

RUSS, AUGUST & KABAT

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Marc A. Fenster, SBN 181067
Email: mfenster@raklaw.com
Reza Mirzaie (CA SBN 246953)
Email: rmirzaie@raklaw.com
Brian D. Ledahl (CA SBN 186579)
Email: bledahl@raklaw.com
Paul Kroeger (CA SBN 229074)
Email: pkroeger@raklaw.com
C. Jay Chung (CA SBN 252794)
Email: jchung@raklaw.com
Philip X. Wang (CA SBN 262239)
Email: pwang@raklaw.com
12424 Wilshire Boulevard, 12th Floor
Los Angeles, California 90025
Telephone: (310) 826-7474
Facsimile: (310) 826-6991

*Attorneys for Plaintiff
Data Scape Limited*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

DATA SCAPE LIMITED,

Plaintiff,

v.

WESTERN DIGITAL
CORPORATION, WESTERN
DIGITAL TECHNOLOGIES, INC.,

Defendants.

Case No. 8:18-cv-02285

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

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PARTIES

1. Data Scape Limited (“Data Scape” or “Plaintiff”) is a company organized under the laws of Ireland with its office located at Office 115, 4-5 Burton Hall Road, Sandyford, Dublin 18, Ireland.

2. On information and belief, Western Digital Corporation is a Delaware corporation with a place of business at 3355 Michelson Drive, Suite 100, Irvine, California 92612.

3. On information and belief, Western Digital Technologies, Inc. is a Delaware corporation with a place of business at 3355 Michelson Drive, Suite 100, Irvine, California 92612. Western Digital Technologies, Inc. and Western Digital Corporation are collectively referred to as “Defendants” or “Western Digital.”

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over each Defendant in this action because each Defendant resides in the Central District of California and has committed acts within this district giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice. Each Defendant, 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.

5. Venue is proper in this district under 28 U.S.C. § 1400(b). Each Defendant has transacted business in this district and has committed acts of direct and indirect infringement in this district. Each Defendant has a regular and established place of business in this District, including, e.g., its headquarters and principal place of business.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 8,386,581

6. Plaintiff realleges and incorporates by reference the foregoing paragraphs, as if fully set forth herein.

7. Data Scape is the owner by assignment of United States Patent No. 8,386,581 (“the ’581 Patent”), entitled “Communication System And Its Method and Communication Apparatus And Its Method.” The ’581 Patent was duly and legally issued by the United States Patent and Trademark Office on February 26, 2013. A true and correct copy of the ’581 Patent is included as Exhibit A.

8. Each Defendant has offered for sale, sold and/or imported into the United States products and services that infringe the ’581 patent, and continues to do so. By way of illustrative example, these infringing products and services include, without limitation, Defendant’s products and services, *e.g.*, My Cloud series devices, WD SmartWare software, WD Sync software, WD Backup software, and all versions and variations thereof since the issuance of the ’581 Patent (“Accused Instrumentalities”).

9. Each Defendant has directly infringed and continues to infringe the ’581 Patent, for example, by making, selling, offering for sale, and/or importing the Accused Instrumentalities, and through its own use and testing of the Accused Instrumentalities. Each Defendant uses the Accused Instrumentalities for its own internal non-testing business purposes, while testing the Accused Instrumentalities, and while providing technical support and repair services for the Accused Instrumentalities to its customers.

10. For example, the Accused Instrumentalities infringe Claim 1 (and other claims) of the ’581 Patent. One non-limiting example of the Accused Instrumentalities’ infringement is presented below:

11. The Accused Instrumentalities include “[a] communication apparatus.” For example, the Accused Instrumentalities communicate data stored on one device

1 (e.g. a My Cloud server or a computer) to another device (e.g. a computer, a USB
2 device, a cloud backup service, or a connected My Cloud server). *See, e.g.,*
3 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395> (“WD Sync
4 allows files to be synchronized across multiple computers connected to a My
5 Cloud.”); <https://www.wd.com/products/personal-cloud-storage/my-cloud.html>
6 (“YOUR OWN PERSONAL CLOUD: With the My Cloud personal storage device,
7 you’re able to have reliable storage in one place for your photos, videos, important
8 files – anything you save – and share it anywhere you have an internet connection.
9 With the automatic backup and synchronization software, your content is up to date
10 and accessible from all your devices.”).

11 12. The Accused Instrumentalities include “a storage unit configured to
12 store content data to a storage medium.” For example, each My Cloud device
13 includes one or more hard disk for storing content data. *See, e.g.,*
14 <https://www.wd.com/products/personal-cloud-storage/my-cloud.html> (“Everything
15 in One Place: Centralize, organize and back up all your photos, videos and files in
16 one reliable place. *** Capacity: 3TB, 4TB, 6TB, 8TB”);
17 [https://www.wd.com/products/network-attached-storage/my-cloud-expert-series-](https://www.wd.com/products/network-attached-storage/my-cloud-expert-series-ex2-ultra.html)
18 [ex2-ultra.html](https://www.wd.com/products/network-attached-storage/my-cloud-expert-series-ex2-ultra.html) (“My Cloud EX2 Ultra comes pre-configured with WD Red hard
19 drives, specifically built for NAS systems to provide improved performance within
20 24x7 environments.”); WD MyCloud User Manual 4779-705140 (“USB Backup—
21 Allows you to back up your WD My Cloud device data to a USB device or to backup
22 your USB device data to your WD My Cloud device.; Remote Backup—Allows you
23 to backup WD My Cloud device data to another WD My Cloud device; Cloud
24 Backup—Allows you to backup WD My Cloud device data to an external cloud
25 backup service.”).

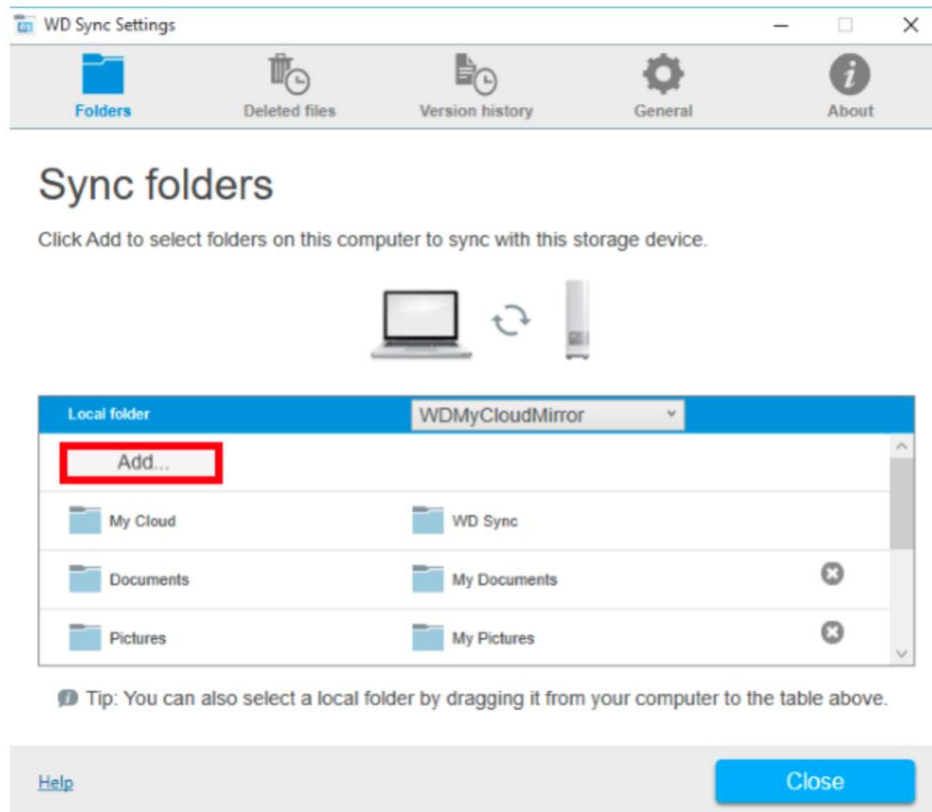
26 13. The Accused Instrumentalities further include “a communication unit
27 configured to communicate with an external apparatus.” For example, each My
28 Cloud device includes hardware and software to communicate with computers,

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1 mobile devices, and other external apparatuses over LAN or Internet connections.
2 *See, e.g.,* <https://www.wd.com/products/personal-cloud-storage/my-cloud.html>
3 (“Access Anywhere: Access and share all your favorite photos and videos using your
4 computer, tablet and smartphone from anywhere you have an Internet connection.
5 *** Interface: Gigabit Ethernet”).

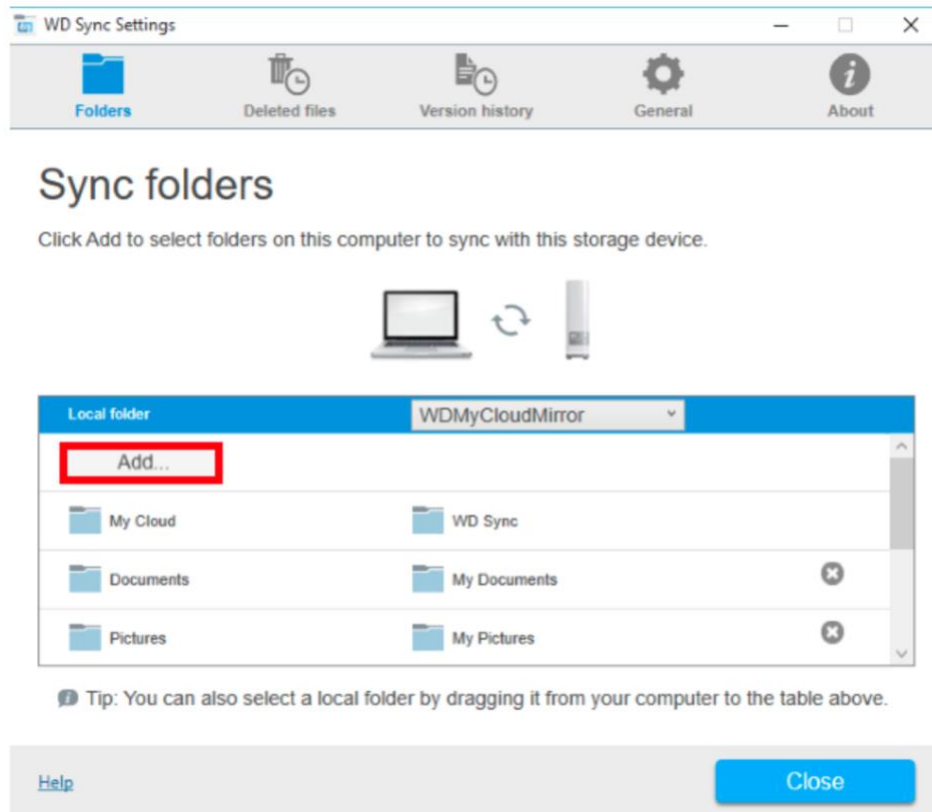
6 14. The Accused Instrumentalities further include “a controller configured
7 to edit a list so that content data is registered in the list.” For example, the My Cloud
8 device includes a software or hardware controller that registers a list of content to be
9 transferred to an external apparatus, including without limitation listing selected or
10 updated files for backup or synchronization. *See, e.g.,* WD MyCloud User Manual
11 4779-705140 (“Enter the following information to create a Remote backup job: ***
12 Source Folder”; “From the drop-down menu, select the type of [Amazon S3 Cloud]
13 backup you’d like to perform. Options include: *** • Full Backup: Creates a separate
14 folder containing all of the backup data each time the backup is performed. •
15 Incremental Backup: Overwrites files with source files that are newer than the target
16 files.”); <https://support.wdc.com/knowledgebase/answer.aspx?ID=16780&lang=en>
17 (“WD Sync allows files to be copied from a computer onto a My Cloud Network
18 Attached Storage device. Adding, deleting or modifying files in one location will
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1 lead to the same changes being applied to the other locations.”);
 2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395>;



