

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VMWARE LLC,

Plaintiff,

v.

SIEMENS AG, SIEMENS CORPORATION,
SIEMENS INDUSTRY SOFTWARE, INC.,
SIEMENS MEDICAL SOLUTIONS USA,
INC., SIEMENS HEALTHCARE
DIAGNOSTICS, INC., SIEMENS
MOBILITY, INC., and PETNET
SOLUTIONS, INC.,

Defendants.

CIVIL ACTION No.

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT FOR COPYRIGHT INFRINGEMENT

I. INTRODUCTION

1. This action concerns the unlicensed and therefore infringing use by Defendants Siemens AG and its affiliates and operations based in the United States (together, “Siemens”)¹ of copyrighted VMware software products. The products at issue were originally provided to Siemens AG under license agreements, but Siemens subsequently downloaded, copied, distributed, and used multiple copies of the products without a license.

2. Siemens AG itself provided a list including these unlicensed products to VMware on September 9, 2024 (the “September 9 List”). In providing the list, Siemens AG demanded that

¹ Defendants Siemens Corporation, Siemens Industry Software, Inc., Siemens Medical Solutions USA Inc., Siemens Healthcare Diagnostics Inc., Siemens Mobility Inc., and PETNET Solutions Inc., are collectively referred to here as “Siemens US.”

VMware accept a purchase order to provide maintenance and support services for the listed products (which includes technical assistance as well as software patches, fixes, updates, and upgrades and are commonly known as “Support Services”). Siemens AG had strong incentives to ensure the September 9 List was correct and not overstated: to list a product not covered by a valid license would expose it to an infringement claim; and, even apart from the infringement exposure, the amount Siemens AG would have to pay for Support Services would increase based on the number of products and licenses deployed for each product on the list. It therefore can be reasonably inferred that Siemens AG took care in preparing the September 9 List and that it accurately recorded only the universe of products and the number of licenses that Siemens actually had downloaded, copied, distributed, and deployed.

3. Upon review of the September 9 List, VMware determined that it included a large number of products for which it had no record of Siemens AG purchasing a license. It promptly notified Siemens AG of this concern. But even then, Siemens AG insisted that the September 9 List was correct and demanded that VMware accept it. In fact, Siemens AG repeatedly threatened VMware with legal action if it did not accept the September 9 List and agree to provide Support Services for the products on it. Under that threat, and to avoid the possibility of interrupting Siemens’s business operations, VMware agreed under protest to provide maintenance and support for the products identified in the list due to the unique circumstances of the case, while reserving its rights – including its right to seek compensation for Siemens’s infringing use of its software products.

4. Weeks later, after evidently recognizing that its September 9 List established its infringement of VMware’s rights, Siemens AG attempted to retract the list and to offer instead a new list that was closer in line with VMware’s records of Siemens AG’s licenses. But Siemens AG

never provided a credible explanation of why it would have presented and insisted on the accuracy of the September 9 List, if it did not represent its actual deployment of VMware products. Further, Siemens AG resisted VMware's efforts to independently verify the number of products it was using, through an audit or by running a script on its systems – something which other more cooperative and forthcoming customers do without objection.

5. To this day, Siemens AG has refused to rectify the situation by acknowledging its unlicensed and infringing use of VMware's copyrighted products and attempting to resolve the matter. VMware therefore has no choice but to bring this action to address the problem Siemens AG has admitted to creating.

II. PARTIES

6. Plaintiff VMware LLC ("VMware") is a cloud computing and virtualization technology company incorporated in Delaware with its principal place of business in Palo Alto, California. It was previously known as VMware Inc. before its acquisition by Broadcom Inc. ("Broadcom") in November 2023.

7. Defendant Siemens AG is the parent company of one of the largest technology groups in the world, organized and existing under the laws of Germany.

8. Defendant Siemens Corporation is a wholly-owned subsidiary of Siemens AG that is incorporated in Delaware.

9. Defendant Siemens Industry Software, Inc. is a wholly-owned subsidiary of Siemens AG that is incorporated in Delaware.

