectra disk and tape solutions are designed from the ground up to be used as reliable backup and archive storage targets, providing ease of use, scalability and cost effectiveness. The Spectra® Verde® NAS Solution's flexibility delivers capacity, protection and performance options, while tape offers the most cost-effective, long-term storage solution. The joint Commvault and Spectra solution enables resources to be shared between Commvault Media Agents servers and can be optimized for performance or capacity-based needs."); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators.").

51. Said compression and storage occurs faster than said data stream is able to be stored on said memory device in said received form. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much

as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators.").

52. The Joint Accused Instrumentality would evidently store a first data descriptor on said memory device indicative of said first compression technique, for example, a checksum, fingerprint, or digest calculated for the data block, a reference count, a header, and/or metadata, and utilize said first descriptor to decompress the portion of said compressed data stream associated with said first data block. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the

storage policy copy.").

53. On information and belief, Spectra Logic also directly infringes and continues to infringe other claims of the '530 patent, for similar reasons as explained above with respect to Claim 1 of the '530 patent.

54. On information and belief, use of the Joint Accused Instrumentality in its ordinary and customary fashion results in infringement of the methods claimed by the '530 patent.

55. By making, using, offering for sale, selling and/or importing into the United States the Joint Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities' compression features, Spectra Logic has injured Realtime and is liable to Realtime for infringement of the '530 patent pursuant to 35 U.S.C. § 271.

56. As a result of Spectra Logic's infringement of the '530 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for Spectra Logic's infringement, but in no event less than a reasonable royalty for the use made of the invention by Spectra Logic, together with interest and costs as fixed by the Court.

CommVault (Simpana)

57. On information and belief, CommVault has offered for sale, sold and/or imported into the United States CommVault products and/or services that infringe the '530 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, CommVault's products and services, including CommVault software (sometimes referred to as "Simpana") versions 8 and later, and all versions and variations thereof since the issuance of the '530 patent ("Accused Instrumentality").

58. On information and belief, CommVault has directly infringed and continues to infringe the '530 patent, for example, through their own use and testing of the Accused Instrumentality, which constitutes a system comprising: a memory device; and a data accelerator, wherein said data accelerator is coupled to said memory device, a data stream

is received by said data accelerator in received form, said data stream includes a first data block and a second data block, said data stream is compressed by said data accelerator to provide a compressed data stream by compressing said first data block with a first compression technique and said second data block with a second compression technique, said first and second compression techniques are different, said compressed data stream is stored on said memory device, said compression and storage occurs faster than said data stream is able to be stored on said memory device in said received form, a first data descriptor is stored on said memory device indicative of said first compression technique, and said first descriptor is utilized to decompress the portion of said compressed data stream associated with said first data block. Upon information and belief, CommVault uses the Accused Instrumentality, an infringing system, for its own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support and repair services for the Accused Instrumentality to CommVault's customers.

59. On information and belief, CommVault has had knowledge of the '530 patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, CommVault knew of the '530 patent and knew of its infringement, including by way of this lawsuit.

60. Upon information and belief, CommVault's affirmative acts of making, using, and selling the Accused Instrumentalities, and providing implementation services and technical support to users of the Accused Instrumentalities, have induced and continue to induce users of the Accused Instrumentalities to use them in their normal and customary way to infringe Claim 1 of the '530 patent by making or using a system comprising: a memory device; and a data accelerator, wherein said data accelerator is coupled to said memory device, a data stream is received by said data accelerator in received form, said data stream includes a first data block and a second data block, said data stream is compressed by said data accelerator to provide a compressed data stream by compressing

said first data block with a first compression technique and said second data block with a second compression technique, said first and second compression techniques are different, said compressed data stream is stored on said memory device, said compression and storage occurs faster than said data stream is able to be stored on said memory device in said received form, a first data descriptor is stored on said memory device indicative of said first compression technique, and said first descriptor is utilized to decompress the portion of said compressed data stream associated with said first data block. For example, CommVault explains to customers the benefits of using the Accused Instrumentality: "Simpana 8 simplifies the way businesses store and manage rapidly growing amounts of data and can help customers ensure compliance, gain operational efficiencies, and dramatically reduce their data management and related storage expenses by up to 40%." See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html. CommVault also explains, "By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. … In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN." See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time

compared to traditional methods."). CommVault specifically intended and was aware that the normal and customary use of the Accused Instrumentality on compatible systems would infringe the '530 patent. CommVault performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '530 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CommVault engaged in such inducement to promote the sales of the Accused Instrumentality, *e.g.,* through CommVault's user manuals, product support, marketing materials, and training materials to actively induce the users of the accused products and/or services to infringe the '530 patent. Accordingly, CommVault has induced and continues to induce end users of the accused products and/or services to use the accused products and/or services in their ordinary and customary way with compatible systems to make and/or use systems infringing the '530 patent, knowing that such use of the Accused Instrumentality with compatible systems will result in infringement of the '530 patent.