16 15. The Accused Instrumentalities further include a controller configured
 17 “to uniquely associate the list with the external apparatus using a unique
 18 identification of the external apparatus.” For example, because each external
 19 apparatus may require backup or synchronization of a different set of data
 20 (including, *e.g.*, different configuration of backup/synchronization targets, or
 21 different current data on the external apparatus leading to different data needing to
 22 be transferred), the external apparatus is uniquely identified with an associated list.
 23 *See, e.g.*, WD MyCloud User Manual 4779-705140 (“Enter the following
 24 information to create a Remote backup job: *** Source Folder”; “From the drop-
 25 down menu, select the type of [Amazon S3 Cloud] backup you’d like to perform.
 26 Options include: *** • Full Backup: Creates a separate folder containing all of the
 27 backup data each time the backup is performed. • Incremental Backup: Overwrites
 28

1 files with source files that are newer than the target files.”);
 2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395>:

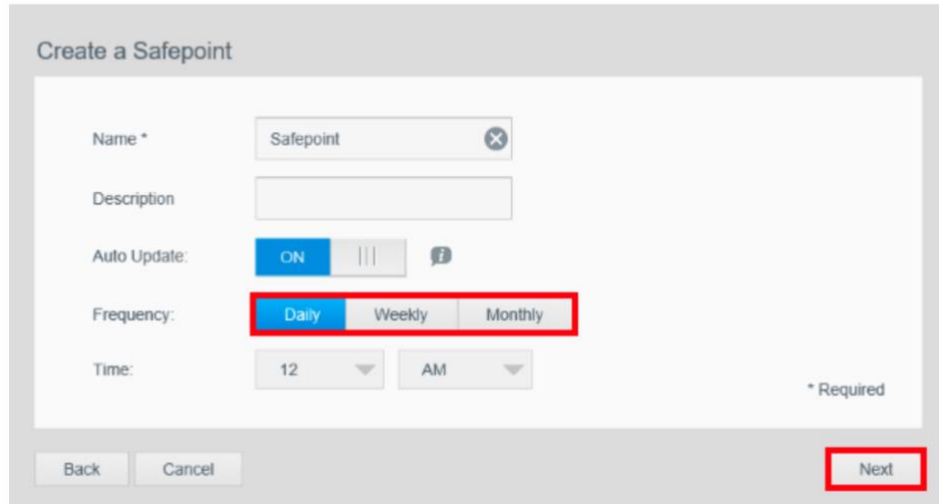


16 16. The Accused Instrumentalities further include a controller configured
 17 “to extract the list associated with the external apparatus from a plurality of lists in
 18 the communication apparatus when the external apparatus is connected to the
 19 communication apparatus, and to control transferring of content data registered in
 20 the extracted list to the external apparatus.” For example, when the My Cloud server
 21 is connected to a WD Sync client, the server transfers all changes to the client;
 22 likewise, the My Cloud server automatically transfers backup data to configured
 23 backup targets. *See, e.g.*, My Cloud User Manual 4779-705147 (“After that, the WD
 24 Sync software automatically updates any changes to the file, at any location, on the
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1 other configured devices.”);

2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=10428>:

- 3 10. Turning the *Auto Update* On will provide a user with the option to decide how often to
- 4 update the device's backup.
- 5 It can be done Daily, Weekly and Monthly. When ready to proceed, click on *Next*.



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14 17. Each Defendant has had knowledge of the '581 Patent and its

15 infringement since at least the filing of the original Complaint in this action, or

16 shortly thereafter, including by way of this lawsuit. By the time of trial, each

17 Defendant will have known and intended (since receiving such notice) that its

18 continued actions would actively induce and contribute to the infringement of the

19 claims of the '581 Patent.

20 18. Each Defendant's affirmative acts of making, using, selling, offering

21 for sale, and/or importing the Accused Instrumentalities have induced and continue

22 to induce users of the Accused Instrumentalities to use the Accused Instrumentalities

23 in their normal and customary way to infringe the claims of the '581 Patent. Use of

24 the Accused Instrumentalities in their ordinary and customary fashion results in

25 infringement of the claims of the '581 Patent.

26 19. For example, each Defendant explains to customers the benefits of

27 using the Accused Instrumentalities, such as by touting their advantages of data

28 backup or synchronization using the accused functionalities. Each Defendant also

1 induces its customers to use the Accused Instrumentalities to infringe other claims
2 of the '581 Patent. Each Defendant specifically intended and was aware that the
3 normal and customary use of the Accused Instrumentalities on compatible systems
4 would infringe the '581 Patent. Each Defendant performed the acts that constitute
5 induced infringement, and would induce actual infringement, with the knowledge of
6 the '581 Patent and with the knowledge, or willful blindness to the probability, that
7 the induced acts would constitute infringement. On information and belief, each
8 Defendant engaged in such inducement to promote the sales of the Accused
9 Instrumentalities, *e.g.*, through its user manuals, product support, marketing
10 materials, demonstrations, installation support, and training materials to actively
11 induce the users of the accused products to infringe the '581 Patent. Accordingly,
12 each Defendant has induced and continues to induce end users of the accused
13 products to use the accused products in their ordinary and customary way with
14 compatible systems to make and/or use systems infringing the '581 Patent, knowing
15 that such use of the Accused Instrumentalities with compatible systems will result
16 in infringement of the '581 Patent. For example, in the case of diskless My Cloud
17 products, each Defendant induces end users to add one or more hard drives in order
18 to make the product operable. Accordingly, each Defendant has been (since at least
19 as of filing of the original complaint), and currently is, inducing infringement of the
20 '581 Patent, in violation of 35 U.S.C. § 271(b).

21 20. Each Defendant has also infringed, and continues to infringe, claims of
22 the '581 Patent by offering to commercially distribute, commercially distributing,
23 making, and/or importing the Accused Instrumentalities, which are used in
24 practicing the process, or using the systems, of the '581 Patent, and constitute a
25 material part of the invention. Each Defendant knows the components in the
26 Accused Instrumentalities to be especially made or especially adapted for use in
27 infringement of the '581 Patent, not a staple article, and not a commodity of
28 commerce suitable for substantial noninfringing use. For example, the ordinary way

1 of using the Accused Instrumentalities infringes the patent claims, and as such, is
2 especially adapted for use in infringement. For another example, in the case of
3 diskless My Cloud products, each end users must add one or more hard drives in
4 order to make the product operable. Accordingly, each Defendant has been, and
5 currently is, contributorily infringing the '581 Patent, in violation of 35 U.S.C. §
6 271(c).

7 21. For similar reasons, each Defendant also infringes the '581 Patent by
8 supplying or causing to be supplied in or from the United States all or a substantial
9 portion of the components of the Accused Instrumentalities, where such components
10 are uncombined in whole or in part, in such manner as to actively induce the
11 combination of such components outside of the United States in a manner that would
12 infringe the '581 Patent if such combination occurred within the United States. For
13 example, each Defendant supplies or causes to be supplied in or from the United
14 States all or a substantial portion of the hardware (e.g., My Cloud devices) and
15 software (e.g., WD Backup, WD Sync, WD SmartWare) components of the Accused
16 Instrumentalities in such a manner as to actively induce the combination of such
17 components (e.g., by instructing users to combine multiple My Cloud devices into
18 an infringing system) outside of the United States.

19 22. Each Defendant also indirectly infringes the '581 Patent by supplying
20 or causing to be supplied in or from the United States components of the Accused
21 Instrumentalities that are especially made or especially adapted for use in infringing
22 the '581 Patent and are not a staple article or commodity of commerce suitable for
23 substantial non-infringing use, and where such components are uncombined in
24 whole or in part, knowing that such components are so made or adapted and
25 intending that such components are combined outside of the United States in a
26 manner that would infringe the '581 Patent if such combination occurred within the
27 United States. Because the Accused Instrumentalities are designed to operate as the
28 claimed system and apparatus, the Accused Instrumentalities have no substantial

1 non-infringing uses, and any other uses would be unusual, far-fetched, illusory,
2 impractical, occasional, aberrant, or experimental. For example, each Defendant
3 supplies or causes to be supplied in or from the United States all or a substantial
4 portion of the hardware (e.g., separate My Cloud devices) and software (e.g., WD
5 Backup, WD Sync, WD SmartWare) components that are especially made or
6 especially adapted for use in the Accused Instrumentalities, where such hardware
7 and software components are not staple articles or commodities of commerce
8 suitable for substantial noninfringing use, knowing that such components are so
9 made or adapted and intending that such components are combined outside of the
10 United States, as evidenced by each Defendant's own actions or instructions to users
11 in, e.g., combining multiple My Cloud devices into infringing systems, and enabling
12 and configuring the infringing functionalities of the Accused Instrumentalities.

