IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

AKOLOUTHEO, LLC,	
Plaintiff,	**CIVIL ACTION NO.: 4:18-cv-806**
v.	
COMMVAULT SYSTEMS, INC.,	**JURY TRIAL DEMANDED**
Defendant.	

COMPLAINT FOR PATENT INFRINGEMENT

1.   This is an action under the patent laws of the United States, Title 35 of the United States Code, for patent infringement in which Akoloutheo, LLC ("Akoloutheo" or "Plaintiff"), makes the following allegations against Commvault Systems, Inc. ("Commvault" or "Defendant").

PARTIES

2.   Akoloutheo is a Texas limited liability company, having its primary office at 15139 Woodbluff Dr., Frisco, Texas 75035. Plaintiff's owner and sole operator is Rochelle T. Burns.

3.   Defendant is a Delaware corporation having a principal place of business at 1 Commvault Way, Tinton Falls, New Jersey 07724. Commvault also maintains a sales office in the Eastern District of Texas − located at 5810 Tennyson Pkwy, Lincoln Legacy II, Suite 250, Plano, Texas 75024. Defendant's Registered Agent for service of process in Texas is Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701.

JURISDICTION AND VENUE

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

5.   Venue is proper in this district under 28 U.S.C. §§ 1391(c), generally, and under 1400(b), specifically. Defendant has a regular and established place of business in this Judicial District, and Defendant has also committed acts of patent infringement in this Judicial District.

6.   Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

7.   Defendant has established offices in the Lincoln Legacy II Building, at 5810 Tennyson Pkwy in Plano, Texas – within the Eastern District of Texas.

Texas-Plano

Commvault Dallas Field Office
5810 Tennyson Pkwy.
Lincoln Legacy II, Suite 250
Plano, TX 75024

8.   Defendant has infringed, and does infringe, by transacting and conducting business within the Eastern District of Texas. Operations at Defendant's Dallas location include sales, marketing and/or business development for Defendant's infringing instrumentalities.

9.   Defendant's office in Plano, Texas is a regular and established place of business in this Judicial District, and Defendant has committed acts of infringement (as described in

detail, hereinafter) at the Commvault office within this District. Venue is therefore proper in this District under 28 U.S.C. § 1400(b).

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,426,730

10.   Plaintiff is the owner by assignment of the valid and enforceable United States Patent No. 7,426,730 ("the '730 Patent") entitled "Method and System for Generalized and Adaptive Transaction Processing Between Uniform Information Services and Applications" – including all rights to recover for past, present and future acts of infringement. The '730 Patent issued on September 16, 2008, and has a priority date of April 19, 2001. A true and correct copy of the '730 Patent is attached as Exhibit A.

11.   Defendant directly – or through intermediaries including distributors, partners, contractors, employees, divisions, branches, subsidiaries, or parents – made, had made, used, operated, imported, provided, supplied, distributed, offered for sale, sold, and/or provided access to software systems, cloud-based software, and/or software as a service (SaaS) for network monitoring, interrogation, and management including, but not limited to, Commvault's: Complete Backup & Recovery; Hyperscale; Orchestrate; and Activate software systems ("Commvault Software").

12.   Defendant directly – or through intermediaries including distributors, partners, contractors, employees, divisions, branches, subsidiaries, or parents – made, had made, used, operated, imported, provided, supplied, distributed, offered for sale, sold, and/or provided access to network resource components – devices and systems for network monitoring, interrogation, and management – including, but not limited to, Commvault's HyperScale and Remote Office Appliances ("Commvault Network Devices").

13.   The Commvault Network Devices are physical systems that are communicably coupled to, and provide access to, a plurality of networked information and application resources – providing an operational front end for those network resources ("Network Resources"):

With the Commvault Remote Office Appliance you can protect, access, and use all of your data wherever it exists; from remote offices to corporate offices and into the cloud.

> The Commvault HyperScale™ Appliance is built on a scale-out architecture and delivers web-scale services with cloud-like economics in an industry-proven data management solution. This software-defined storage architecture allows customers to use cost-efficient server-based storage to optimize their hardware investment compared to traditional controller-based or object-oriented storage devices. The Commvault HyperScale Appliance provides a unified platform that supports data services for indexing, storage, data security, automation, reporting, and native access without the need for extra storage or other hardware infrastructure.