61. The Accused Instrumentality evidently includes the memory device and includes the data accelerator, wherein said data accelerator is coupled to said memory device. For example, the Accused Instrumentality must run on hardware containing a memory device. See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication").

62. The Accused Instrumentality receives an incoming stream of data. *See, e.g.,* http://www.commvault.com/solutions/by-function/data-protection-backup-and-recovery ("Enterprise data is anything but uniform. Which is why your data protection, backup and recovery solution needs to cover the full range of data sources, file types, storage media and backup modes — from snapshots to streaming. … Back up your databases, files, applications, endpoints and VMs with maximum efficiency according to data type and

recovery profile. Integrate hardware snapshots. Optimize storage with deduplication. Recover your data rapidly and easily, whenever you need to."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems.").

63. The Accused Instrumentality's received data stream will evidently consist of more than one data block. *See, e.g.,* http://www.commvault.com/solutions/by-function/data-protection-backup-and-recovery ("Enterprise data is anything but uniform. Which is why your data protection, backup and recovery solution needs to cover the full range of data sources, file types, storage media and backup modes — from snapshots to streaming. … Back up your databases, files, applications, endpoints and VMs with maximum efficiency according to data type and recovery profile. Integrate hardware snapshots. Optimize storage with deduplication. Recover your data rapidly and easily, whenever you need to.").

64. The Accused Instrumentality compresses said data stream to provide a compressed data stream by compressing said first data block with a first compression technique and said second data block with a second compression technique. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN. …

By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block. Software compression method reduces the amount of space needed for storing data."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes."); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The

compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

65. The first and second compression techniques used by the Accused Instrumentality described above are necessarily different. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN. … By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block. Software compression method reduces the amount of space needed for storing data."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is

deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes."); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

66. After compression, said compressed data stream is stored on said memory device. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block. Software compression method reduces the amount of space needed for storing data."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("The new version offers block-level compression

that runs on a media server and begins with a simple compression algorithm … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%"); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

67. Said compression and storage occurs faster than said data stream is able to be stored on said memory device in said received form. See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%"); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-

solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

68. The Accused Instrumentality would evidently store a first data descriptor on said memory device indicative of said first compression technique, for example, a checksum, fingerprint, or digest calculated for the data block, a reference count, a header, and/or metadata, and utilize said first descriptor to decompress the portion of said compressed data stream associated with said first data block. See, e.g, https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN."); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more

data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

69. CommVault also infringes other claims of the '530 patent, directly and through inducing infringement and contributory infringement, for similar reasons as explained above with respect to Claim 1 of the '530 patent.

70. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentality, and touting the benefits of using the Accused Instrumentality's compression features, CommVault has injured Realtime and is liable to Realtime for infringement of the '530 patent pursuant to 35 U.S.C. § 271.

71. As a result of CommVault's infringement of the '530 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CommVault's infringement, but in no event less than a reasonable royalty for the use made of the invention by CommVault, together with interest and costs as fixed by the Court.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 9,116,908

72. Plaintiff Realtime realleges and incorporates by reference paragraphs 1-71 above, as if fully set forth herein.

73. Plaintiff Realtime is the owner by assignment of United States Patent No. 9,116,908 ("the '908 Patent") entitled "System and methods for accelerated data storage and retrieval." The '908 Patent was duly and legally issued by the United States Patent and Trademark Office on August 25, 2015. A true and correct copy of the '908 Patent is included as Exhibit C.

74. On information and belief, Spectra Logic has offered for sale, sold and/or imported into the United States products and/or services that infringe the '908 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, a joint solution including both Spectra Logic's Spectra nTier Verde disk and CommVault's Simpana software, CommVault Windows CommServe® Server, and/or CommVault Media Agent Servers (Windows, Unix or Linux), and all versions and variations thereof since the issuance of the '908 patent ("Joint Accused Instrumentality"). See, e.g., Ex. E; https://www.spectralogic.com/commvault-joint-solution-overview/.