13 23. As a result of Defendant's infringement of the '581 Patent, Plaintiff
14 Data Scape is entitled to monetary damages in an amount adequate to compensate
15 for each Defendant's infringement, but in no event less than a reasonable royalty for
16 the use made of the invention by each Defendant, together with interest and costs as
17 fixed by the Court.

18 COUNT II

19 INFRINGEMENT OF U.S. PATENT NO. 7,720,929

20 24. Plaintiff realleges and incorporates by reference the foregoing
21 paragraphs, as if fully set forth herein.

22 25. Data Scape is the owner by assignment of United States Patent No.
23 7,720,929 ("the '929 Patent"), entitled "Communication System And Its Method and
24 Communication Apparatus And Its Method." The '929 Patent was duly and legally
25 issued by the United States Patent and Trademark Office on May 18, 2010. A true
26 and correct copy of the '929 Patent is included as Exhibit B.

27 26. Each Defendant has offered for sale, sold and/or imported into the
28 United States products and services that infringe the '929 patent, and continues to

1 do so. By way of illustrative example, these infringing products and services include,
2 without limitation, Defendant's products and services, *e.g.*, My Cloud devices, WD
3 SmartWare software, WD Sync software, and all versions and variations thereof
4 since the issuance of the '929 Patent ("Accused Instrumentalities").

5 27. Each Defendant has directly infringed and continues to infringe
6 the '929 Patent, for example, by making, selling, offering for sale, and/or importing
7 the Accused Instrumentalities, and through its own use and testing of the Accused
8 Instrumentalities. Each Defendant uses the Accused Instrumentalities for its own
9 internal non-testing business purposes, while testing the Accused Instrumentalities,
10 and while providing technical support and repair services for the Accused
11 Instrumentalities to its customers.

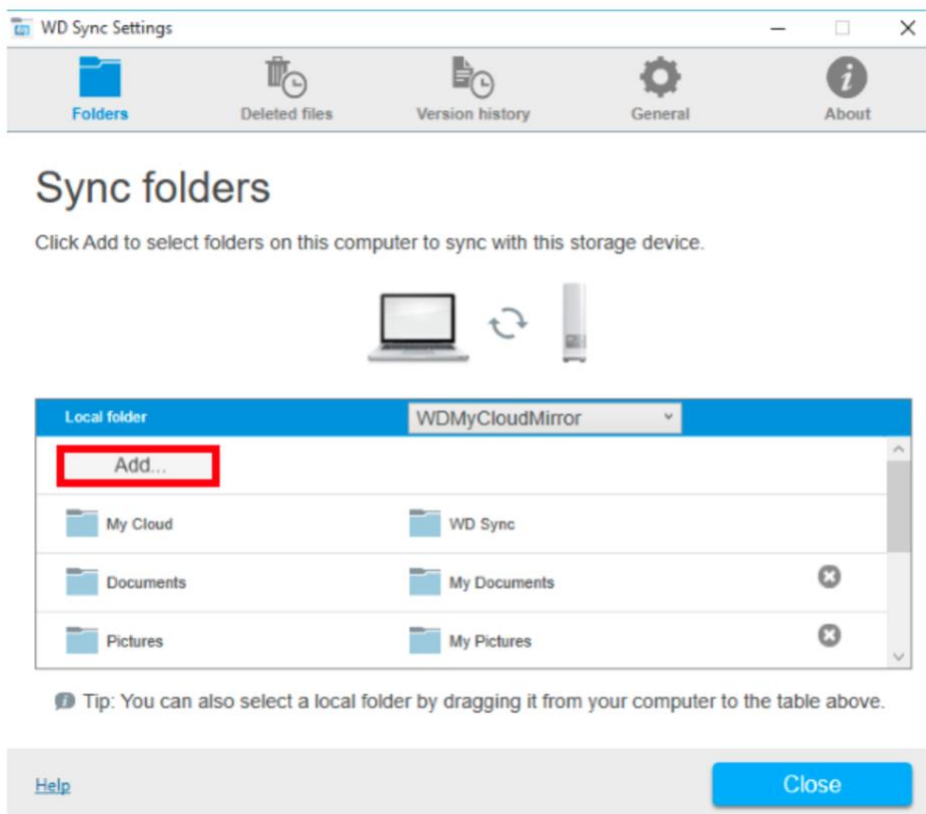
12 28. For example, the Accused Instrumentalities infringe Claim 1 (and other
13 claims) of the '929 Patent. One non-limiting example of the Accused
14 Instrumentalities' infringement is presented below:

15 29. The Accused Instrumentalities include "[a] communication system
16 including a first apparatus having a first storage medium, and a second apparatus."
17 For example, the Accused Instrumentalities include a communications system to
18 transfer data stored on a storage medium on a second apparatus (*e.g.* a My Cloud
19 server or a computer) to a first apparatus with a storage medium (*e.g.* a computer, a
20 USB device, a cloud backup service, or a connected My Cloud server). *See, e.g.*,
21 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395> ("WD Sync
22 allows files to be synchronized across multiple computers connected to a My
23 Cloud."); <https://www.wd.com/products/personal-cloud-storage/my-cloud.html>
24 ("YOUR OWN PERSONAL CLOUD: With the My Cloud personal storage device,
25 you're able to have reliable storage in one place for your photos, videos, important
26 files – anything you save – and share it anywhere you have an internet connection.
27 With the automatic backup and synchronization software, your content is up to date
28 and accessible from all your devices."); WD My Cloud User Manual 4779-705140

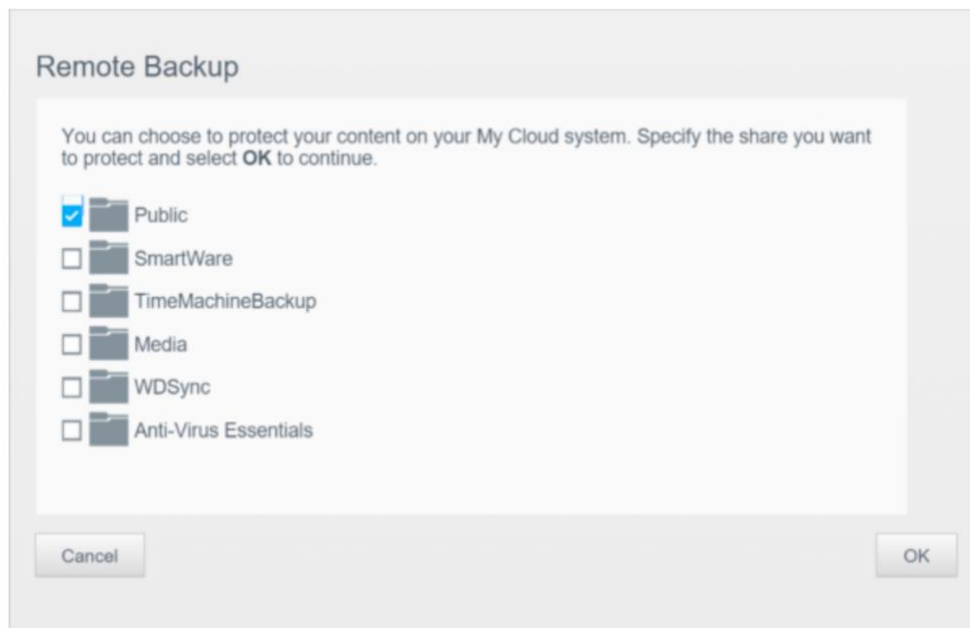
1 (“Remote Backups: This option allows you to back up your WD My Cloud device
2 to another WD My Cloud device.”).

3 30. The Accused Instrumentalities include a second apparatus comprising:
4 “a second storage medium configured to store management information of data to
5 be transferred to said first storage medium.” For example, each My Cloud device
6 includes one or more hard disk for management data, including identification of files
7 configured for backup or synchronization, and identification of changes since the
8 last backup or synchronization. *See, e.g.*, [https://www.wd.com/products/personal-
9 cloud-storage/my-cloud.html](https://www.wd.com/products/personal-cloud-storage/my-cloud.html) (“Everything in One Place: Centralize, organize and
10 back up all your photos, videos and files in one reliable place. *** Capacity: 3TB,
11 4TB, 6TB, 8TB”); [https://www.wd.com/products/network-attached-storage/my-
12 cloud-expert-series-ex2-ultra.html](https://www.wd.com/products/network-attached-storage/my-cloud-expert-series-ex2-ultra.html) (“My Cloud EX2 Ultra comes pre-configured
13 with WD Red hard drives, specifically built for NAS systems to provide improved
14 performance within 24x7 environments.”); WD MyCloud User Manual 4779-
15 705140 (“USB Backup—Allows you to back up your WD My Cloud device data to
16 a USB device or to backup your USB device data to your WD My Cloud device.;
17 Remote Backup—Allows you to backup WD My Cloud device data to another WD
18 My Cloud device; Cloud Backup—Allows you to backup WD My Cloud device data
19 to an external cloud backup service.”); My Cloud User Manual 4779-705103 (“Auto
20 updates help keep your safepoint up to date with the content on your WD My Cloud
21 device by copying changes since the last update.”); WD MyCloud User Manual
22 4779-705140 (“Enter the following information to create a Remote backup job: ***
23 Source Folder”; “From the drop-down menu, select the type of [Amazon S3 Cloud]
24 backup you’d like to perform. Options include: *** • Full Backup: Creates a separate
25 folder containing all of the backup data each time the backup is performed. •
26 Incremental Backup: Overwrites files with source files that are newer then the target
27 files.”); <https://support.wdc.com/knowledgebase/answer.aspx?ID=16780&lang=en>
28 (“WD Sync allows files to be copied from a computer onto a My Cloud Network

1 Attached Storage device. Adding, deleting or modifying files in one location will
2 lead to the same changes being applied to the other locations.”);
3 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395>:



4 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11807>:



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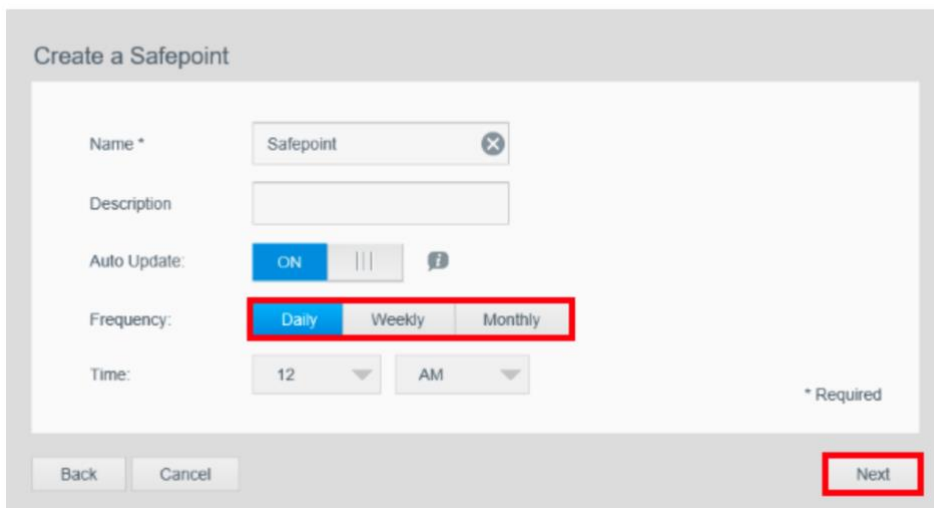
1 31. The Accused Instrumentalities further include a second apparatus
2 comprising “a communicator configured to communicate with said first apparatus.”
3 For example, each My Cloud device includes hardware and software to
4 communicate with computers, mobile devices, and other external apparatuses over
5 LAN or Internet connections. *See, e.g.*, [https://www.wd.com/products/personal-](https://www.wd.com/products/personal-cloud-storage/my-cloud.html)
6 [cloud-storage/my-cloud.html](https://www.wd.com/products/personal-cloud-storage/my-cloud.html) (“Access Anywhere: Access and share all your
7 favorite photos and videos using your computer, tablet and smartphone from
8 anywhere you have an Internet connection. *** Interface: Gigabit Ethernet”).

9 32. The Accused Instrumentalities further include a second apparatus
10 comprising “a detector configured to detect whether said first apparatus and a second
11 apparatus are connected.” For example, the My Cloud device detects whether the
12 sync or backup target is connected before beginning a sync or backup operation. *See,*
13 *e.g.* <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395> (“WD Sync
14 allows files to be synchronized across multiple computers connected to a My
15 Cloud.”);

16 <https://support.wdc.com/knowledgebase/answer.aspx?ID=17824&lang=en>
17 (“Remote Access and Network connection failures can occur for many reasons: ISP
18 or Router blocking UDP/TCP ports; Router does not support UPnP or UPnP is
19 disabled; Domain Name Resolution issues”);

20 <https://support.wdc.com/knowledgebase/answer.aspx?ID=10428>:
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- 10. Turning the *Auto Update* On will provide a user with the option to decide how often to update the device's backup. It can be done Daily, Weekly and Monthly. When ready to proceed, click on *Next*.



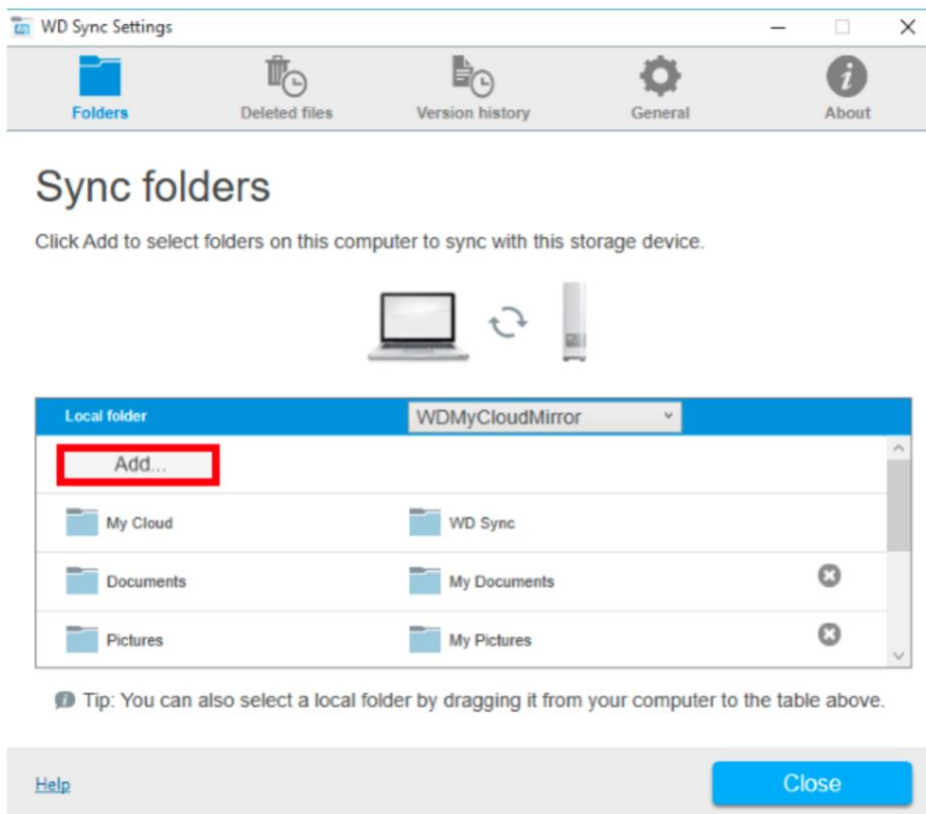
33. The Accused Instrumentalities further include a second apparatus comprising “an editor configured to select certain data to be transferred and to edit said management information based on said selection without regard to the connection of said first apparatus.” For example, a user can choose which files or folders will be transferred to another device, e.g. which files will be synced or backed up. *See, e.g.,*

<https://support.wdc.com/knowledgebase/answer.aspx?ID=16780&lang=en> (“WD Sync allows files to be copied from a computer onto a My Cloud Network Attached Storage device. Adding, deleting or modifying files in one location will lead to the

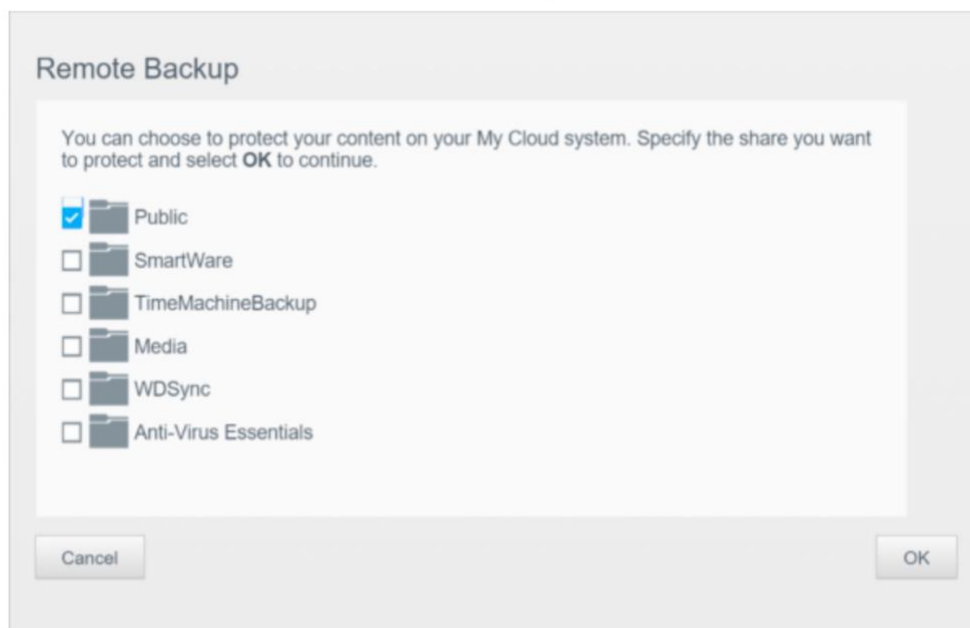
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1 same changes being applied to the other locations.”);
2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395>:



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16 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11807>:



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27 34. The Accused Instrumentalities further include a second apparatus
28 comprising “a controller configured to control transfer of the selected data stored in

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1 said second apparatus to said first apparatus via said communicator based on said
 2 management information edited by said editor when said detector detects that said
 3 first apparatus and said second apparatus are connected.” For example, when the My
 4 Cloud server is connected to a WD Sync client, the server transfers all changes to
 5 the client; likewise, the My Cloud server automatically transfers backup data to
 6 configured backup targets. *See, e.g.*, My Cloud User Manual 4779-705147 (“After
 7 that, the WD Sync software automatically updates any changes to the file, at any
 8 location, on the other configured devices.”);

9 <https://support.wdc.com/knowledgebase/answer.aspx?ID=10428>:

- 10 10. Turning the *Auto Update* On will provide a user with the option to decide how often to
 11 update the device's backup.
 It can be done Daily, Weekly and Monthly. When ready to proceed, click on *Next*.

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The screenshot shows a 'Create a Safepoint' dialog box. It has the following fields and options:

- Name ***: A text box containing 'Safepoint' with a clear button (X).
- Description**: An empty text box.
- Auto Update:** A toggle switch set to 'ON' with a help icon (i).
- Frequency:** Three radio button options: 'Daily' (selected and highlighted with a red box), 'Weekly', and 'Monthly'.
- Time:** Two dropdown menus: the first is set to '12' and the second to 'AM'.
- * Required**: A small asterisk indicating required fields.
- Buttons:** 'Back', 'Cancel', and 'Next' (highlighted with a red box).

21 35. The Accused Instrumentalities further include a second apparatus
 22 “wherein said controller is configured to compare said management information
 23 edited by said editor with management information of data stored in said first storage
 24 medium and to transmit data in said second apparatus based on result of the
 25 comparison.” For example, the My Cloud system identifies files that are not present
 26 on the remote system because they have been changed or updated locally. *See, e.g.*,
 27 My Cloud User Manual 4779-705103 (“Auto updates help keep your safepoint up
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1 to date with the content on your WD My Cloud device by copying changes since the
2 last update.”).

3 36. Each Defendant has had knowledge of the '929 Patent and its
4 infringement since at least the filing of the original Complaint in this action, or
5 shortly thereafter, including by way of this lawsuit. By the time of trial, each
6 Defendant will have known and intended (since receiving such notice) that its
7 continued actions would actively induce and contribute to the infringement of the
8 claims of the '929 Patent.

9 37. Each Defendant's affirmative acts of making, using, selling, offering
10 for sale, and/or importing the Accused Instrumentalities have induced and continue
11 to induce users of the Accused Instrumentalities to use the Accused Instrumentalities
12 in their normal and customary way to infringe the claims of the '929 Patent. Use of
13 the Accused Instrumentalities in their ordinary and customary fashion results in
14 infringement of the claims of the '929 Patent.

