

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

NETWORK BACKUP CORPORATION,

Plaintiff,

v.

ALLMYDATA, INC.,
BEST BUY CO, INC.,
CARBONITE, INC.,
EMC CORP.,
IRON MOUNTAIN, INC.,
NETMASS, INC.,
OFFICEWARE CORP.
d/b/a FILESANYWHERE.COM,
PRO SOFTNET CORP., and
WEBROOT SOFTWARE, INC.,

Defendants.

Civil Action No. _____

TRIAL BY JURY DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, NETWORK BACKUP CORPORATION, by its attorneys, hereby complains against Defendants ALLMYDATA, INC., BEST BUY CO, INC., CARBONITE, INC., EMC CORP., IRON MOUNTAIN, INC., NETMASS, INC., OFFICEWARE CORP., PRO SOFTNET CORP., and WEBROOT SOFTWARE, INC., as follows:

I.

PARTIES

1. Plaintiff, NETWORK BACKUP CORPORATION (“NBC”) is a Corporation organized and existing under the laws of the State of Texas with a place of business located at 911 NW Loop 281, Suite 211, Longview, Texas 75604.

2. Defendant ALLMYDATA, INC. (“ALLMYDATA”) is a Corporation established under the laws of the State of Delaware with its principal place of business at 555 De Haro

Street, Suite 400, San Francisco, CA 94107. ALLMYDATA may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

3. Defendant BEST BUY CO., INC. (“BESTBUY”) is a Corporation established under the laws of the State of Minnesota, with its principal place of business at 7601 Penn Avenue South, Richfield, MN 55423. BESTBUY may be served with process by serving its registered agent, CT Corporation System, Inc., 100 S 5th St, #1075, Minneapolis, MN 55402.

4. Defendant CARBONITE, INC., (“CARBONITE”) is a Corporation established under the laws of the State of Delaware, with its principal place of business at 334 Boylston St, 3rd Floor, Boston, MA 02116. CARBONITE may be served with process by serving its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

5. Defendant EMC CORP. (“EMC”) is a Corporation established under the laws of the State of Massachusetts, with its principal place of business at 176 South Street, Hopkinton, MA 01748. EMC may be served with process by serving its registered agent, CT Corporation System, Inc., 155 Federal St., Suite 700, Boston, MA 02110.

6. Defendant IRON MOUNTAIN, INC., (“IRON”) is a Corporation established under the laws of the State of Delaware, with its principal place of business at 745 Atlantic Avenue, Boston, MA 02111. IRON may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

7. Defendant NETMASS, INC., (“NETMASS”) is a Corporation established under the laws of the State of Texas, with its principal place of business at 118 S. Tennessee St., McKinney, TX 75069. NETMASS may be served with process by serving its registered agent, Mark W. Martin, 23569 FM 1314, Porter, TX 77365.

8. Defendant OFFICEWARE CORP. d/b/a FILESANYWHERE.COM, (“OFFICEWARE”) is a Corporation established under the laws of the State of Texas, with its principal place of business at 8600 Freeport Parkway, Suite 220, Irving, TX 75063. OFFICEWARE may be served with process by serving its registered agent, Capitol Corporate Services, Inc., 800 Brazos, Suite 400, Austin, TX 78701.

9. Defendant PRO SOFTNET CORP., (“PSC”) is a Corporation established under the laws of the State of California, with its principal place of business at 21300 Victory Boulevard, Suite 690, Woodland Hills, CA 91367. PSC may be served with process by serving its registered agent, Raghavendra V. Kulkarni, 7528 Penobscot Dr., West Hills, CA 91304.

10. Defendant WEBROOT SOFTWARE, INC., (“WEBROOT”) is a Corporation established under the laws of the State of Delaware, with its principal place of business at 2560 55th Street, Boulder, CO 80301. WEBROOT may be served with process by serving its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

II.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* This Court has personal jurisdiction over Defendants because, among other things, on information and belief Defendants have committed acts giving rise to this action within Texas and this judicial district and have established minimum contacts within the forum such that the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice. On information and belief, each Defendant designed, made or had made on its behalf, and placed software products (for practicing the method claimed in Plaintiff’s patent-

in-suit) into the stream of commerce with the reasonable expectation and/or knowledge that actual or potential ultimate purchasers and users for such products were located within this judicial district. On information and belief, Defendants sold, advertised, solicited customers, marketed and distributed their software products for practicing the method claimed in the patent-in-suit in this judicial district.

12. Venue properly lies in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b), because Defendants are subject to personal jurisdiction in this district as discussed in the preceding paragraph. Furthermore, NBC is a resident of Texas.

III.

CLAIMS

13. NBC realleges and incorporates by reference the allegations set forth in Paragraphs 1-12 above as if fully set forth herein.