75. On information and belief, Spectra Logic has directly infringed and continue to infringe at least Claim 1 of the '908 patent, for example, through its own use and testing of the Joint Accused Instrumentality, which constitutes a system comprising: a memory device; and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block; wherein the compressed first and second data blocks are stored on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in

uncompressed form. Upon information and belief, Spectra Logic uses the Joint Accused Instrumentality, an infringing system, for its own internal non-testing business purposes, while testing the Joint Accused Instrumentality, and while providing technical support and repair services for the Joint Accused Instrumentality to Spectra Logic's customers.

76. On information and belief, use of the Accused Instrumentality in its ordinary and customary fashion results in infringement of the systems claimed by the '908 patent.

77. On information and belief, Spectra Logic has had knowledge of the '908 patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, CommVault and Spectra Logic knew of the '908 patent and knew of their infringement, including by way of this lawsuit.

78. Upon information and belief, Spectra Logic's affirmative acts of making, using, and selling the Joint Accused Instrumentalities, and providing implementation services and technical support to users of the Joint Accused Instrumentalities, have induced and continue to induce users of the Joint Accused Instrumentalities to use them in their normal and customary way to infringe Claim 1 of the '908 patent by making or using a system comprising: a memory device; and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block; wherein the compressed first and second data blocks are stored on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. For example, Spectra Logic explains to customers the benefits of using the Accused Instrumentality: "CommVault® and Spectra Logic have created a joint solution to address the increasing data protection and archive challenges of a digital world. Working in combination, CommVault Simpana® and Spectra Logic nTier Verde provide a scalable, cost effective, comprehensive data management

platform addressing the performance and storage needs required to provide a backup and archive solution "silver bullet." Simpana software simplifies virtual or physical business critical application protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication, and reduces production system overhead by performing backup, archiving and analytics in a single pass (Simpana OnePass™). … Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators." See, e.g., Ex. E; https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."). For similar reasons, Spectra Logic also induces its customers to use the Accused Instrumentalities to infringe other claims of the '908 patent. Spectra Logic specifically intended and were aware that these normal and customary activities would infringe the '908 patent. Spectra Logic performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '908 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, Spectra Logic engaged in such inducement to promote the sales of the Joint Accused Instrumentalities. Accordingly, Spectra Logic has induced and continues to induce users of the accused products and/or services to use the accused products and/or services in their ordinary and customary way to infringe the '908 patent, knowing that such use constitutes infringement of the '908 patent.

79. The Joint Accused Instrumentality evidently includes a memory device and a data accelerator configured to compress: (i) a first data block with a first compression

technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block. For example, the Joint Accused Instrumentality stores data on Verde storage systems, which constitute a memory device. See, e.g., https://www.spectralogic.com/commvault-joint-solution-overview/ ("Spectra Logic Verde Disk – Simply Affordable File Storage Spectra Verde was designed from the ground up as a backup and archive storage platform with 3 simple goals: ease of use, affordability and reliability.");

https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("The nTier Verde disk system can easily expand capacity in place by allowing addition of expansion chassis, and by permitting the use of larger disk drives as they become available."). The Joint Accused Instrumentality compresses said data stream to provide a compressed data stream by compressing said first data block with a first compression technique and said second data block with a second compression technique different from the first compression technique. See, e.g., https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication.");

https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form.");

https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which

testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."). Moreover, by reducing the amount of data transferred, the Accused Instrumentality inherently accelerates the movements of data.

80. The Accused Instrumentality stores the compressed first and second data blocks on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. See, e.g., https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups … Spectra Logic® Storage Solutions Spectra disk and tape solutions are designed from the ground up to be used as reliable backup and archive storage targets, providing ease of use, scalability and cost effectiveness."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

81. On information and belief, Spectra Logic also directly infringes and

continue to infringe other claims of the '908 patent, for similar reasons as explained above with respect to Claim 1 of the '908 patent.

82. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities' compression features, Spectra Logic has injured Realtime and is liable to Realtime for infringement of the '908 patent pursuant to 35 U.S.C. § 271.

83. As a result of Spectra Logic's infringement of the '908 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for Spectra Logic's infringement, but in no event less than a reasonable royalty for the use made of the invention by Spectra Logic, together with interest and costs as fixed by the Court.