10. Defendant Siemens Medical Solutions USA, Inc. is a wholly-owned subsidiary of Siemens AG that is incorporated in Delaware and, on information and belief, headquartered in Pennsylvania.

11. Defendant Siemens Mobility, Inc. is a wholly-owned subsidiary of Siemens AG that is incorporated in Delaware.

12. Defendant PETNET Solutions, Inc. is a wholly-owned subsidiary of Siemens AG that is incorporated in Delaware.

13. Defendant Siemens Healthcare Diagnostics, Inc. is a wholly-owned subsidiary of Siemens AG that is, upon information and belief, incorporated in California and registered to do business in Delaware.

III. JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*

15. Defendants Siemens Corporation, Siemens Industry Software, Inc., Siemens Medical Solutions USA, Inc., Siemens Mobility, Inc., and PETNET Solutions, Inc. are incorporated in the State of Delaware and are therefore subject to personal jurisdiction here.

16. Defendant Siemens Healthcare Diagnostics, Inc. has substantial operations in Delaware, including a manufacturing facility in the Newark/Glasgow area of Delaware. On information and belief, Siemens Healthcare Diagnostics has downloaded, copied, distributed, and/or deployed unlicensed VMware products at issue in this action in connection with its operations in Delaware and accordingly is subject to personal jurisdiction on this basis.

17. Defendant Siemens AG is subject to personal jurisdiction in Delaware and this District, based on its operations and activities in Delaware and throughout the United States. It states on its website that it has 24 manufacturing sites and 45,000 employees in the United States, with “customers in all 50 states.” As noted, one of these manufacturing sites is in the

Newark/Glasgow area. And it operates another manufacturing facility through its subsidiary Siemens Mobility, Inc. in New Castle, Delaware.

18. In addition, Siemens AG directly violated VMware's U.S. copyrights and is subject to personal jurisdiction, because its downloading and copying of VMware software products, including engaging in such activities outside the scope of its licenses, has entailed the use of VMware customer support portals located in the United States in order to gain access and the ability to download and copy such products.

19. Further, Siemens has violated VMware's U.S. copyrights and is subject to personal jurisdiction, because, on information and belief, it has downloaded, copied, and distributed unlicensed copies of the VMware software products to Siemens entities and operations in the United States, including without limitation its affiliates incorporated in Delaware and operations in Delaware.

20. In addition, pursuant to the license between VMware and Siemens AG, all VMware software products and the license keys needed to activate and use them were to be provided to Siemens AG. Accordingly, any infringing activities by Siemens US and other subsidiaries and affiliates of Siemens AG in the United States, including the unlicensed downloading, activation, and use of VMware products, is the result of Siemens AG having provided, directed, induced and authorized such activities. Siemens AG therefore induced and materially contributed to the downloading, copying, distribution and use of unlicensed and infringing copies of VMware's copyrighted software in the United States by Siemens AG's affiliates and operations in the United States.

21. Further, Siemens AG has the right and ability to control the downloading, copying, distribution, and use of VMware's copyrighted software in the United States by Siemens AG's

affiliates and operations in the United States and it failed to exercise such right and ability to control these activities in order to prevent the downloading, copying, distribution, and use of unlicensed and infringing copies of VMware's copyrighted software in the United States by Siemens AG's affiliates and operations in the United States; and Siemens AG directly benefited financially from these infringing activities, including as a result of their contribution to the revenues and profits of Siemens AG.

22. As further evidence of the foregoing, a primary point person for Siemens AG with responsibility for managing and tracking the use of VMware's copyrighted products by Siemens AG and its affiliates and operations in the United States, Astrid Mueller, is based in the United States.

23. Based on the foregoing activities and those set forth below, Siemens AG is subject to liability under VMware's U.S. copyright claims and to personal jurisdiction in the United States and in this District.

24. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), because, on information and belief, a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

25. Further, and in the alternative, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3), because the Court has personal jurisdiction over at least one defendant – and in fact, all defendants – with respect to this action.

