UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

DATACLOUD TECHNOLOGIES, LLC,	Civil Action No. _____
Plaintiff,	**JURY TRIAL DEMANDED**
v.	
DATTO, INC.,	
Defendant.	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff DataCloud Technologies, LLC (hereinafter, "Plaintiff" or "DataCloud") files this Complaint for patent infringement against Defendant Datto, Inc. (hereinafter, "Defendant" or "Datto") alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1.   This is a patent infringement action to stop Defendant's infringement of the following United States Patents (collectively, the "Patents-in-Suit") issued by the United States Patent and Trademark Office ("USPTO"), copies of which are attached hereto as **Exhibit A, Exhibit B, Exhibit C,** and **Exhibit D**, respectively:

	U.S. Patent No.	Title
A.	6,560,613 (the "'613 patent")	Disambiguating File Descriptors
B.	7,209,959 (the "'959 patent")	Apparatus, System, And Method For Communicating To A Network Through A Virtual Domain Providing Anonymity To A Client Communicating On The Network
C.	8,156,499 (the "'499 patent")	Methods, Systems And Articles Of Manufacture For Scheduling Execution Of Programs On Computers Having Different Operating Systems
D.	8,762,498 (the '498 patent")	Apparatus, System, And Method For Communicating To A Network Through A Virtual Domain

2.   Plaintiff seeks monetary damages.

PARTIES

3.   DataCloud is a limited liability company organized and existing under the laws of the State of Georgia and maintains its principal place of business at 44 Milton Avenue, Suite 254, Alpharetta, Georgia, 30009 (Fulton County).

4.   Based upon public information, Datto is a limited liability company duly organized and existing under the laws of the state of Delaware since June 20. 2013.

5.   Based upon public information, Datto lists its Corporate Headquarters as 101 Merritt 7, 7th Floor, Norwalk, Connecticut, 06851 (Fairfield County).

6.   Based upon public information, Datto may be served through its registered agent, The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

JURISDICTION AND VENUE

7.   Plaintiff repeats and re-alleges the allegations in the Paragraphs above as though fully set forth in their entirety.

8.   This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

9.   The Court has personal jurisdiction over Datto because: Defendant has minimum contacts within the State of Delaware and in this District; Defendant has purposefully availed itself of the privileges of conducting business in the State of Delaware and in this District; Defendant has sought protection and benefit from the laws of the State of Delaware; Defendant regularly conducts business within the State of Delaware and within this District, and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Delaware and in this District.

10.   More specifically, Defendant directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and services in the United States, the State of Delaware, and in this District.

11.   Specifically, Defendant intends to do and does business in, has committed acts of infringement in this District directly, and offers its services, including those accused of infringement here, to customers and potential customers located in the State of Delaware, including in this District.

12.   Therefore, venue is proper in this District pursuant to 28 U.S.C. §1400(b) because Defendant resides in this District by way of its incorporation in Delaware.

THE ACCUSED INSTRUMENTALITIES

13.   Based upon public information, Defendant owns, operates, advertises, and/or controls the website www.datto.com through which it advertises, sells, offers to sell, provides and/or educates customers about its website hosting platforms. *See* **Exhibit E. Exhibit F.**