CommVault (Simpana)

84. On information and belief, CommVault has offered for sale, sold and/or imported into the United States CommVault products and/or services that infringe the '908 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, CommVault's products and services, including CommVault software (sometimes referred to as "Simpana") versions 8 and later, and all versions and variations thereof since the issuance of the '908 patent ("Accused Instrumentality").

85. On information and belief, CommVault has directly infringed and continues to infringe the '908 patent, for example, through their own use and testing of the Accused Instrumentality, which constitutes a system comprising: a memory device; and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block; wherein the compressed first and second data blocks are stored on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. Upon

information and belief, CommVault uses the Accused Instrumentality, an infringing system, for their own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support and repair services for the Accused Instrumentality to CommVault's customers.

86. On information and belief, use of the Accused Instrumentality in its ordinary and customary fashion results in infringement of the systems claimed by the '908 patent.

87. On information and belief, CommVault has had knowledge of the '908 patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, CommVault knew of the '908 patent and knew of its infringement, including by way of this lawsuit.

88. Upon information and belief, CommVault's affirmative acts of making, using, and selling the Accused Instrumentalities, and providing implementation services and technical support to users of the Accused Instrumentalities, have induced and continue to induce users of the Accused Instrumentalities to use them in their normal and customary way to infringe Claim 1 of the '908 patent by making or using a system comprising: a memory device; and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block; wherein the compressed first and second data blocks are stored on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. For example, CommVault explains to customers the benefits of using the Accused Instrumentality: "Simpana 8 simplifies the way businesses store and manage rapidly growing amounts of data and can help customers ensure compliance, gain operational efficiencies, and dramatically reduce their data management and related storage expenses by up to 40%." See, e.g.,

http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html. CommVault also explains, "By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. … In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN." See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."). CommVault specifically intended and was aware that the normal and customary use of the Accused Instrumentality on compatible systems would infringe the '908 patent. CommVault performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '908 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CommVault engaged in such inducement to promote the sales of the Accused Instrumentality, *e.g.,* through CommVault's user manuals, product support, marketing materials, and training materials to actively induce the users of the accused products and/or services to infringe the '908 patent. Accordingly, CommVault has induced and continues to induce end users of the accused products and/or services to use the accused products and/or services in their ordinary and customary way with compatible systems to make and/or use systems infringing the '908 patent, knowing that such use of the Accused Instrumentality with

compatible systems will result in infringement of the '908 patent.

89. The Accused Instrumentality evidently includes a memory device and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block. For example, the Accused Instrumentality must run on hardware containing a memory device. See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication"). The Accused Instrumentality compresses: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN. … By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block.

Software compression method reduces the amount of space needed for storing data."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes."); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators.");

http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("Client compression is available for all storage media. This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … MediaAgent compression is available for all storage media. This scheme compresses the data on the MediaAgent using compression software in the MediaAgent. The compressed data is then sent from the MediaAgent to the storage media. … When deduplication storage policy is configured, compression is automatically enabled on the storage policy copy.").

90. The Accused Instrumentality stores the compressed first and second data blocks on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block. Software compression method reduces the amount of space needed for storing data."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%"); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is

automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

91. On information and belief, CommVault also directly infringes and continue to infringe other claims of the '908 patent, for similar reasons as explained above with respect to Claim 1 of the '908 patent.

92. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities' compression features, CommVault has injured Realtime and is liable to Realtime for infringement of the '908 patent pursuant to 35 U.S.C. § 271.

93. As a result of CommVault's infringement of the '908 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CommVault's infringement, but in no event less than a reasonable royalty for the use made of the invention by CommVault, together with interest and costs as fixed by the Court.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 8,717,204

94. Plaintiff realleges and incorporates by reference paragraphs 1-93 above, as if fully set forth herein.

95. Plaintiff Realtime is the owner by assignment of United States Patent No. 8,717,204 entitled "Methods for encoding and decoding data." The '204 patent was duly and legally issued by the United States Patent and Trademark Office on May 6, 2014. A true and correct copy of the '204 Patent is included as Exhibit D.

96. On information and belief, Spectra Logic has offered for sale, sold and/or imported into the United States products and/or services that infringe the '204 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, a joint solution including both Spectra Logic's Spectra nTier Verde disk and CommVault's Simpana software, CommVault Windows

CommServe® Server, and/or CommVault Media Agent Servers (Windows, Unix or Linux), and all versions and variations thereof since the issuance of the '204 patent ("Joint Accused Instrumentality"). See, e.g., Ex. E; https://www.spectralogic.com/commvault-joint-solution-overview/.