26. In addition, because Siemens AG is not a resident of the United States, it may be sued in any judicial district in accordance with 28 U.S.C. § 1391(c)(3), and accordingly venue in this District is proper on this additional basis.

IV. FACTUAL BACKGROUND

A. VMware's Software Products and Registered Copyrights

27. VMware is a leading manufacturer and distributor of virtualization software for data center infrastructure and cloud computing. VMware's software allows customers to create several virtual machines ("VMs") from the same physical hardware, all of which run in parallel and independently of each other. The products at issue in this action, with corresponding registration numbers provided by the United States Copyright Office on the Certificate of Registration for each product ("Registration Numbers"), include the following:

28. **VMware vSphere.** *vSphere* (previously known as the "VMware ESX Server" and covered by Registration Numbers TX 9-477-075; TX 9-476-905; TX 9-477-079; TX 9-477-072; TX 9-477-070; TX 9-477-064; TX 9-477-054; TX 9-477-043; TX 9-477-103; TX 9-476-029; TX 9-476-031; TX 9-476-034; and TX 9-476-036) enables the virtualization and management of server resources through a set of software products. The central component in the *vSphere* software acts as the intermediary between the hardware and the VMs. *vSphere* assumes the management and distribution of tangible resources such as processor power, RAM, and hard disk space to the individual VMs. The VMs behave like independent computers, each with their own operating system and applications, while sharing the underlying hardware infrastructure. This enables companies to use their IT resources more efficiently, as multiple systems can be operated on a single hardware platform.

29. **VMware vCenter Server.** *vCenter Server* (previously known as "*VirtualCenter*") and covered by Registration Numbers TX 9-476-773; TX 9-476-766; TX 9-476-769; TX 9-477-063; TX 9-477-055; TX 9-477-058; TX 9-477-059; TX 9-476-970; TX 9-476-963; TX 9-476-974; and TX 9-476-979) software provides a central control platform for management of multiple

physical hosts running *vSphere*. *vCenter* includes functions to optimize operations such as *vMotion* for the live migration of running VMs between hosts; *DRS* for automatic load balancing across hosts; and *HA* to ensure the recovery of software operations in the event of failure or malfunction.

30. **VMware *Virtual SAN*.** *Virtual SAN* (which, comprised of a code that is a constituent part of the *vSphere* code, is covered by the Registration Numbers for *vSphere*) is VMware's storage virtualization technology. It virtualizes local storage from physical hosts into a software-defined single shared pool of storage, enabling customers to consolidate and optimize storage resources. *Storage vMotion* enables the uninterrupted movement of data from the VMs, while *Storage DRS* automatically distributes the data according to defined rules.

31. **VMware *NSX*.** *NSX* (covered by Registration Numbers TX 9-480-367; TX 9-480-022; TX 9-480-089; TX 9-480-017) is VMware's network virtualization and security software. It virtualizes the network infrastructures and enables customer management of network resources, rather than relying on physical hardware such as switches and routers to do so. *NSX* can automate functions such as load balancing and firewalling based on rules and criteria set by the customer.

32. **VMware *NSX Advanced Load Balancer*.** *NSX Advanced Load Balancer* (now known as "*Avi Load Balancer*") and covered by Registration Numbers TX 9-480-016; TX 9-480-371; TX 9-480-415; TX 9-480-113) manages traffic for *NSX*. It provides multi-cloud load balancing, web application firewall, and application analytics across on-premises data centers and any cloud environment.

33. **VMware *vRealize Suite*.** The *vRealize Suite* (covered by Registration Numbers TX 9-476-702; TX 9-476-699; TX 9-476-763; TX 9-476-772; TX 9-476-777; TX 9-476-783; TX 9-476-700; and TX 9-476-775) automates, manages, and monitors the deployment of virtual machines and containerized applications in private-, public-, and hybrid-cloud environments. It

supports operational management by providing multiple products in a single package: VMware *vRealize Operations* (now known as “VMware *Aria Operations*”) for management of different environments through a unified platform, VMware *vRealize Automation* for process automation; VMware *vRealize Log Insight* for centralized logging; and VMware *vRealize Network Insight* for network analytics. Each component comprising *vRealize Suite* (with the exception of *vRealize Network Insight*) shared the same base code covered by the preceding Registration Numbers. VMware *vRealize Suite* was available on a stand-alone basis as well as in combination with VMware *vSphere Enterprise Plus for vCloud Suites* as part of the commercial offering VMware *vCloud Suite*.