14. On July 21, 1992, United States Patent Number 5,133,065 (the '065 patent), was duly and lawfully issued for an invention entitled "Backup Computer Program for Networks" to Edward L. Cheffetz and Ronald C. Searls. At its issuance, the '065 patent was assigned to Personal Computer Peripherals Corporation and is currently assigned to Plaintiff Network Backup Corporation, which now owns the '065 patent and holds the right to sue for and recover all past damages for infringement thereof. A true and correct copy of the '065 patent as issued is attached hereto as Exhibit A.

15. In this complaint, NBC only asserts claims 6-10, the method claims, and not the system claims, of the '065 patent.

16. ALLMYDATA, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, literally and/or under the doctrine of equivalents, one or more of the method claims of the '065 patent in this District and

elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its online backup subscription service and software products.

17. On information and belief, ALLMYDATA has offered and continues to offer its paid online backup subscription service at its website: www.allmydata.com and has offered and continues to offer the service plan “Home Backup.” Before using the subscription service, a subscriber must first register with ALLMYDATA and then download and install ALLMYDATA’s client software on the subscriber’s computer. Upon information and belief, said client software was available and continues to be available at: www.allmydata.com. After installation, said client software creates, on the subscriber’s computer, a remote backup set containing a list of files located on the subscriber’s computer to be backed up. Furthermore, ALLMYDATA’s client software transfers the files listed on the remote backup set over the Internet to ALLMYDATA’s remote secure backup storage servers.

18. BESTBUY, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, literally and/or under the doctrine of equivalents, one or more of the method claims of the ‘065 patent in this District and elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its online backup subscription service and software products.

19. On information and belief, BESTBUY has offered and continues to offer its paid online backup subscription service (“Geek Squad Online Data Backup”) through its subsidiary Geek Squad, Inc. at its website: www.geeksquad.com/tools/databackup.aspx. Before using the subscription service, a subscriber must first register with BESTBUY and then download and install BESTBUY’s client software (“Geek Squad Online Data Backup Software”) on the subscriber’s computer. Upon information and belief, said client software was available and

continues to be available at: <https://onlinebackup.geeksquad.com/backup/geeksquadbackup.msi>.

After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, BESTBUY's client software transfers the files listed on the remote backup set over the Internet to BESTBUY's remote secure backup storage servers.

20. CARBONITE, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, has infringed, literally and/or under the doctrine of equivalents, one or more of the method claims of the '065 patent in this District and elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its online backup subscription service and software products.

21. Upon information and belief, CARBONITE has offered and continues to offer its paid online backup subscription service at its website: www.carbonite.com. Before using the subscription service, a subscriber must first register with CARBONITE and then download and install CARBONITE's client software on the subscriber's computer. Upon information and belief, said client software was available and continues to be available at: www.carbonite.com. After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, CARBONITE's client software transfers the files listed on the remote backup set over the Internet to CARBONITE's remote secure backup storage servers.

22. EMC, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, has infringed, literally and/or under the doctrine of equivalents, one or more of the method claims of the '065 patent in this District and

elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its backup service and software products.

23. For example, upon information and belief, EMC has offered and continues to offer its “Mozy” branded paid online backup subscription service at its website: www.mozy.com and has offered and continues to offer the service plans “MozyHome” and “MozyPro.” Before using the subscription service, a subscriber must first register with EMC and then download and install EMC’s client software on the subscriber’s computer. Upon information and belief, said client software was available and continues to be available at: www.mozy.com. After installation, said client software creates, on the subscriber’s computer, a remote backup set containing a list of files located on the subscriber’s computer to be backed up. Furthermore, EMC’s client software transfers the files listed on the remote backup set over the Internet to EMC’s remote secure backup storage servers. On information and belief, additional EMC backup service and software products include, but are not limited to, EMC’s “Avamar” and “Retrospect” branded products.

24. IRON, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, has infringed, literally and/or under the doctrine of equivalents, one or more of the method claims of the ‘065 patent in this District and elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its online backup service and software products.

25. For example, upon information and belief, IRON has offered and continues to offer its “Connected” branded paid online backup subscription service at its website: <http://www.ironmountain.com/digital/pc/connected.asp>. The backup service is offered as a paid subscription service or in form of licensed software. Before using the subscription service, a subscriber must first register with IRON and then download and install IRON’s client software

on the subscriber's computer. Upon information and belief, said client software was available and continues to be available at: <http://backup.ironmountain.com/plans/soho.asp> (for home PC and MAC users) and <http://backup.ironmountain.com/plans/smb.asp> (for small business PC and MAC users). After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, IRON's client software transfers the files listed on the remote backup set over the Internet to IRON's remote secure backup storage servers. On information and belief, additional IRON backup service and software products include, but are not limited to, IRON's "LiveVault" branded products, which enables users to back up server data over the Internet.

26. NETMASS, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, has infringed, literally and/or under the doctrine of equivalents, one or more of the method claims of the '065 patent in this District and elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its online backup subscription service and software products.