97. On information and belief, Spectra Logic has directly infringed and continues to infringe the '204 patent, for example, through its own use and testing of the accused products and/or services to practice compression methods claimed by the '204 patent, including a method for processing data, the data residing in data fields, comprising: recognizing any characteristic, attribute, or parameter of the data; selecting an encoder associated with the recognized characteristic, attribute, or parameter of the data; compressing the data with the selected encoder utilizing at least one state machine to provide compressed data having a compression ratio of over 4:1; and point-to-point transmitting the compressed data to a client; wherein the compressing and the transmitting occur over a period of time which is less than a time to transmit the data in an uncompressed form. On information and belief, Spectra Logic uses the Joint Accused Instrumentality in its ordinary and customary fashion for its own internal non-testing business purposes, while testing the Joint Accused Instrumentality, and while providing technical support and repair services for the Joint Accused Instrumentality to Spectra Logic's customers, and use of the Joint Accused Instrumentality in its ordinary and customary fashion results in infringement of the methods claimed by the '204 patent.

98. On information and belief, Spectra Logic has had knowledge of the '204 patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, Spectra Logic knew of the '204 patent and knew of its infringement, including by way of this lawsuit.

99. Spectra Logic's affirmative acts of making, using, selling, offering for sale, and/or importing the Joint Accused Instrumentality have induced and continue to induce users of the Joint Accused Instrumentality to use the Joint Accused Instrumentality in its

normal and customary way to infringe the '204 patent by practicing compression methods claimed by the '204 patent, including a method for processing data, the data residing in data fields, comprising: recognizing any characteristic, attribute, or parameter of the data; selecting an encoder associated with the recognized characteristic, attribute, or parameter of the data; compressing the data with the selected encoder utilizing at least one state machine to provide compressed data having a compression ratio of over 4:1; and point-to-point transmitting the compressed data to a client; wherein the compressing and the transmitting occur over a period of time which is less than a time to transmit the data in an uncompressed form. For example, Spectra Logic explains to customers the benefits of using the Accused Instrumentality: "CommVault® and Spectra Logic have created a joint solution to address the increasing data protection and archive challenges of a digital world. Working in combination, CommVault Simpana® and Spectra Logic nTier Verde provide a scalable, cost effective, comprehensive data management platform addressing the performance and storage needs required to provide a backup and archive solution "silver bullet." Simpana software simplifies virtual or physical business critical application protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication, and reduces production system overhead by performing backup, archiving and analytics in a single pass (Simpana OnePass™). … Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators." See, e.g., Ex. E; https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4422 ("nTier Verde disk systems support compression, a standard feature that lets you store more data onto disk, increasing disk's affordability."). Spectra Logic specifically intended and was aware that the normal and customary use of the Joint Accused Instrumentality on

compatible systems would infringe the '204 patent. Spectra Logic performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '204 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, Spectra Logic engaged in such inducement to promote the sales of the Joint Accused Instrumentality, *e.g.,* through Spectra Logic's user manuals, product support, marketing materials, and training materials to actively induce the users of the accused products and/or services to infringe the '204 patent. Accordingly, Spectra Logic has induced and continues to induce end users of the accused products and/or services to use the accused products and/or services in their ordinary and customary way with compatible systems to make and/or use systems infringing the '204 patent, knowing that such use of the Joint Accused Instrumentality with compatible systems will result in infringement of the '204 patent.

100. The Accused Instrumentality practices a method for processing data, the data residing in data fields. *See, e.g.*, https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault® Software provides a single platform that protects, manages, and accesses data—regardless of where it lives.").

101. The Accused Instrumentality recognizes any characteristic, attribute, or parameter of the data. *See, e.g.*, https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication."); https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form.").

102. The Accused Instrumentality selects an encoder associated with the recognized characteristic, attribute, or parameter of the data. *See, e.g.*,

https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication.");

https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form.").

103. Upon information and belief, the Accused Instrumentality compresses the data with the selected encoder utilizing at least one state machine to provide compressed data having a compression ratio of over 4:1. *See, e.g.*, https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication.");

https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form.").