34. **VMware Cloud Foundation.** VMware *Cloud Foundation*, at the time of the ELA, was offered as a collection of each of the VMware *vSphere*, the VMware *NSX*, the VMware *Virtual SAN*, and the VMware *vRealize Suite* products.

35. VMware has registered copyrights for the products at issue in this action, which are attached as Annex I.

B. VMware’s License Agreement with Siemens AG

36. VMware’s license agreements with Siemens AG make clear that, for Siemens to have a license to download, receive, or use one or more copies of a VMware product, it must validly purchase and pay for a license for each copy of the product.

37. VMware and Siemens AG executed a Master Software License and Service Agreement on November 28, 2012 (the “MSLA”). The MSLA was subsequently amended on September 29, 2021 (the “Amended MSLA”).

38. The MSLA provides the framework under which Siemens AG, as the “Customer,” may “purchase licenses to the Software.” MSLA at 1.

39. The MSLA expressly provides that a license is granted only upon Siemens's compliance with the license conditions, including the payment of the required license fee. Section 2.1, License, states: "Subject to the terms and conditions of this Agreement, *including the due payment of the respective applicable license fee*, VMware hereby grants to Customer" a license to the software (emphasis added).

40. Section 2.1 further states that any license grant is limited to "us[ing] the Software products, in accordance with the License Type, *that Customer purchases according to the Purchase Order*" (emphasis added).

41. Still further, Section 2.1 emphasizes: "Except as otherwise expressly set forth in this Agreement, no license or other rights in or to the Software, License Key(s) or Documentation, and all intellectual property rights therein, are granted to Customer."

42. That Siemens AG receives a license to a copy of a product only if and when it purchases and pays for the license is reinforced in other provisions of the MSLA, including Section 1.11's definition of "Number of Licensed Copies" to mean "with respect to each Software product licensed hereunder," which provides that Siemens AG has licenses only for "the number of copies of such Software product for which Customer has paid VMware the applicable license fee."

C. Siemens AG's Purchase of Licenses And Support Services Under Enterprise License Agreements Governed By The MSLA

43. Based on the MSLA, VMware and Siemens AG entered into Enterprise License Agreements for the licensing of VMware products as well as the purchase and licensing of Support Services. Each Enterprise License Agreement operated as an order form, through which Siemens AG placed orders to purchase licenses and Support Services from VMware.

44. The last Enterprise License Agreement associated with the MSLA became effective on September 30, 2021, for a period of three years (the "ELA").

45. Pursuant to the ELA, Siemens AG purchased licenses to a specific number of copies of VMware software products. ELA at Exhibit A, Section I.A (reflecting, for example, that Siemens AG purchased 30 licenses for VMware *NSX-T Enterprise Plus per Processor*).

46. Siemens AG also purchased Support Services for these products during the ELA Period, which extended for three years from the ELA's effective date of September 30, 2021. ELA at Exhibit A, Section I.D.1.

47. Further, Siemens AG purchased Support Services during the ELA Period for certain products for which it had purchased licenses under prior ELAs, referred to as "Pre-ELA Installed Software." ELA at Exhibit A, Section I.D.3.

48. In addition, Siemens AG purchased certain "credits" that could be used to acquire licenses to additional copies of products. ELA at Exhibit A, Section I.C.

49. As noted, the ELA provided that the Support Services purchased by Siemens AG would extend for the "ELA Period" – that is, three years from the ELA's effective date of September 30, 2021. In addition, the ELA gave Siemens AG the option to purchase one additional year of Support Services for certain eligible licensed products. Section II.B of Exhibit A to the ELA provided: "At any time prior to the expiration of the ELA Period, Customer may renew the Covered Offerings listed below from VMware for one (1) additional year beginning on the expiration of the ELA Period for an annual fee of no less than [an agreed minimum amount] but not to exceed [an agreed maximum amount] (Renewal Fees)."