15 38. For example, each Defendant explains to customers the benefits of
16 using the Accused Instrumentalities, such as by touting their advantages of data
17 backup or synchronization using the accused functionalities. Each Defendant also
18 induces its customers to use the Accused Instrumentalities to infringe other claims
19 of the '929 Patent. Each Defendant specifically intended and was aware that the
20 normal and customary use of the Accused Instrumentalities on compatible systems
21 would infringe the '929 Patent. Each Defendant performed the acts that constitute
22 induced infringement, and would induce actual infringement, with the knowledge of
23 the '929 Patent and with the knowledge, or willful blindness to the probability, that
24 the induced acts would constitute infringement. On information and belief, each
25 Defendant engaged in such inducement to promote the sales of the Accused
26 Instrumentalities, *e.g.*, through its user manuals, product support, marketing
27 materials, demonstrations, installation support, and training materials to actively
28 induce the users of the accused products to infringe the '929 Patent. Accordingly,

1 each Defendant has induced and continues to induce end users of the accused
2 products to use the accused products in their ordinary and customary way with
3 compatible systems to make and/or use systems infringing the '929 Patent, knowing
4 that such use of the Accused Instrumentalities with compatible systems will result
5 in infringement of the '929 Patent. For example, in the case of diskless My Cloud
6 products, each Defendant induces end users to add one or more hard drives in order
7 to make the product operable. Accordingly, each Defendant has been (since at least
8 as of filing of the original complaint), and currently is, inducing infringement of
9 the '929 Patent, in violation of 35 U.S.C. § 271(b).

10 39. Each Defendant has also infringed, and continues to infringe, claims of
11 the '929 Patent by offering to commercially distribute, commercially distributing,
12 making, and/or importing the Accused Instrumentalities, which are used in
13 practicing the process, or using the systems, of the '929 Patent, and constitute a
14 material part of the invention. Defendant knows the components in the Accused
15 Instrumentalities to be especially made or especially adapted for use in infringement
16 of the '929 Patent, not a staple article, and not a commodity of commerce suitable
17 for substantial noninfringing use. For example, the ordinary way of using the
18 Accused Instrumentalities infringes the patent claims, and as such, is especially
19 adapted for use in infringement. For another example, in the case of diskless My
20 Cloud products, each end users must add one or more hard drives in order to make
21 the product operable. Accordingly, each Defendant has been, and currently is,
22 contributorily infringing the '929 Patent, in violation of 35 U.S.C. § 271(c).

23 40. For similar reasons, each Defendant also infringes the '929 Patent by
24 supplying or causing to be supplied in or from the United States all or a substantial
25 portion of the components of the Accused Instrumentalities, where such components
26 are uncombined in whole or in part, in such manner as to actively induce the
27 combination of such components outside of the United States in a manner that would
28 infringe the '929 Patent if such combination occurred within the United States. For

1 example, each Defendant supplies or causes to be supplied in or from the United
2 States all or a substantial portion of the hardware (e.g., My Cloud devices) and
3 software (e.g., WD Backup, WD Sync, WD SmartWare) components of the Accused
4 Instrumentalities in such a manner as to actively induce the combination of such
5 components (e.g., by instructing users to combine multiple My Cloud devices into
6 an infringing system) outside of the United States.

7 41. Each Defendant also indirectly infringes the '929 Patent by supplying
8 or causing to be supplied in or from the United States components of the Accused
9 Instrumentalities that are especially made or especially adapted for use in infringing
10 the '929 Patent and are not a staple article or commodity of commerce suitable for
11 substantial non-infringing use, and where such components are uncombined in
12 whole or in part, knowing that such components are so made or adapted and
13 intending that such components are combined outside of the United States in a
14 manner that would infringe the '929 Patent if such combination occurred within the
15 United States. Because the Accused Instrumentalities are designed to operate as the
16 claimed system and apparatus, the Accused Instrumentalities have no substantial
17 non-infringing uses, and any other uses would be unusual, far-fetched, illusory,
18 impractical, occasional, aberrant, or experimental. For example, each Defendant
19 supplies or causes to be supplied in or from the United States all or a substantial
20 portion of the hardware (e.g., separate My Cloud devices) and software (e.g., WD
21 Backup, WD Sync, WD SmartWare) components that are especially made or
22 especially adapted for use in the Accused Instrumentalities, where such hardware
23 and software components are not staple articles or commodities of commerce
24 suitable for substantial noninfringing use, knowing that such components are so
25 made or adapted and intending that such components are combined outside of the
26 United States, as evidenced by each Defendant's own actions or instructions to users
27 in, e.g., combining multiple My Cloud devices into infringing systems, and enabling
28 and configuring the infringing functionalities of the Accused Instrumentalities.

1 42. As a result of Defendant’s infringement of the ’929 Patent, Plaintiff
2 Data Scape is entitled to monetary damages in an amount adequate to compensate
3 for each Defendant’s infringement, but in no event less than a reasonable royalty for
4 the use made of the invention by each Defendant, together with interest and costs as
5 fixed by the Court.

6 **COUNT III**

7 **INFRINGEMENT OF U.S. PATENT NO. 7,617,537**

8 43. Plaintiff realleges and incorporates by reference the foregoing
9 paragraphs, as if fully set forth herein.

10 44. Data Scape is the owner by assignment of United States Patent No.
11 7,617,537 (“the ’537 Patent”), entitled “Communication System And Its Method and
12 Communication Apparatus And Its Method.” The ’537 Patent was duly and legally
13 issued by the United States Patent and Trademark Office on November 10, 2009. A
14 true and correct copy of the ’537 Patent is included as Exhibit C.

15 45. Each Defendant has offered for sale, sold and/or imported into the
16 United States products and services that infringe the ’537 patent, and continues to
17 do so. By way of illustrative example, these infringing products and services include,
18 without limitation, Defendant’s products and services, *e.g.*, My Cloud devices, WD
19 SmartWare software, WD Sync software, and all versions and variations thereof
20 since the issuance of the ’537 Patent (“Accused Instrumentalities”).

21 46. Each Defendant has directly infringed and continues to infringe the
22 ’537 Patent, for example, by making, selling, offering for sale, and/or importing the
23 Accused Instrumentalities, and through its own use and testing of the Accused
24 Instrumentalities. Each Defendant uses the Accused Instrumentalities for its own
25 internal non-testing business purposes, while testing the Accused Instrumentalities,
26 and while providing technical support and repair services for the Accused
27 Instrumentalities to its customers.

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47. For example, the Accused Instrumentalities infringe Claim 43 (and other claims) of the '537 Patent. One non-limiting example of the Accused Instrumentalities' infringement is presented below:

48. The Accused Instrumentalities include “[a] computer readable storage medium encoded with computer program instructions executable by a computer to implement a method of transferring content data to a first apparatus from a second apparatus.” For example, the Accused Instrumentalities include instructions for transferring content data, as described below.

49. The Accused Instrumentalities include instructions that “judge whether said first apparatus and said second apparatus are connected.” For example, the My Cloud device detects whether the sync or backup target is connected before beginning a sync or backup operation. *See, e.g.*

<https://support.wdc.com/knowledgebase/answer.aspx?ID=11395> (“WD Sync allows files to be synchronized across multiple computers connected to a My Cloud.”);

<https://support.wdc.com/knowledgebase/answer.aspx?ID=17824&lang=en> (“Remote Access and Network connection failures can occur for many reasons: ISP or Router blocking UDP/TCP ports; Router does not support UPnP or UPnP is

1 disabled; Domain Name Resolution issues”);

2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=10428>:

3 10. Turning the *Auto Update* On will provide a user with the option to decide how often to
4 update the device's backup.

5 It can be done Daily, Weekly and Monthly. When ready to proceed, click on *Next*.

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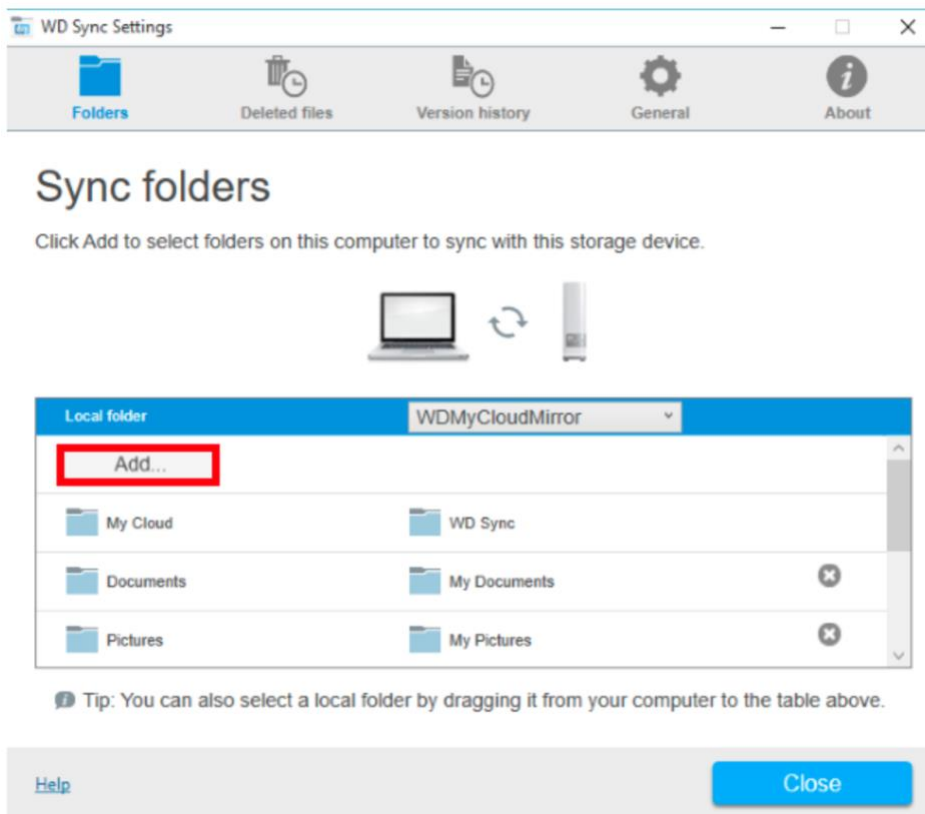
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50. The Accused Instrumentalities include instructions that “compare, upon judging that said first apparatus and said second apparatus are connected, an identifier of said first apparatus with a corresponding identifier in said second apparatus.” For example, because each unique first apparatus may require backup or synchronization of a different set of data (including, *e.g.*, different configuration of backup/synchronization targets, or different current data on the external apparatus leading to different data needing to be transferred), the Accused Instrumentalities must determine a corresponding identifier. *See, e.g.*, WD MyCloud User Manual 4779-705140 (“Enter the following information to create a Remote backup job: *** Source Folder”; “From the drop-down menu, select the type of [Amazon S3 Cloud] backup you’d like to perform. Options include: *** • Full Backup: Creates a separate folder containing all of the backup data each time the backup is performed. •