104. The Accused Instrumentality point-to-point transmits the compressed data to a client. See, e.g., https://www.spectralogic.com/commvault-joint-solution-overview/:

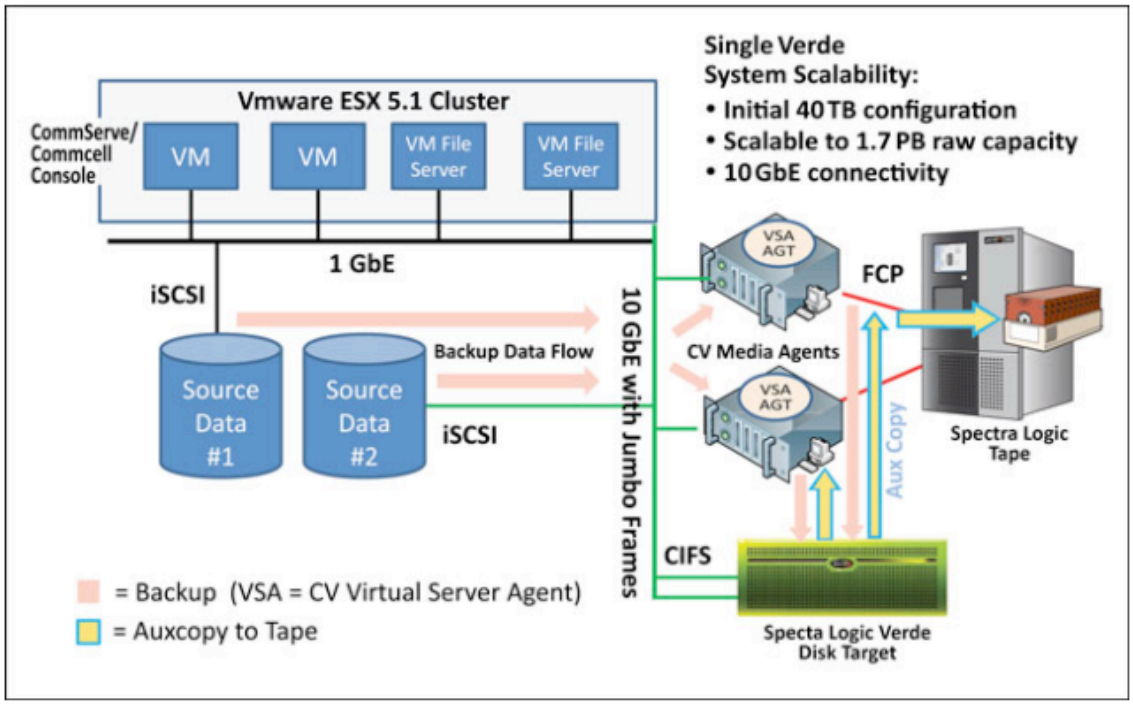

Figure 2: Joint CommVault and Spectra Logic Solution VSA Data Flow Representation

105. In the Accused Instrumentality, the compressing and the transmitting occur over a period of time which is less than a time to transmit the data in an uncompressed form. *See, e.g.,* https://edge.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=4599 ("Source-based deduplication for fast, efficient backups"); https://www.spectralogic.com/commvault-joint-solution-overview/ ("CommVault software simplifies data protection with point-in time recovery, improves backup performance while reducing storage and network overhead with source-based deduplication"); http://cstor.com/wp-content/uploads/2016/03/Spectra_Mutual-Fund_Case-Study.pdf ("Backups are deduplicated by CommVault and written to the nTier Verde in the reduced form."); Ex. E ("Verde also features a compression option that can have multiple performance advantages when enabled. Because of the reduced data set size on disk due to compression, less disk based IO is required which testing has shown will improve restore and AUX copy speeds by as much as 50%. Enabling Verde compression will also improve site to site replication speeds for those sites using WAN accelerators.");

http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … Client compression reduces the network load since the data is compressed before it leaves the client.").

106. On information and belief, Spectra Logic also directly infringes and continues to infringe other claims of the '204 patent, for similar reasons as explained above with respect to Claim 12 of the '204 patent.

107. By making, using, offering for sale, selling and/or importing into the United States the Joint Accused Instrumentalities, and touting the benefits of using the Joint Accused Instrumentalities' compression features, Spectra Logic has injured Realtime and is liable to Realtime for infringement of the '204 patent pursuant to 35 U.S.C. § 271.

108. As a result of Spectra Logic's infringement of the '204 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for Spectra Logic's infringement, but in no event less than a reasonable royalty for the use made of the invention by Spectra Logic, together with interest and costs as fixed by the Court.