50. Section II.B defines "Covered Offerings" to be "one-year renewal of Support Services" for the products referenced above for which Siemens AG had purchased licenses under the ELA or under prior agreements.

D. As The Customer Under The License Agreements, Siemens AG Was Responsible For The VMware Software Products And License Keys Received Under The Agreements

51. The license agreements make clear that Siemens AG is responsible for any downloading, copying, distribution, deployment, or use of the VMware software products and the license keys needed to activate and operate them, including by any of its affiliates.

52. Siemens AG is the designated “Customer” under the MLSA and ELA. *See* MLSA at 1; ELA at 1. The ELA provides that “VMware shall deliver the Software to Customer.” ELA, Section 1 b). As the ELA explains, the software may be delivered to the Customer in multiple ways, including: “(a) making the Software available for download and emailing the corresponding license key(s); (b) making the Software available for download in a fashion that does not require a license key; or (c) shipping the Software on physical media and emailing the corresponding license key(s).”

53. The MLSA provided that, solely for licenses purchased by Siemens AG as the Customer, Siemens AG could allow its affiliates to deploy and use the VMware software products covered by the license, while making clear that Siemens AG was responsible for its affiliates’ compliance with the MLSA with regard to such licenses. MLSA Section 2.2.

54. Accordingly, any downloading, copying, distribution, deployment, or use of VMware software products and the license keys needed to activate and operate them was at the direction and under the control of Siemens AG, including any such actions by Siemens AG’s subsidiaries, affiliates, or operations in the United States. Accordingly, when Siemens AG’s subsidiaries, affiliates, or operations in the United States engaged in unlicensed – and therefore infringing – downloading, copying, distribution, deployment, and use of VMware software products, as set forth below, it was at the direction and under the control of Siemens AG.

E. Siemens's Use Of Portals Based In The United States To Gain Access And Authorization To Download VMware Software Products And License Keys

55. As part of the process for accessing and downloading VMware software products and license keys, customers such as Siemens AG must use the VMware customer support portal. To do so, the customer must register and create a customer account that references its license agreements and establishes its entitlement to download and use copies of the VMware product it seeks to obtain.

56. VMware's customer support portal has been and continues to be hosted in the United States. Until May 2024, the customer support portal was hosted on servers at VMware's data center located in Santa Clara, California. As of May 2024, following VMware's acquisition by Broadcom, the customer support portal is hosted on servers at a Google data center in Ashburn, Virginia.

57. VMware customers are authorized to download and activate products on the VMware customer portal only if they have purchased licenses for them. A valid deployment of a product occurs when a VMware customer downloads the product and then activates it using a valid license key.

58. As set forth below, Siemens AG and its affiliates downloaded, copied, distributed, and activated a large number of VMware software products in excess of the number of licenses they had purchased for such products.

F. Siemens's Admission That It Downloaded, Copied And Deployed Thousands Of VMware Products For Which It Had Never Acquired A License

59. In the context of attempting to exercise the option described above to purchase a one-year renewal of Support Services for certain eligible licensed products for the year following the expiration of the ELA in September 2024, Siemens AG revealed that it had downloaded, copied,

distributed, and deployed thousands of copies of VMware products for which it had never purchased a license.