14.   Defendant offers at least the following products (hereinafter, the "Accused Instrumentalities") that infringe one or more claims of the Patents-in-Suit:
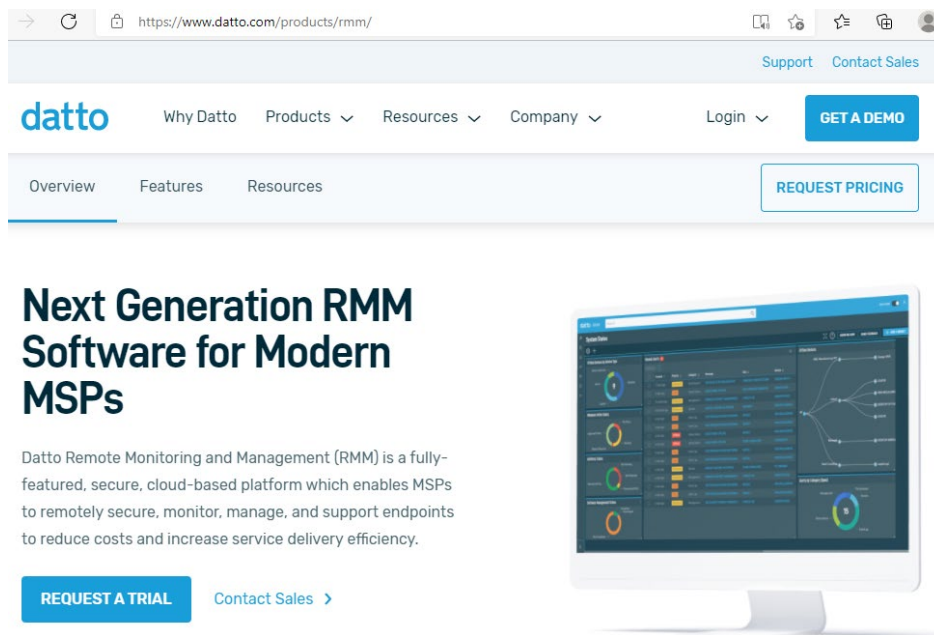
- o   Datto Siris with Virtualization;
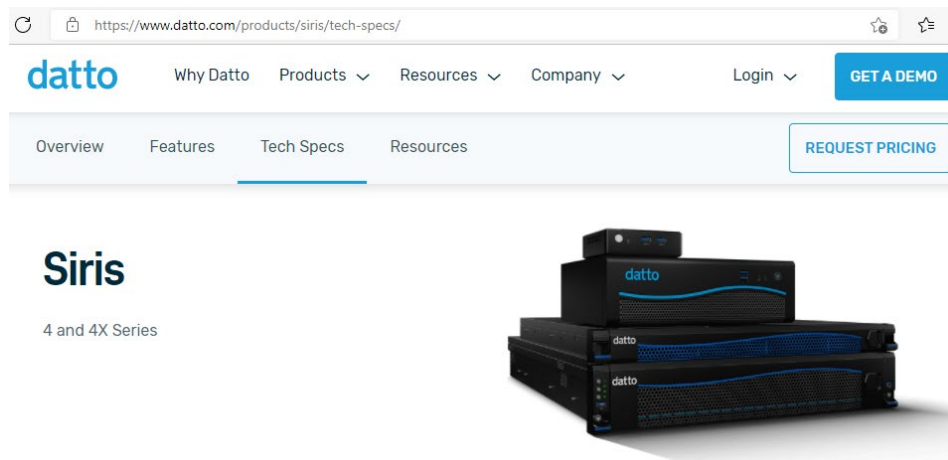
o Datto Website Infrastructure;
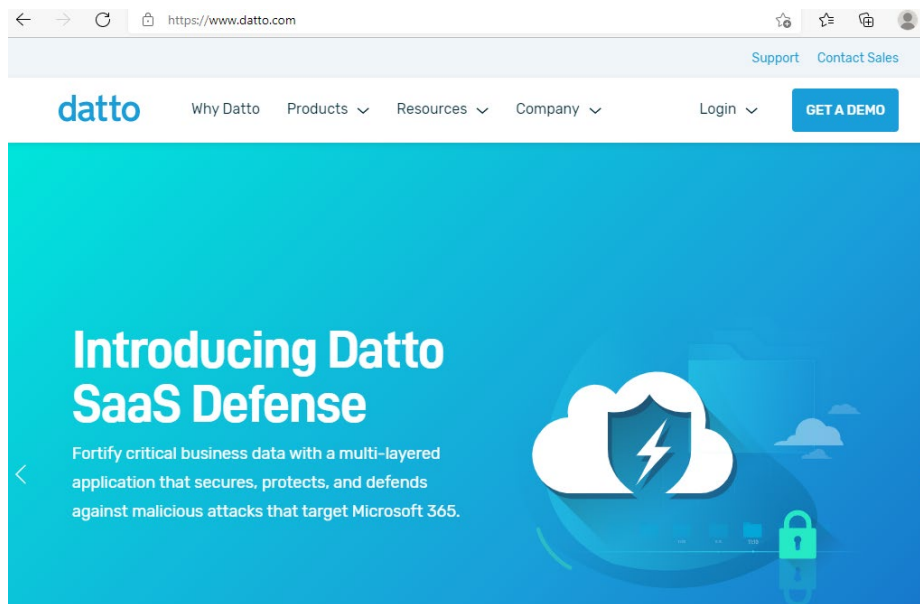
o Datto RMM Platform;

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,560,613

15. Plaintiff re-alleges and incorporates by reference each of the paragraphs above as

though fully set forth in their entirety.