1 Incremental Backup: Overwrites files with source files that are newer than the target
 2 files.”); <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395>:



16 51. The Accused Instrumentalities include instructions that “compare,
 17 when said identifier of said first apparatus corresponds to said identifier stored in
 18 said second apparatus, a first list of content data of said first apparatus and a second
 19 list of content data of said second apparatus.” For example, the My Cloud device
 20 identifies a list of content that has not been previously synced or backed up to the
 21 uniquely identified first apparatus. *See, e.g.,*
 22 <https://support.wdc.com/knowledgebase/answer.aspx?ID=16780&lang=en> (“WD
 23 Sync allows files to be copied from a computer onto a My Cloud Network Attached
 24 Storage device. Adding, deleting or modifying files in one location will lead to the
 25 same changes being applied to the other locations.”); My Cloud User Manual 4779-
 26 705103 (“Auto updates help keep your safepoint up to date with the content on your
 27 WD My Cloud device by copying changes since the last update.”); My Cloud User
 28

1 Manual 4779-705147 (“After that, the WD Sync software automatically updates any
2 changes to the file, at any location, on the other configured devices.”)

3 52. The Accused Instrumentalities include instructions to “transfer first
4 content data, from the second apparatus to the first apparatus, which is registered in
5 said second list and is not registered in said first list.” For example, when the My
6 Cloud device is connected to a WD Sync client, the server transfers all changes to
7 the client; likewise, the My Cloud server automatically transfers backup data to
8 configured backup targets that has not previously been transferred. *See, e.g.*,
9 <https://support.wdc.com/knowledgebase/answer.aspx?ID=16780&lang=en> (“WD
10 Sync allows files to be copied from a computer onto a My Cloud Network Attached
11 Storage device. Adding, deleting or modifying files in one location will lead to the
12 same changes being applied to the other locations.”); My Cloud User Manual 4779-
13 705103 (“Auto updates help keep your safepoint up to date with the content on your
14 WD My Cloud device by copying changes since the last update.”); My Cloud User
15 Manual 4779-705147 (“After that, the WD Sync software automatically updates any
16 changes to the file, at any location, on the other configured devices.”);
17 <https://support.wdc.com/knowledgebase/answer.aspx?ID=10428>:

- 18 10. Turning the *Auto Update* On will provide a user with the option to decide how often to
19 update the device's backup.
20 It can be done Daily, Weekly and Monthly. When ready to proceed, click on *Next*.

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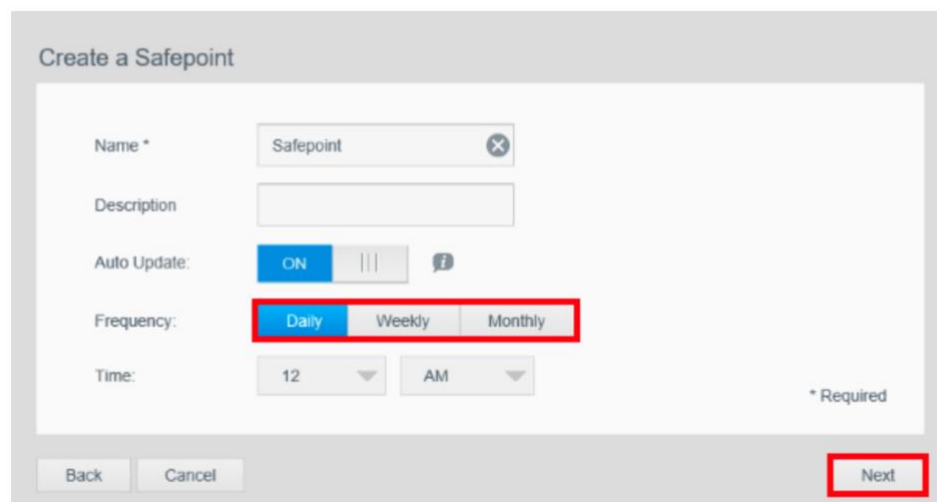
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1 53. The Accused Instrumentalities include instructions to “delete second
2 content data, from the first apparatus, which is registered in said first list and is not
3 registered in said second list.” For example, the My Cloud device will automatically
4 synchronize deletions. *See, e.g.,*

5 [https://support.wdc.com/knowledgebase/answer.aspx?ID=11395:](https://support.wdc.com/knowledgebase/answer.aspx?ID=11395)



6 **Critical:** This folder will now be synchronized with a folder of the same
7 name inside My Cloud storage device. Be aware that data that is
8 deleted on the folder will also be deleted on the My Cloud, while files
9 deleted on the My Cloud WD Sync folder will also be deleted on the
10 computer side as well. This is not a backup software. While the WD
11 Sync does have ways to restore files that have been deleted, **caution is
12 advised when deleting data from a synced folder in order to avoid
13 possible data loss.**

13 54. Each Defendant has had knowledge of the '537 Patent and its
14 infringement since at least the filing of the original Complaint in this action, or
15 shortly thereafter, including by way of this lawsuit. By the time of trial, each
16 Defendant will have known and intended (since receiving such notice) that its
17 continued actions would actively induce and contribute to the infringement of the
18 claims of the '537 Patent.

19 55. Each Defendant's affirmative acts of making, using, selling, offering
20 for sale, and/or importing the Accused Instrumentalities have induced and continue
21 to induce users of the Accused Instrumentalities to use the Accused Instrumentalities
22 in their normal and customary way to infringe the claims of the '537 Patent. Use of
23 the Accused Instrumentalities in their ordinary and customary fashion results in
24 infringement of the claims of the '537 Patent.

25 56. For example, each Defendant explains to customers the benefits of
26 using the Accused Instrumentalities, such as by touting their advantages of data
27 backup or synchronization using the accused functionalities. Each Defendant also
28 induces its customers to use the Accused Instrumentalities to infringe other claims

1 of the '537 Patent. Each Defendant specifically intended and was aware that the
2 normal and customary use of the Accused Instrumentalities on compatible systems
3 would infringe the '537 Patent. Each Defendant performed the acts that constitute
4 induced infringement, and would induce actual infringement, with the knowledge of
5 the '537 Patent and with the knowledge, or willful blindness to the probability, that
6 the induced acts would constitute infringement. On information and belief, each
7 Defendant engaged in such inducement to promote the sales of the Accused
8 Instrumentalities, *e.g.*, through its user manuals, product support, marketing
9 materials, demonstrations, installation support, and training materials to actively
10 induce the users of the accused products to infringe the '537 Patent. Accordingly,
11 each Defendant has induced and continues to induce end users of the accused
12 products to use the accused products in their ordinary and customary way with
13 compatible systems to make and/or use systems infringing the '537 Patent, knowing
14 that such use of the Accused Instrumentalities with compatible systems will result
15 in infringement of the '537 Patent. For example, in the case of diskless My Cloud
16 products, each Defendant induces end users to add one or more hard drives in order
17 to make the product operable. Accordingly, each Defendant has been (since at least
18 as of filing of the original complaint), and currently is, inducing infringement of the
19 '537 Patent, in violation of 35 U.S.C. § 271(b).

20 57. Each Defendant has also infringed, and continues to infringe, claims of
21 the '537 Patent by offering to commercially distribute, commercially distributing,
22 making, and/or importing the Accused Instrumentalities, which are used in
23 practicing the process, or using the systems, of the '537 Patent, and constitute a
24 material part of the invention. Defendant knows the components in the Accused
25 Instrumentalities to be especially made or especially adapted for use in infringement
26 of the '537 Patent, not a staple article, and not a commodity of commerce suitable
27 for substantial noninfringing use. For example, the ordinary way of using the
28 Accused Instrumentalities infringes the patent claims, and as such, is especially

1 adapted for use in infringement. For another example, in the case of diskless My
2 Cloud products, each end users must add one or more hard drives in order to make
3 the product operable. Accordingly, each Defendant has been, and currently is,
4 contributorily infringing the '537 Patent, in violation of 35 U.S.C. § 271(c).

5 58. For similar reasons, each Defendant also infringes the '537 Patent by
6 supplying or causing to be supplied in or from the United States all or a substantial
7 portion of the components of the Accused Instrumentalities, where such components
8 are uncombined in whole or in part, in such manner as to actively induce the
9 combination of such components outside of the United States in a manner that would
10 infringe the '537 Patent if such combination occurred within the United States. For
11 example, each Defendant supplies or causes to be supplied in or from the United
12 States all or a substantial portion of the hardware (e.g., My Cloud devices) and
13 software (e.g., WD Backup, WD Sync, WD SmartWare) components of the Accused
14 Instrumentalities in such a manner as to actively induce the combination of such
15 components (e.g., by instructing users to combine multiple My Cloud devices into
16 an infringing system) outside of the United States.

17 59. Each Defendant also indirectly infringes the '537 Patent by supplying
18 or causing to be supplied in or from the United States components of the Accused
19 Instrumentalities that are especially made or especially adapted for use in infringing
20 the '537 Patent and are not a staple article or commodity of commerce suitable for
21 substantial non-infringing use, and where such components are uncombined in
22 whole or in part, knowing that such components are so made or adapted and
23 intending that such components are combined outside of the United States in a
24 manner that would infringe the '537 Patent if such combination occurred within the
25 United States. Because the Accused Instrumentalities are designed to operate as the
26 claimed system and apparatus, the Accused Instrumentalities have no substantial
27 non-infringing uses, and any other uses would be unusual, far-fetched, illusory,
28 impractical, occasional, aberrant, or experimental. For example, each Defendant

1 supplies or causes to be supplied in or from the United States all or a substantial
 2 portion of the hardware (e.g., separate My Cloud devices) and software (e.g., WD
 3 Backup, WD Sync, WD SmartWare) components that are especially made or
 4 especially adapted for use in the Accused Instrumentalities, where such hardware
 5 and software components are not staple articles or commodities of commerce
 6 suitable for substantial noninfringing use, knowing that such components are so
 7 made or adapted and intending that such components are combined outside of the
 8 United States, as evidenced by each Defendant's own actions or instructions to users
 9 in, e.g., combining multiple My Cloud devices into infringing systems, and enabling
 10 and configuring the infringing functionalities of the Accused Instrumentalities.