CommVault (Simpana)

109. On information and belief, CommVault has offered for sale, sold and/or imported into the United States CommVault products and/or services that infringe the '204 patent, and continues to do so. By way of illustrative example, these infringing products and/or services include, without limitation, CommVault's products and services, including CommVault software (sometimes referred to as "Simpana") versions 8 and later, and all versions and variations thereof since the issuance of the '204 patent ("Accused Instrumentality").

110. On information and belief, CommVault has directly infringed and continues to infringe the '204 patent, for example, through its own use and testing of the accused products and/or services to practice compression methods claimed by the '204 patent,

including a method for processing data, the data residing in data fields, comprising: recognizing any characteristic, attribute, or parameter of the data; selecting an encoder associated with the recognized characteristic, attribute, or parameter of the data; compressing the data with the selected encoder utilizing at least one state machine to provide compressed data having a compression ratio of over 4:1; and point-to-point transmitting the compressed data to a client; wherein the compressing and the transmitting occur over a period of time which is less than a time to transmit the data in an uncompressed form. On information and belief, CommVault uses the Accused Instrumentality in its ordinary and customary fashion for its own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support and repair services for the Accused Instrumentality to CommVault's customers, and use of the Accused Instrumentality in its ordinary and customary fashion results in infringement of the methods claimed by the '204 patent.

111. On information and belief, CommVault has had knowledge of the '204 patent since at least the filing of the Original Complaint on February 27, 2017 or shortly thereafter, and on information and belief, CommVault knew of the '204 patent and knew of its infringement, including by way of this lawsuit.

112. CommVault's affirmative acts of making, using, selling, offering for sale, and/or importing the Accused Instrumentality have induced and continue to induce users of the Accused Instrumentality to use the Accused Instrumentality in its normal and customary way to infringe the '204 patent by practicing compression methods claimed by the '204 patent, including a method for processing data, the data residing in data fields, comprising: recognizing any characteristic, attribute, or parameter of the data; selecting an encoder associated with the recognized characteristic, attribute, or parameter of the data; compressing the data with the selected encoder utilizing at least one state machine to provide compressed data having a compression ratio of over 4:1; and point-to-point transmitting the compressed data to a client; wherein the compressing and the transmitting

occur over a period of time which is less than a time to transmit the data in an uncompressed form. For example, CommVault explains to customers the benefits of using the Accused Instrumentality: "Simpana 8 simplifies the way businesses store and manage rapidly growing amounts of data and can help customers ensure compliance, gain operational efficiencies, and dramatically reduce their data management and related storage expenses by up to 40%." See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html. CommVault also explains, "By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. … In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN." See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm; https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."). CommVault specifically intended and was aware that the normal and customary use of the Accused Instrumentality on compatible systems would infringe the '204 patent. CommVault performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the '204 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CommVault engaged in such inducement to promote the sales of the Accused Instrumentality, *e.g.,* through CommVault's user manuals, product support, marketing materials, and training materials

to actively induce the users of the accused products and/or services to infringe the '204 patent. Accordingly, CommVault has induced and continues to induce end users of the accused products and/or services to use the accused products and/or services in their ordinary and customary way with compatible systems to make and/or use systems infringing the '204 patent, knowing that such use of the Accused Instrumentality with compatible systems will result in infringement of the '204 patent.

113. The Accused Instrumentality practices a method for processing data, the data residing in data fields. *See, e.g.,* http://www.commvault.com/solutions/by-function/data-protection-backup-and-recovery ("Enterprise data is anything but uniform. Which is why your data protection, backup and recovery solution needs to cover the full range of data sources, file types, storage media and backup modes — from snapshots to streaming. … Back up your databases, files, applications, endpoints and VMs with maximum efficiency according to data type and recovery profile. Integrate hardware snapshots. Optimize storage with deduplication. Recover your data rapidly and easily, whenever you need to."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes.").

114. The Accused Instrumentality recognizes any characteristic, attribute, or parameter of the data. See, e.g.,

https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes."); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

115. The Accused Instrumentality selects an encoder associated with the recognized characteristic, attribute, or parameter of the data. See, e.g.,

https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("Whenever a new DDB is created, a fresh copy of signatures and first occurrence of each subsequent data block is written to storage. However these data blocks may already exist in storage with signature contained in the sealed DDBs residing in the MediaAgent or Data Center. The DDB Priming feature looks for signatures in the previously sealed DDBs and uses them to baseline the new DDB. In source-side deduplication, this saves the need for clients to transfer data blocks that are already available in the storage. Use this option to reduce the data transfer between clients that have source-side deduplication enabled and connect to the MediaAgent over a WAN."); http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("CommVault Monday announced a new version of its flagship data management software, Simpana , which now includes block-level data deduplication … The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm and completes with full deduplication on secondary disk storage subsystems. … Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%. 'And it performs deduplication across the enterprise, based on a one policy,' Ilkal said. As data is deduplicated, a searchable index is created on the media server that can later be used to recover data for regulatory compliance or civil litigation purposes."); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