In similar fashion, Commvault Software manages and provides access to a plurality of network information and application resources, also providing an operational front end for those Network Resources:

> Commvault HyperScale™ Technology consolidates all the roles performed by discrete servers in the traditional data protection architecture into a single software defined stack running on a scale-out architecture. The software spans multiple storage nodes running on general purpose servers, creating a massively addressable storage pool with built-in enterprise class data management capabilities. This eliminates the need for dedicated media servers, proprietary controller based storage devices and cloud gateways, reducing infrastructure costs dramatically.

14.   Together, Commvault Software and Commvault Network Devices are communicatively and operationally coupled to a variety of Network Resources – forming unified Commvault network access/management systems ("Commvault Systems").

15.   The Commvault Software – and thereby Commvault Systems – further comprise software that extends the operational function and capacity of Commvault Systems.

> Commvault has an unparalleled ability to collect and protect data from across your organization. Commvault Activate™ extends Commvault Complete™ Backup & Recovery with a layer of analytics, workflows and pre-built solution accelerators that allow you to know what data you have, contextualize it, apply rules to it, protect it and use it.

16.   Commvault Systems incorporate a Commvault search engine ("CV Search Engine") that generates a transaction request – a search query – that provides access to a particular Network Resource:

> **The CV Search Engine provides the following key features:**
>
> - Ability to **index data** and allow **search and eDiscovery across repositories** that contain electronically stored information (ESI) (including email and text) across operational systems, archives and media; stored in centralized corporate servers, file shares and desktops. Data needs to be backed up using the appropriate agents and then indexed using **Offline Content Indexing**.
> - Provides a **highly distributed indexing and searching configuration** that enables you to **index simultaneously on multiple servers** and search across these search servers. Indexing **large volumes of data** and searching instantly across them is easy to manage. As your data grows, you can add more servers to meet your needs without having to move your data manually.
> - Enables end users to **find the single document most relevant to their specific goal.** The engine provides ready to use faceted search results. Facets can be organized by date, content type (HTML, PDF, Word etc), data source, modification time, email fields etc... With the ability to search and view e-mail messages and attachments right within your browser, it helps end users save valuable time. **Preview of documents** can be viewed in the browser without installing the native applications in the desktop and in mobile/tablet devices.
> - Ability to **search both the metadata and the content.** Adding the Search Engine would allow for searches based on content and metadata, such as file name, location, size and modified time, and information in the To, From, CC, BCC, subject, size, and received time fields for emails.
> - Ability to identify and discover the right information applicable to your eDiscovery requests. As part of the identification process, complex search queries, custodian facets, range queries can be used to cull out the irrelevant documents. Identified documents can be added to a **review set** for further review and hold using **Legal Hold.**

That Network Resource is selected from a plurality of indexed, remotely linked, Network Resources – based upon contextual elements processed from within the search query. The CV Search Engine determines "relevance" of potential Network Resources based upon contextual information for the search (*e.g.*, facets, metadata v. content).

17.   Plaintiff herein restates and incorporates by reference paragraphs 11-16, above.

18.   Commvault Systems perform centralized monitoring, interrogation and management functions for Network Resources across a network, to which a Commvault System is operationally and communicatively linked.

19.   Commvault Systems generate a user interface – which may be browser based, in the example of CV Search Engine – through which users interrogate, manage, or manipulate various Network Resources.

20.   Commvault Systems generate and/or maintain a listing of resources on the network, and generate a registry of Network Resources; as evidenced by the indexing in CV Search Engine.

21.   Commvault Systems, through a user interface, accept a transaction requested by a user – such as a search query.

> The CV Search Engine, powered by Apache SOLR, is designed to search for information in data within your organization. It organizes retrieval of structured and unstructured data. It also provides an intuitive interface for entering, categorizing and retrieving data securely, in compliance with security and data retention regulation.

22.   Commvault Systems determine which Network Resources may be responsive to the requested transaction, and dynamically generate a corresponding communication or signal to one or more Network Resources responsive to that requested transaction.

23.   Commvault Systems select which Network Resources are responsive to the requested transaction, sort them by relevance to the requested transaction, and perform the transaction on or with that Network Resource. Commvault Systems, through the user interface, accept user requests or requirements for network data, generate corresponding communications or signals with one or more related Network Resources, and retrieve requested network data from the Network Resources – displaying the requested data for a user via the user interface.