60. On September 9, 2024, Siemens AG sent VMware a letter announcing its intention to exercise the option under the ELA to purchase a one-year renewal of Support Services. Siemens AG attached to its September 9 letter a list of products – the September 9 List – that were deployed by Siemens AG and its affiliates as of August 2024 (the “IB Status” of each product) and that Siemens AG claimed were eligible for the one-year extension of Support Services. The September 9 List stated as follows:

Exhibit: List of Covered Offerings

Product	SKU	IB Status August 2024
VMware vSphere Essentials	VS7-ESSL-KIT	296
VMware vSphere Essentials Plus	VS7-ESP-KIT	96
VMware vSphere Standard	VS7-STD	2965
VMware vSphere Enterprise Plus for 1 processor	VS7-EPL	29
VMware vCloud Suite Standard	CL19-STD	6468
VMware vCloud Suite Advanced	CL19-ADV	1555
VMware vCloud Suite Enterprise	CL19-ENT	854
VMware vCenter Server Standard for vSphere	VCS7-STD	312
VMware Site Recovery Manager Enterprise (25 VM Pack)	VC-SRM8-25E	9
VMware vCenter Server Essentials for vSphere		15
vCloud Director per CPU	VCD10-NVC	1209
vCloud Director per VM * (25 VM Packs)	VCD10-NVC-25VM	82
VMware vRealize Suite Standard	VR19-STD	612
VMware vRealize Suite Enterprise (Per PLU)		20
VMware vRealize Suite Advanced (Per PLU)		1011
VMware vCenter Configuration Manager for Suites (25 OSI)	VC-CMSO-25	1100
VMware NSX Standard per Processor	NX-DC-STD	1248
VMware NSX Advanced per Processor	NX-DC-ADV	78
VMware NSX Enterprise per Processor	NX-DC-ENT	322
VMware NSX Enterprise Plus per Processor	NX-DC-EPL	179
VMware vRealize Network Insight - Add-on for NSX (per CPU)	VRN16-ENTAD-NXEPLP	176
VMware NSX Datacenter Enterprise Plus Lizenzen	NX-DC-EPL	189
VMware NSX Advanced Load Balancer per Processor	NX-ALB-SU-3TLSS	16
VMware vRealize Network Insight Advanced (per CPU)	VRN16-ADV-CPU	121
VMware vRealize Log Insight (per CPU)	VR-LIS8-CPU	21
VMware vRealize True Visibility Suite Enterprise (25 OSI Pack)	VR8-TVS-ENO-25	10
VMware Cloud Foundation Standard per Processor	CF4-STD	24
VMware Cloud Foundation Advanced per Processor	CF4-ADV	24
VMware Virtual SAN Standard for 1 Processor	ST7-STD	217
VMware Virtual SAN Enterprise for 1 Processor	ST7-ENT	799
VMware Virtual SAN Advanced for 1 Processor (aus Foundation Bundle)	ST7-ADV	56
VMware Horizon Standard : 10 Pack (CCU)	HZ7-STD-10	245
VMware Horizon Enterprise : 10 Pack (CCU)	HZ8-ENC-10	433
VMware vRealize Operations for Horizon: 100 Concurrent User Pack	VR7-VU100	7
VMware vRealize Operations Std Per CPU	VR8-OSTC	158
VMware Fusion	FUS-PRO	2077
VMware Workstation Player	WS-PLAY	12117
VMware Workstation Pro for Linux and Windows, ESD	WS-PRO	16532

61. As set forth below, the deployments of VMware products that Siemens AG reported in its September 9 List far exceeded the number of licenses it had actually purchased. Nevertheless, even after VMware pointed out this problem, Siemens AG insisted that its September 9 List was accurate and demanded that VMware accept it and provide an additional year of Support Services for all products and license counts on the list – and threatened VMware with legal action if it did not promptly do so.

62. After receiving Siemens AG’s September 9 letter with the September 9 List, VMware responded the following day to request that Siemens AG provide, “in accordance with the

ELA terms and conditions (section 1.c), . . . a full list of the licenses used, software installed, and their respective areas of application, including the relevant Siemens entity and country.”

63. In a response letter dated September 12, 2024, Siemens AG refused to provide the information VMware requested. Further, Siemens AG demanded that VMware provide “prompt acknowledgement of the renewal” based on the September 9 List and threatened to “take a firm legal stance” if VMware did not do so.