11 60. As a result of Defendant's infringement of the '537 Patent, Plaintiff
 12 Data Scape is entitled to monetary damages in an amount adequate to compensate
 13 for each Defendant's infringement, but in no event less than a reasonable royalty for
 14 the use made of the invention by each Defendant, together with interest and costs as
 15 fixed by the Court.

16 COUNT IV

17 INFRINGEMENT OF U.S. PATENT NO. 9,715,893

18 61. Plaintiff realleges and incorporates by reference the foregoing
 19 paragraphs, as if fully set forth herein.

20 62. Data Scape is the owner by assignment of United States Patent No.
 21 9,715,893 ("the '893 Patent"), entitled "Recording Apparatus, Server Apparatus,
 22 Recording Method, Program and Storage Medium." The '893 Patent was duly and
 23 legally issued by the United States Patent and Trademark Office on July 25, 2017.
 24 A true and correct copy of the '893 Patent is included as Exhibit D.

25 63. Each Defendant has offered for sale, sold and/or imported into the
 26 United States products and services that infringe the '893 patent, and continues to
 27 do so. By way of illustrative example, these infringing products and services include,
 28 without limitation, Defendant's products and services, e.g., My Cloud devices, and

1 all versions and variations thereof since the issuance of the '893 Patent (“Accused
2 Instrumentalities”).

3 64. Each Defendant has directly infringed and continues to infringe
4 the '893 Patent, for example, by making, selling, offering for sale, and/or importing
5 the Accused Instrumentalities, and through its own use and testing of the Accused
6 Instrumentalities. Each Defendant uses the Accused Instrumentalities for its own
7 internal non-testing business purposes, while testing the Accused Instrumentalities,
8 and while providing technical support and repair services for the Accused
9 Instrumentalities to its customers.

10 65. For example, the Accused Instrumentalities infringe Claim 1 (and other
11 claims) of the '893 Patent. One non-limiting example of the Accused
12 Instrumentalities' infringement is presented below:

13 66. The Accused Instrumentalities include “[a] non-transitory computer-
14 readable storage medium storing instructions which, when executed by a computer,
15 cause the computer to perform a method of an information processing apparatus for
16 transferring data.” For example, the Accused Instrumentalities include instructions
17 for transferring data in the manner described below.

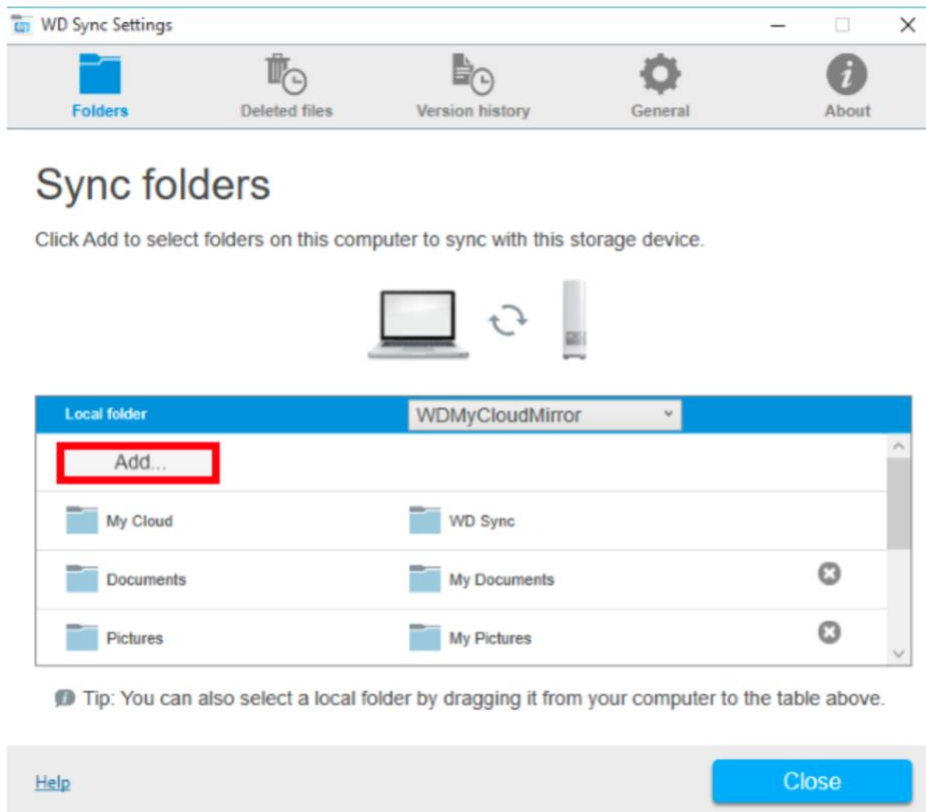
18 67. The Accused Instrumentalities include instructions for “automatically
19 reading first management data from a first storage medium, the first management
20 data identifying files of source data stored on the first storage medium.” For
21 example, each My Cloud device includes one or more hard disk for management
22 data, including identification of files configured for backup or synchronization, and
23 identification of changes since the last backup or synchronization. *See, e.g.*,
24 <https://www.wd.com/products/personal-cloud-storage/my-cloud.html> (“Everything
25 in One Place: Centralize, organize and back up all your photos, videos and files in
26 one reliable place. *** Capacity: 3TB, 4TB, 6TB, 8TB”);
27 [https://www.wd.com/products/network-attached-storage/my-cloud-expert-series-
28 ex2-ultra.html](https://www.wd.com/products/network-attached-storage/my-cloud-expert-series-ex2-ultra.html) (“My Cloud EX2 Ultra comes pre-configured with WD Red hard

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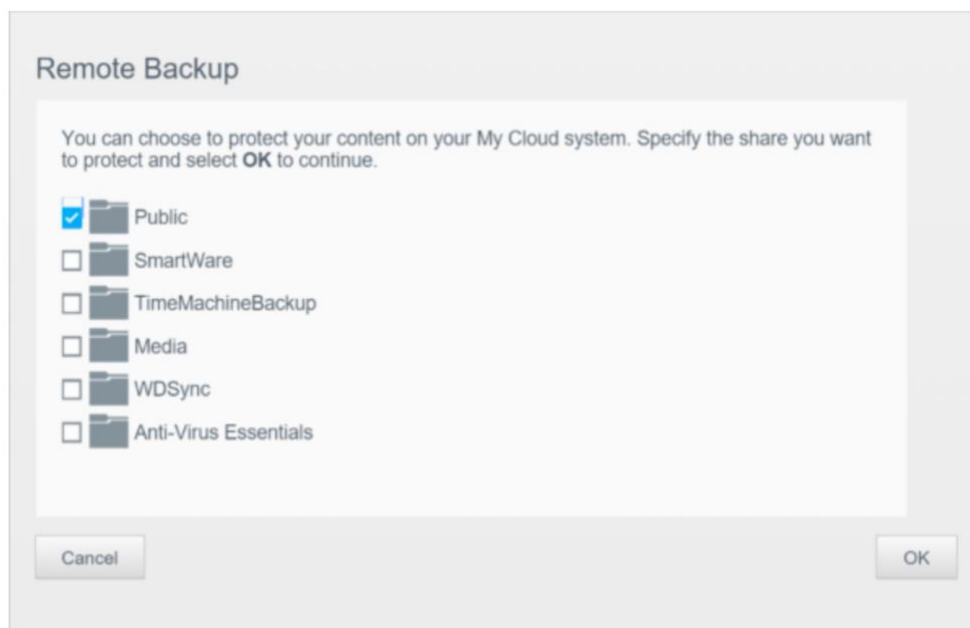
1 drives, specifically built for NAS systems to provide improved performance within
2 24x7 environments.”); WD MyCloud User Manual 4779-705140 (“USB Backup—
3 Allows you to back up your WD My Cloud device data to a USB device or to backup
4 your USB device data to your WD My Cloud device.; Remote Backup—Allows you
5 to backup WD My Cloud device data to another WD My Cloud device; Cloud
6 Backup—Allows you to backup WD My Cloud device data to an external cloud
7 backup service.”); My Cloud User Manual 4779-705103 (“Auto updates help keep
8 your safepoint up to date with the content on your WD My Cloud device by copying
9 changes since the last update.”); WD MyCloud User Manual 4779-705140 (“Enter
10 the following information to create a Remote backup job: *** Source Folder”;
11 “From the drop-down menu, select the type of [Amazon S3 Cloud] backup you’d
12 like to perform. Options include: *** • Full Backup: Creates a separate folder
13 containing all of the backup data each time the backup is performed. • Incremental
14 Backup: Overwrites files with source files that are newer than the target files.”);
15 <https://support.wdc.com/knowledgebase/answer.aspx?ID=16780&lang=en> (“WD
16 Sync allows files to be copied from a computer onto a My Cloud Network Attached
17 Storage device. Adding, deleting or modifying files in one location will lead to the
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1 same changes being applied to the other locations.”);

2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11395>:



16 <https://support.wdc.com/knowledgebase/answer.aspx?ID=11807>:



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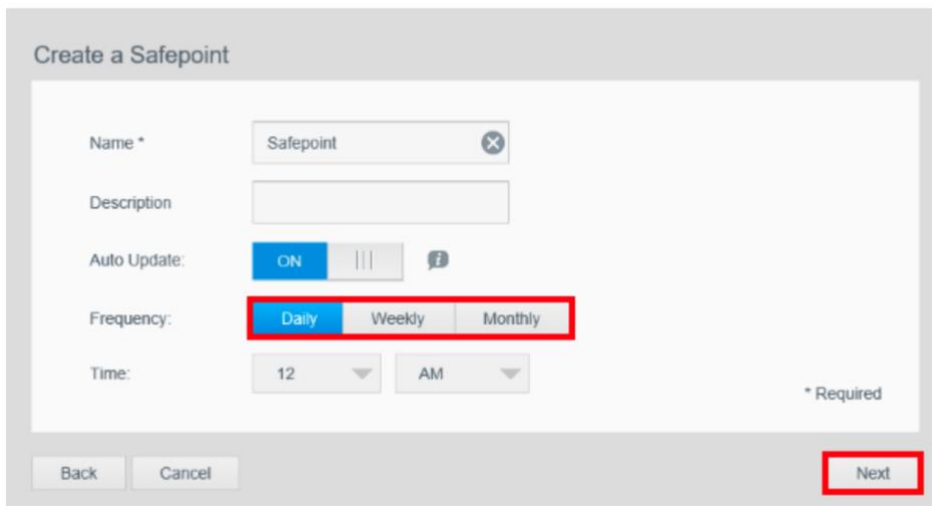
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68. The Accused Instrumentalities include instructions for “automatically identifying, by the computer, one of the files of source data based on the first management data and second management data, the second management data identifying files of transferred data stored on a second storage medium, the one of the files of source data being absent from the second storage medium.” For example, the My Cloud system identifies files that are not present on the remote system because they have been changed or updated locally. *See, e.g.*, My Cloud User Manual 4779-705103 (“Auto updates help keep your safepoint up to date with the content on your WD My Cloud device by copying changes since the last update.”).