116. Upon information and belief, the Accused Instrumentality compresses the data with the selected encoder utilizing at least one state machine to provide compressed

data having a compression ratio of over 4:1. *See, e.g.*, http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("Initial compression rates run as high as 50%, with final deduplication on the secondary disk storage arrays achieving rates as high as 90%.").

117. The Accused Instrumentality point-to-point transmits the compressed data to a client. See, e.g., https://documentation.commvault.com/commvault/v11/article?p=features/deduplication/online_help/r_settings.htm ("By default, when a storage policy is configured to use deduplication, compression is automatically enabled for the storage policy copy. All the subclients associated to this storage policy will use storage policy compression settings. … When compression is enabled, data blocks are compressed and signatures are generated on the compressed block. Software compression method reduces the amount of space needed for storing data."); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("Data protected by Commvault's snapshot, backup, and archive solutions is stored in the virtual repository. … In addition. the virtual repository is deduplicated for optimized capacity and performance … During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods.").

118. In the Accused Instrumentality, the compressing and the transmitting occur over a period of time which is less than a time to transmit the data in an uncompressed form. See, e.g., http://www.cio.com/article/2431106/virtualization/commvault-adds-deduplication-to-flagship-software.html ("The new version offers block-level compression that runs on a media server and begins with a simple compression algorithm … Initial compression rates run as high as 50%, with final deduplication on the secondary disk

storage arrays achieving rates as high as 90%"); https://kapost-files-prod.s3.amazonaws.com/published/5744e6fa0469bb611200000b/solution-brief-commvault-data-protection-and-recovery-solutions.pdf?kui=2OTt_Se3VZBnqTku4t3AfA ("Data protected by Commvault's snapshot, backup, and archive solutions is stored in the virtual repository. … In addition. the virtual repository is deduplicated for optimized capacity and performance … During the backup process, data is automatically deduplicated at the source and globally across sites and servers. This significantly reduces the amount of required network bandwidth, storage, and backup time compared to traditional methods."); http://documentation.commvault.com/commvault/v10/article?p=features/data_compression/data_compression.htm ("This scheme compresses the data on the client computer using the compression software. The compressed data is then sent to the MediaAgent which in turn directs it to a storage media. … Client compression reduces the network load since the data is compressed before it leaves the client.").

119. On information and belief, CommVault also directly infringes and continues to infringe other claims of the '204 patent, for similar reasons as explained above with respect to Claim 12 of the '204 patent.

120. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities' compression features, CommVault has injured Realtime and is liable to Realtime for infringement of the '204 patent pursuant to 35 U.S.C. § 271.

121. As a result of CommVault's infringement of the '204 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CommVault's infringement, but in no event less than a reasonable royalty for the use made of the invention by CommVault, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Realtime respectfully requests that this Court enter:

a. A judgment in favor of Plaintiff that CommVault and Spectra Logic have infringed, either literally and/or under the doctrine of equivalents, the '728 patent, the '530 patent, the '908 patent, and the '204 patent;

b. A permanent injunction prohibiting CommVault and Spectra Logic from further acts of infringement of the '728 patent, the '530 patent, the '908 patent, and the '204 patent;

c. A judgment and order requiring CommVault and Spectra Logic to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for its infringement of the '728 patent, the '530 patent, the '908 patent, and the '204 patent; and

d. A judgment and order requiring CommVault and Spectra Logic to provide an accounting and to pay supplemental damages to Realtime, including without limitation, prejudgment and post-judgment interest;

e. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against CommVault and Spectra Logic; and

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

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: May 18, 17

Respectfully submitted,

/s/ Reza Mirzaie
Marc A. Fenster (CA SBN 181067)
LEAD ATTORNEY
Reza Mirzaie (CA SBN 246953)
Brian D. Ledahl (CA SBN 186579)
Jeffrey Z.Y. Liao (CA SBN 288994)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on this the 18th day of May 2017.

/s/ *Danielle Joseph*
Danielle Joseph