16.   The. '613 patent was issued on May 6, 2003 after full and fair examination by the USPTO of Application No. 09/500,212 which was filed on February 8, 2000. *See* Ex. B. A Certificate of Correction was issued on August 26, 2003. *See id.*

17.   The claims of the '613 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve networks and network systems by anonymizing network activity for individual clients and groups of clients.

18.   The written description of the '613 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

19.   DataCloud owns all substantial rights, interest, and title in and to the '613 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

20.   DataCloud or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '613 patent.

21.   Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '613 patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises Datto's Siris with Virtualization.

22.   Upon information and belief, Datto's Siris with Virtualization meets each and every element of at least Claim 8 of the '613 Patent, either literally or equivalently.

23.   Based upon public information, Datto's Siris with Virtualization. has infringed one or more claims of the '613 patent, including Claim 8, because it provides a method for disambiguating file descriptors in a computer system through a process which intercepts the system calls that store files on media, stores one or more file type indicators for each file descriptor in a table, and determines what file type is associated with the file descriptor based on a review of the stored file type indicators. KVM, used in Datto's Siris with Virtualization, employs disambiguation of file descriptors (files/sockets/pipes) that are used in shadowed I/O system call routines by intercepting them, storing related indicators (*e.g.*, reference to images), and examining those stored indicators to determine the associated file type.

24.   Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

25.   Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 7,209,959

26.   Plaintiff re-alleges and incorporates by reference each of the paragraphs above as though fully set forth in their entirety.

27.   The '959 patent was issued on April 24, 2007 after full and fair examination by the USPTO of Application No. 09/542,858 which was filed on April 4, 2000. *See* Ex. B.

28.   The claims of the '959 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include

inventive components that improve networks and network systems by anonymizing network activity for individual clients and groups of clients.

29.   The written description of the '959 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

30.   DataCloud owns all substantial rights, interest, and title in and to the '959 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

31.   DataCloud or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '959 patent.

32.   Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '959 Patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises Datto's Website Infrastructure.

33.   Upon information and belief, Datto's Website Infrastructure meets each and every element of at least Claim 1 of the '959 Patent, either literally or equivalently.

34.   Based upon public information, Defendant has infringed one or more claims of the '959 Patent, including Claim 1, because Datto's Website Infrastructure provides a method of, in response to a request (*e.g.,* ""Client Hello") by a client (*e.g.,* 10.0.0.3) to initiate communication with a destination website (*e.g.,* www.datto.com, cloud.datto.com, helpdesk.datto.com, dit-

logging-kafka-4.datto.com, dit-rly-relay-2-test.datto.com); setting up a forwarding session (*e.g.*, from the internet to a WWW server) between the client (*e.g.*, internet device) and a destination server corresponding to the destination website (*e.g.*, WWW server), the forwarding session employing a forwarder disposed between (*e.g.*, a front-end server switch) the client and the destination server to forward packets sent from the client to the destination server and to forward packets sent from the destination server to the client (*e.g.*, bilateral communications); employing the forwarder (*e.g.*, front-end server switch), to transfer packets (*e.g.*, ethernet or others) between the client (*e.g.*, internet device) and the destination server (*e.g.*, WWW server) during the forwarding session, wherein the forwarding session is set up and implemented such that neither the client or the destination server is aware of the employment of the forwarder (*e.g.*, the WWW server has a direct TCP connection between a local IP address and a client IP address, each being different; thus, neither the client or the destination server is aware of the employment of the forwarder); employing a controller configured to communicate (*e.g.*, firewall) with the forwarder (*e.g.*, front-end server switch) and a domain name server (*e.g.*, a DNS), wherein the controller queries the domain name server to resolve the name of the destination website (*e.g.*, www.datto.com, cloud.datto.com, helpdesk.datto.com, dit-logging-kafka-4.datto.com, dit-rly-relay-2-test.datto.com) associated with the destination server (*e.g.*, WWW server) and initiates communication (*e.g.*, between the firewall and front-end server switch) with the forwarder in response to an answer from the domain name server to resolve the name of the destination website associated with the destination server; employing a deceiver (*e.g.*, router) configured to communicate with the controller (*e.g.*, firewall) and the client (*e.g.*, internet device), wherein the deceiver receives the request by the client to initiate communication (*e.g.*, from the internet to the router) with the destination website (*e.g.*, www.datto.com on a WWW server) and initiates the