24.   Commvault Systems process a variety of context specific data as they process the user request.

25.   Commvault Systems create connections to multiple Network Resources, display connected Network Resources, and access Network Resources from a single user interface.

26.   Plaintiff herein restates and incorporates by reference paragraphs 13-25, above.

27.   All recited elements of – at least – claims 1, 15, and 17 of the '730 Patent are present on or within Commvault Systems.

28.   As generally described in the paragraphs above, a Commvault System comprises Commvault Software installed on a networked computer system having a plurality of computer servers, and a plurality of Network Resources communicatively and operationally coupled to the Commvault Software and/or Devices.

29.   As generally described in the paragraphs above, a Commvault System provides access to, or monitoring or management of, one or more Network Resources according to a transaction request entered into the Commvault System through the user interface.

30.   As generally described in the paragraphs above, a Commvault System processes resource transactions entered through the user interface.

31.   As generally described in the paragraphs above, a Commvault System comprises a plurality of Network Resources, remotely located with respect to the computer system upon which the Commvault Software is based, and communicatively coupled to the Commvault Software via a computer network.

32.   As generally described in the paragraphs above, each Network Resource provides one or more resources available for use by a Commvault System.

33.   A Commvault System comprises a resource information registry for storing information about the Network Resources. The information registry in a Commvault System stores resource information available for each of the Network Resources.

34.   A Commvault System, through its user interface, accepts user requests or commands that define a requested transaction with a Network Resource; and dynamically generates a corresponding communication or signal to one or more Network Resources responsive to that requested transaction.

35.   A Commvault System generates contextual elements for the requested transaction that provide additional information for dynamically selecting and processing data from at least one Network Resource.

36.   A Commvault System dynamically selects at least one Network Resource to process in conjunction with the requested transaction according to information stored in the resource information registry.

37.   A Commvault System determines one or more operations to perform on the Network Resource to obtain a result satisfying the requested transaction – such as retrieving data types or categorical information.

38.   A Commvault System obtains a desired result from the selected Network Resource and processes that result to generate a desired output to the user interface.

39.   Commvault Systems infringe – at least – claims 1, 15, and 17 of the '730 Patent.

40.   Commvault Systems literally and directly infringe – at least – claims 1, 15, and 17 of the '730 Patent.

41.   Commvault Systems perform or comprise all required elements of – at least – claims 1, 15, and 17 of the '730 Patent.

42.   In the alternative, Commvault Systems infringe – at least – claims 1, 15, and 17 of the '730 Patent under the doctrine of equivalents. Commvault Systems perform substantially the same functions in substantially the same manner with substantially the same structures, obtaining

substantially the same results, as the required elements of – at least – claims 1, 15, and 17 of the '730 Patent. Any differences between the Commvault Systems and the claims of the '730 Patent are insubstantial.

43.   Commvault Systems – by virtue of exclusivity of use of Commvault Software – require end users to operate Commvault Systems in a manner prescribed and controlled by Commvault. Commvault therefore exercises control and/or direction over the performance of every action performed on or by a Commvault System, including those that are initiated by an end user via the user interface.

44.   All recited elements of – at least – claims 1, 15, and 17 of the '730 Patent are present within, or performed by, Commvault Systems or, in the alternative, performed by end users of Commvault Systems under the direction and control of Commvault – and are therefore attributable to Commvault.

45.   Commvault Systems, when used and/or operated in their intended manner or as designed, infringe – at least – claims 1, 15, and 17 of the '730 Patent, and Commvault is therefore liable for infringement of the '730 Patent.

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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

a.   A judgment in favor of Plaintiff that Defendant has infringed the '730 Patent;

b.   A permanent injunction enjoining Defendant and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith, from infringement of the '730 Patent;

c.   A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendant's infringement of the '730 Patent as provided under 35 U.S.C. § 284;

d.   An award to Plaintiff for enhanced damages resulting from the knowing and deliberate nature of Defendant's prohibited conduct with notice being made at least as early as

the service date of this complaint, as provided under 35 U.S.C. § 284;

      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; and

      f.   Any and all other relief to which Plaintiff may show itself to be entitled.

November 9, 2018

Respectfully Submitted,

By: /s/ *Ronald W. Burns*

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