69. The Accused Instrumentalities include instructions for “automatically transferring the one of the files of source data to the second storage medium, the one of the files of source data being transferred becoming one of the files of transferred data.” For example, when the My Cloud server is connected to a WD Sync client, the server transfers all changes to the client; likewise, the My Cloud server automatically transfers backup data to configured backup targets. *See, e.g.*, My Cloud User Manual 4779-705147 (“After that, the WD Sync software automatically

1 updates any changes to the file, at any location, on the other configured devices.”);
2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=10428>:

- 3 10. Turning the *Auto Update* On will provide a user with the option to decide how often to
4 update the device's backup.
5 It can be done Daily, Weekly and Monthly. When ready to proceed, click on *Next*.



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14 70. The Accused Instrumentalities include instructions for “automatically
15 displaying transferring status of the one of the files of source data by a symbolic
16 figure.” For example, the My Cloud interface displays the progress of a transfer. *See,*
17 *e.g.*, WD My Cloud User Manual 4779-705140 (“Use the following steps to back up
18 your WD My Cloud to a remote location: *** In the USB Backup Jobs area, click
19 the Start Backup icon to begin your backup. The progress of the backup appears in
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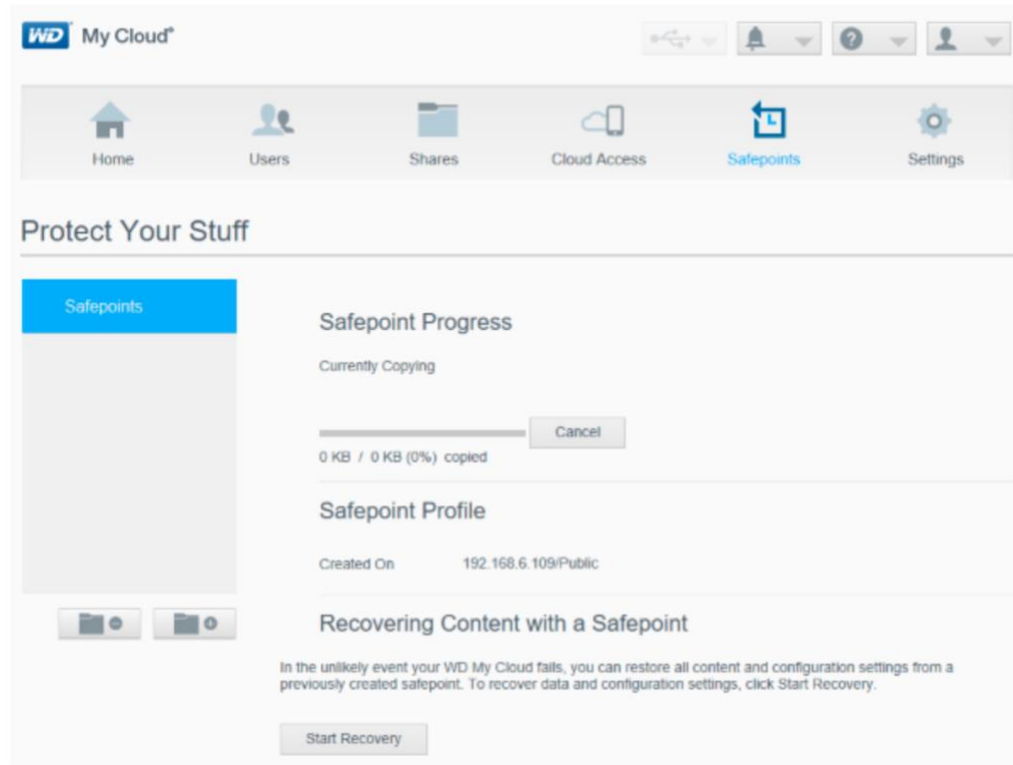
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1 the USB Backup Jobs area.”);

2 <https://support.wdc.com/knowledgebase/answer.aspx?ID=10428>:

3 13. As the Safepoint creation is active, the progress will be displayed on the Dashboard.

4 This process may take up to several hours depending on how much information is in the drive.



17 71. Each Defendant has had knowledge of the '893 Patent and its
18 infringement since at least the filing of the original Complaint in this action, or
19 shortly thereafter, including by way of this lawsuit. By the time of trial, each
20 Defendant will have known and intended (since receiving such notice) that its
21 continued actions would actively induce and contribute to the infringement of the
22 claims of the '893 Patent.

23 72. Each Defendant's affirmative acts of making, using, selling, offering
24 for sale, and/or importing the Accused Instrumentalities have induced and continue
25 to induce users of the Accused Instrumentalities to use the Accused Instrumentalities
26 in their normal and customary way to infringe the claims of the '893 Patent. Use of
27 the Accused Instrumentalities in their ordinary and customary fashion results in
28 infringement of the claims of the '893 Patent.

1 73. For example, each Defendant explains to customers the benefits of
2 using the Accused Instrumentalities, such as by touting their advantages of data
3 backup or synchronization using the accused functionalities. Each Defendant also
4 induces its customers to use the Accused Instrumentalities to infringe other claims
5 of the '893 Patent. Each Defendant specifically intended and was aware that the
6 normal and customary use of the Accused Instrumentalities on compatible systems
7 would infringe the '893 Patent. Each Defendant performed the acts that constitute
8 induced infringement, and would induce actual infringement, with the knowledge of
9 the '893 Patent and with the knowledge, or willful blindness to the probability, that
10 the induced acts would constitute infringement. On information and belief, each
11 Defendant engaged in such inducement to promote the sales of the Accused
12 Instrumentalities, *e.g.*, through its user manuals, product support, marketing
13 materials, demonstrations, installation support, and training materials to actively
14 induce the users of the accused products to infringe the '893 Patent. Accordingly,
15 each Defendant has induced and continues to induce end users of the accused
16 products to use the accused products in their ordinary and customary way with
17 compatible systems to make and/or use systems infringing the '893 Patent, knowing
18 that such use of the Accused Instrumentalities with compatible systems will result
19 in infringement of the '893 Patent. For example, in the case of diskless My Cloud
20 products, each Defendant induces end users to add one or more hard drives in order
21 to make the product operable. Accordingly, each Defendant has been (since at least
22 as of filing of the original complaint), and currently is, inducing infringement of the
23 '893 Patent, in violation of 35 U.S.C. § 271(b).

24 74. Each Defendant has also infringed, and continues to infringe, claims of
25 the '893 Patent by offering to commercially distribute, commercially distributing,
26 making, and/or importing the Accused Instrumentalities, which are used in
27 practicing the process, or using the systems, of the '893 Patent, and constitute a
28 material part of the invention. Defendant knows the components in the Accused

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1 Instrumentalities to be especially made or especially adapted for use in infringement
2 of the '893 Patent, not a staple article, and not a commodity of commerce suitable
3 for substantial noninfringing use. For example, the ordinary way of using the
4 Accused Instrumentalities infringes the patent claims, and as such, is especially
5 adapted for use in infringement. For another example, in the case of diskless My
6 Cloud products, each end users must add one or more hard drives in order to make
7 the product operable. Accordingly, each Defendant has been, and currently is,
8 contributorily infringing the '893 Patent, in violation of 35 U.S.C. § 271(c).

9 75. As a result of Defendant's infringement of the '893 Patent, Plaintiff
10 Data Scape is entitled to monetary damages in an amount adequate to compensate
11 for each Defendant's infringement, but in no event less than a reasonable royalty for
12 the use made of the invention by each Defendant, together with interest and costs as
13 fixed by the Court.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff Data Scape respectfully requests that this Court
16 enter:

17 a. A judgment in favor of Plaintiff that Defendants have infringed, either
18 literally and/or under the doctrine of equivalents, the '581 Patent, the '929 Patent,
19 the '537 Patent, and the '893 Patent (collectively, "asserted patents");

20 b. A permanent injunction prohibiting Defendants from further acts of
21 infringement of the asserted patents;

22 c. A judgment and order requiring Defendants to pay Plaintiff its damages,
23 costs, expenses, and prejudgment and post-judgment interest for its infringement of
24 the asserted patents, as provided under 35 U.S.C. § 284;

25 d. A judgment and order requiring Defendants to provide an accounting
26 and to pay supplemental damages to Data Scape, including without limitation,
27 prejudgment and post-judgment interest;

28

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

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

6 **DEMAND FOR JURY TRIAL**

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

9
10 Respectfully Submitted,

11 Dated: December 26, 2018

12 /s/ Reza Mirzaie
13 RUSS AUGUST & KABAT
14 Marc A. Fenster, SBN 181067
15 Email: mfenster@raklaw.com
16 Reza Mirzaie (CA SBN 246953)
17 Email: rmirzaie@raklaw.com
18 Brian D. Ledahl (CA SBN 186579)
19 Email: bledahl@raklaw.com
20 Paul Kroeger (CA SBN 229074)
21 Email: pkroeger@raklaw.com
22 C. Jay Chung (CA SBN 252794)
23 Email: jchung@raklaw.com
24 Philip X. Wang (CA SBN 262239)
25 Email: pwang@raklaw.com

26 *Attorneys for Plaintiff Data Scape Limited*
27
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