controller to query the domain name server to resolve the name of the destination website associated with the destination server (*e.g.*, the router both (i) receives the request and (ii) sends the data from the WWW server in a manner that makes the router appear to be the source of the data, when the source of the data is actually the WWW server); and in response to the controller (*e.g.*, router) receiving the answer from the domain name server and initiating communication with the forwarder initiating the forwarding session.

35.   Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

36.   Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. 8,156,499

37.   Plaintiff re-alleges and incorporates by reference each of the paragraphs above as though fully set forth in their entirety.

38.   The '499 Patent was issued on April 10, 2012 after full and fair examination by the USPTO of Application No. 12/331,980 which was filed on December 10, 2008. *See* Ex. C. A Certificate of Correction was issued on September 25, 2012. *See id.*

39.   The claims of the '499 Patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve the retrieval and transmission of data from and/or to a remote server.

40.   The written description of the '499 Patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how

the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

41.   DataCloud owns all substantial rights, interest, and title in and to the '499 Patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

42.   DataCloud or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '499 Patent.

43.   Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '499 Patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises Datto's Remote Monitoring and Management platform ("RMM").

44.   Upon information and belief, RMM meets each and every step of at least Claim 1 of the '499 Patent, either literally or equivalently.

45.   Based upon public information, RMM has infringed one or more claims of the '499 Patent, including Claim 1, because it provides a method scheduling a first computer (*e.g.*, "ANI-PC") communicatively coupled with the scheduling computer (*e.g.*, "CURRENT UI," Web Portal, etc.) to execute a first program (*e.g.*, the "Adobe Reader Uninstaller") wherein the first computer has a first operating system (*e.g.*, Windows 10 for the PC); receiving at the scheduling computer a result from the first computer (*e.g.*, a status of "failed"), wherein the result from the first computer is based at least in part upon the execution of the first program by the first compute (*e.g.*, the failed uninstallation result is based at least in part on the execution of the "Adobe Reader Uninstaller");

and scheduling a second computer (*e.g.*, a "Job Server") communicatively coupled with the scheduling computer to execute a second program (*e.g.*, "Rerun job on selected devices") in response to a determination that the result from the first computer meets a criterion (*e.g.*, selecting the action "Rerun job on selected devices" will schedule the job server to execute a second program which reruns the job for failed devices) wherein the second computer has a second operating system and the second operating system is different from the first operating system (*e.g.*, the "Job Server" will have a server operating system such as Linux or Windows Server).

46.   Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

47.   Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

<div align="center">

COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 8,762,498

</div>

48.   Plaintiff re-alleges and incorporates by reference each of the paragraphs above as though fully set forth in their entirety.

49.   The. '498 patent was issued on June 24, 2014, after full and fair examination by the USPTO of Application No. 13/731,731 which was filed on December 31, 2012. *See* Ex. D.

50.   The claims of the '498 patent are not directed to an abstract idea and are not limited to well-understood, routine, or conventional activity. Rather, the claimed inventions include inventive components that improve networks and network systems by anonymizing network activity for individual clients and groups of clients.

51.   The written description of the '498 patent describes in technical detail each limitation of the claims, allowing a skilled artisan to understand the scope of the claims and how

the non-conventional and non-generic combination of claim limitations is patently distinct from and improved upon what may have been considered conventional or generic in the art at the time of the invention.