64. In a letter dated September 13, 2024, VMware reiterated its request for information concerning Siemens’s deployment and use of VMware products, explaining that the information was required under the ELA. Further, VMware expressed concern about Siemens AG’s compliance with the ELA and proposed to appoint an independent third-party auditor to assist in obtaining the required information. In addition, to “ensure that Siemens’ business operations are not negatively impacted during this process” of resolving the concerns, VMware agreed to extend Support Services for an additional thirty days while the parties sought to resolve the situation.

65. In a response letter dated September 17, 2024, Siemens AG again rejected VMware’s request for information. Siemens AG also rejected the proposal to appoint an auditor. And it again demanded that VMware accept Siemens AG’s renewal of Support Services based on its September 9 List, threatening that any resistance by VMware “will be challenged legally.”

66. By letter dated September 20, 2024, VMware reiterated its concerns, explaining that the number of licenses on the September 9 List did not match VMware’s records of the number of licenses that Siemens AG had purchased for many of the products on the September 9 List. VMware attached to its letter a table showing its understanding of the products for which Siemens AG had purchased a license and the number of licenses purchased, reproduced below. The column entitled “View by VMware by Broadcom” sets forth the number of licenses that VMware had

records of Siemens purchasing under the ELA or were Pre-ELA Installed Software; the column entitled “View Siemens” sets forth the number of products that Siemens’s September 9 List reported as deployed by Siemens as of August 2024; and the “Delta” column showed, with negative figures, the number of products that Siemens reported as having deployed that exceeded the number of licenses it had purchased.

SKU	Product	View VMware by Broadcom	View Siemens	Delta
VS8-ESSL-KIT	VMware vSphere Essentials	312	298	14
VS6-ESP-KIT	VMware vSphere Essentials Plus	108	96	12
VS8-STD	VMware vSphere Standard	2797	2965	-168
VS8-EPL	VMware vSphere Enterprise Plus for 1 processor	16	29	-13
VR19-ADV	VMware vRealize Suite Advanced (Per PLU)	1521	2566	-1045
VR19-ENT	VMware vRealize Suite Enterprise (Per PLU)	894	874	20
VR19-STD	VMware vRealize Suite Standard (Per PLU)	7410	7080	330
VS8-EPL-VS	VMware vSphere Enterprise Plus for vCloud Suites (Per CPU)	9117	8877	240
VCS8-STD	VMware vCenter Server Standard for vSphere	300	312	-12
VC-SRMB-25E	VMware Site Recovery Manager Enterprise (25 VM Pack)	0	9	-9
VCS7-ESSL	VMware vCenter Server Essentials for vSphere	0	15	-15
VCD10-NVC	vCloud Director per CPU	1343	1209	134
VCD10-NVC-25VM	vCloud Director per VM * (25 VM Packs)	82	82	0
VCMSO-25	VMware vCenter Configuration Manager for Suites (25 OSI)	1100	1100	0
NX-DC-STD	VMware NSX Standard per Processor	1232	1248	-16
NX-DC-ADV	VMware NSX Advanced per Processor	70	78	-8
NX-DC-ENT	VMware NSX Enterprise per Processor	322	322	0
NX-DC-EPL	VMware NSX Enterprise Plus per Processor	395	368	27
VNR16-ENTAD-NXEPLP	VMware vRealize Network Insight - Add-on for NSX (per CPU)	176	176	0
NX-ALB-SU-3TLSS	VMware NSX Advanced Load Balancer per Processor	10	16	-6
VRN16-ADV-CPU	VMware vRealize Network Insight Advanced (per CPU)	78	121	-43
VR-LIS8-CPU	VMware vRealize Log Insight (per CPU)	25	21	4
VR8-TVS-ENO-25	VMware vRealize True Visibility Suite Enterprise (25 OSI)	10	10	0