27. Upon information and belief, NETMASS offered and continues to offer its "Systemsafe" branded paid online backup subscription service at its website: www.netmass.com. Before using the subscription service, a subscriber must first register with NETMASS and then download and install NETMASS's client software on the subscriber's computer. Upon information and belief, said client software was available and continues to be available at: http://www.netmass.com/olb_free_trial.html. After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, NETMASS's client software transfers the files listed on the remote backup set over the Internet to NETMASS's remote secure backup

storage servers. On information and belief, additional NETMASS backup service and software products include, but are not limited to, NETMASS's "System Backup SE" branded product, which enables users to back up data stored on Microsoft Windows file servers and print servers over the Internet.

28. OFFICEWARE, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, has infringed, literally and/or under the doctrine of equivalents, one or more of the method claims of the '065 patent in this District and elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its online backup subscription service and software products.

29. Upon information and belief, OFFICEWARE has offered and continues to offer its paid online backup subscription service at its website: www.filesanywhere.com and has offered and continues to offer a number of different service plans, such as, for example, the "WebAdvancedPlan." Before using the subscription service, a subscriber must first register with OFFICEWARE and then download and install OFFICEWARE's client software on the subscriber's computer. Upon information and belief, said client software was available and continues to be available at: <http://www.filesanywhere.com/Setup.asp> ("Handy Backup for Windows" and "FASYNC for OS X"). After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, OFFICEWARE's client software transfers the files listed on the remote backup set over the Internet to OFFICEWARE's remote secure backup storage servers.

30. PSC, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, has infringed, literally and/or under the

doctrine of equivalents, one or more of the method claims of the '065 patent in this District and elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its backup service and software products.

31. For example, upon information and belief, PSC has offered and continues to offer its "IBackup" branded paid online backup subscription service at its website: www.ibackup.com has offered and continues to offer a variety of service plans for home and professional users. Before using the subscription service, a subscriber must first register with PSC and then download and install PSC's client software on the subscriber's computer. Upon information and belief, said client software was available and continues to be available at: <http://www.ibackup.com/online-backup-downloads/> (for example, "IBackup for Windows" and "IBackup for Mac"). After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, PSC's client software transfers the files listed on the remote backup set over the Internet to PSC's remote secure backup storage servers.

32. As a further example, upon information and belief, PSC has offered and continues to offer its "IDrive" branded paid online backup subscription service at its website: www.idrive.com and has offered and continues to offer a variety of service plans for home and professional users. Before using the subscription service, a subscriber must first register with PSC and then download and install PSC's client software on the subscriber's computer. Upon information and belief, said client software was available and continues to be available at: <http://www.idrive.com/online-backup-download.htm> (for example, "IDrive Online Backup Classic for Windows" and "IDrive Online Backup for Mac"). After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, PSC's client software

transfers the files listed on the remote backup set over the Internet to PSC's remote secure backup storage servers.

33. WEBROOT, either alone or in conjunction with others, has infringed, contributed to the infringement of, and/or induced others to infringe, has infringed, literally and/or under the doctrine of equivalents, one or more of the method claims of the '065 patent in this District and elsewhere in the United States by having made, made on its behalf, designed, offered for sale, sold, provided, maintained and supported its online backup subscription service and software products.

34. Upon information and belief, WEBROOT has offered and continues to offer its "Webroot Secure Backup" branded paid online backup subscription service at its website: www.webroot.com. Before using the subscription service, a subscriber must first register with WEBROOT and then download and install WEBROOT's client software on the subscriber's computer. Upon information and belief, said client software was available and continues to be available at: www.webroot.com. After installation, said client software creates, on the subscriber's computer, a remote backup set containing a list of files located on the subscriber's computer to be backed up. Furthermore, WEBROOT's client software transfers the files listed on the remote backup set over the Internet to WEBROOT's remote secure backup storage servers.

35. Each of the Defendants has committed acts of infringement which have caused damage to NBC. Under 35 U.S.C. § 284, NBC is entitled to recover from each of the Defendants the damages sustained by NBC as a result of their past infringement of the '065 patent.

IV.

PRAYER FOR RELIEF

WHEREFORE, NBC respectfully requests that this Court enter judgment against Defendants ALLMYDATA, INC., BEST BUY CO, INC., CARBONITE, INC., EMC CORP., IRON MOUNTAIN, INC., NETMASS, INC., OFFICEWARE CORP., PRO SOFTNET CORP., and WEBROOT SOFTWARE, INC., as follows:

- (a) for judgment that Defendants have infringed the '065 patent;
- (b) for damages to be paid by Defendants adequate to compensate NBC for their past infringement, including interest, costs and disbursements as justified under 35 U.S.C. 284; and
- (c) for such further relief at law and in equity as the Court may deem just and proper.

V.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff NBC hereby demands a jury trial on all issues triable by jury.

Dated: August 18, 2009

Respectfully submitted,

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