52.   DataCloud owns all substantial rights, interest, and title in and to the '498 patent, including the sole and exclusive right to prosecute this action and enforce it against infringers and to collect damages for all relevant times.

53.   DataCloud or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '498 patent.

54.   Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '498 patent, either literally or under the doctrine of equivalents, because it ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its Datto's Website Infrastructure employing TLS.

55.   Upon information and belief, Datto's Website Infrastructure employing TLS meets each and every element of at least Claim 1 of the '498 patent, either literally or equivalently.

56.   Based upon public information, Datto's Website Infrastructure employing TLS has infringed one or more claims of the '498 patent, including Claim 1, because it provides a method of determining, by a controller device comprising a processor (*e.g.*, a router), a destination internet protocol (IP) address from a plurality of categories for virtual names (*e.g.,* datto.com) based on a virtual   namespace   destination   address   (*e.g.,*   www.datto.com,   cloud.datto.com, helpdesk.datto.com, dit-logging-kafka-4.datto.com, dit-rly-relay-2-test.datto.com) specified by request data received from a device, wherein a category of the plurality of categories is related to the virtual namespace destination address establishing a correlation between the destination IP

address and a forwarder IP address of a forwarder device; and instructing the forwarder device to

send the request data to the destination IP address. (*e.g.*, through a WWW server and SNI Routing).

57.   Defendant's aforesaid activities have been without authority and/or license from

Plaintiff.

58.   Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as

a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot

be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35

U.S.C. § 284.

JURY DEMAND

59.   Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

60.   Plaintiff respectfully requests the following relief:

A.   An adjudication that one or more claims of the Patents-in-Suit has been

infringed, either literally and/or under the doctrine of equivalents, by

Defendant;

B.   An award of damages to be paid by Defendant adequate to compensate Plaintiff

Defendant's past infringement, including interest, costs, and disbursements as

justified under 35 U.S.C. § 284 and, if necessary to adequately compensate

Plaintiff for Defendant's infringement, an accounting of all infringing sales

including, but not limited to, those sales not presented at trial;

C.   That this Court declare this to be an exceptional case and award Plaintiff its

reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,

D.   Any further relief that this Court deems just and proper.

Dated: <u>January 6, 2023</u>

Respectfully submitted,

Stamoulis & Weinblatt LLC

/s/ Richard C. Weinblatt

Stamatios Stamoulis (#4606)
Richard C. Weinblatt (#5080)
800 N. West Street - Third Floor
Wilmington, Delaware 19801
Telephone: (302) 999-1540
Email: stamoulis@swdelaw.com
Email: weinblatt@swdelaw.com

James F. McDonough, III (GA 117088)*
Jonathan R. Miller (GA 507179)*
Travis E. Lynch (GA 162373)*
ROZIER HARDT MCDONOUGH PLLC
3621 Vinings Slope, Suite 4300
Atlanta, Georgia 30339
Telephone: (470) 480-9505, -9517, -9514
Email: jim@rhmtrial.com
Email: miller@rhmtrial.com
Email: lynch@rhmtrial.com

Jonathan L. Hardt (TX 24039906)*
ROZIER HARDT MCDONOUGH PLLC
712 W. 14th Street, Suite C
Austin, Texas 78701
Telephone: (210) 289-7541
Email: hardt@rhmtrial.com

C. Matthew Rozier (CO 46854)*
ROZIER HARDT MCDONOUGH PLLC
2590 Walnut Street, Suite 10
Denver, Colorado 80205
Telephone: (720) 820-3006
Email: matt@rhmtrial.com

Attorneys for Plaintiff
DATACLOUD TECHNOLOGIES, LLC

* Admission *pro hac vice* anticipated

<u>LIST OF EXHIBITS</u>

A. U.S. Patent No. 6,560,613
B. U.S. Patent No. 7,209,959
C. U.S. Patent No. 8,156.499
D. U.S. Patent No. 8,762,498
E. Webpage: Products and Services Offered
F. Webpage: Products | MSP Technology Solutions