CF4-STD	VMware Cloud Foundation Standard per Processor	32	24	8
CF4-ADV	VMware Cloud Foundation Advanced per Processor	16	24	-8
ST8-STD	VMware Virtual SAN Standard for 1 Processor	196	217	-21
ST8-ENT	VMware Virtual SAN Enterprise for 1 Processor	741	799	-58
ST8-ADV	VMware Virtual SAN Advanced for 1 Processor	40	56	-16
VR8-OSTC	VMware vRealize Operations Std Per CPU	158	158	0
FUS-PRO	VMware Fusion	2078	2077	1
WS18-PLAY	VMware Workstation Player	12712	12117	595
WS18-PRO	VMware Workstation Pro for Linux and Windows, ESD	19573	16532	3041
VR8-ATSTDP25-C	VMware vRealize Automation 8 Standard Plus (25 OSI Pack)	20	0	20
VS8-BF-C	VMware vSphere 7 Bifusion for 1 processor	10	0	10
HZ7-STD-10	VMware Horizon Standard: 10 Pack (CCU)	245	245	0
HZ8-ENC-10	VMware Horizon Enterprise: 10 Pack (CCU)	432	433	-1
VR7-VU100	VMware vRealize Operations for Horizon: 100 Concurrent User	7	7	0
ST7-ADV-DT	VMware vSAN Advanced per Concurrent User	1940	0	1940
VR8-VU	VMware vRealize Operations Manager for Horizon per Concurrent User	194	0	194

67. Nevertheless, Siemens AG forged ahead with its demand that VMware accept Siemens AG’s September 9 List as accurate and provide a renewal of Support Services based on that list. On September 25, 2024, Siemens AG issued a formal purchase order for the renewal of Support Services based on the September 9 List. The purchase order stated: “This purchase order is based on announcement letter with subject Re: Exercise of Renewal Right under Enterprise License Agreement (ELA) #00557143 dated 9th Sept 2024.”

68. Siemens AG followed up its September 25 purchase order with an email to VMware on September 28, 2024, stating: “In our view, the list attached to the letter [of September 9, 2024] exercising and specifying our contractual renewal right is accurate.” Siemens AG again threatened legal action if VMware did not accept its renewal of Support Services based on the September 9 List, stating: “We have previously indicated that we have engaged an external law firm to enforce our rights and ensure business continuity if necessary. This position remains unchanged.” Siemens AG threatened that if VMware did not “implement the acknowledged renewal promptly,” it would “seek legal remedies in the very near future.”

69. In a further escalation of its pressure on VMware to accept the renewal of Support Services based on its September 9 List, Siemens AG had its outside counsel send a letter to VMware on October 4, 2024, to threaten legal action. The letter stated: “By exercising its renewal right under the ELA with letter of 9 September 2024, our client has effectively extended the term of the ELA until 29 September 2025.” The letter went on to assert that VMware was acting illegally by not accepting the renewal based on the September 9 List and to threaten VMware with various legal claims.

70. On October 8, 2024, through a letter from its outside counsel, VMware informed Siemens AG that, due to the unique circumstances of the case, it would conditionally agree to Siemens AG’s demand that it provide Support Services to Siemens AG based on the products set forth in the September 9 List, while making clear that it “reserves the right to seek compensation for the unauthorized overage of its software and support services.”

G. Siemens’s Refusal To Address And Rectify Its Unlicensed Downloading, Copying, Distribution And Use Of VMware Products

71. Siemens has continued to refuse to address and rectify its unlicensed and infringing downloading, copying, distribution and use of VMware products. Instead, after having repeatedly insisted that its September 9 List of products it deployed was accurate and having threatened VMware with legal action if it did not accept the list, Siemens AG evidently came to realize that the September 9 List established its infringement of VMware’s rights. In a communication to VMware on October 29, 2024, Siemens attempted to retract the list and to offer instead a new list (the “October 29 List”) that was closer in line with VMware’s records of Siemens’s licenses. But Siemens AG never provided a credible explanation of why it had presented – and insisted on – the September 9 List, if it did not represent its actual deployment of VMware products. Nor did

Siemens AG accept VMware's proposals to independently verify Siemens's usage of VMware products, including through an audit or running a script on Siemens's systems.

72. As noted, Siemens had strong incentives to ensure that the September 9 List was correct and not overstated: to list a product that was not covered by a valid license would expose it to an infringement claim; and, even apart from the infringement exposure, the amount Siemens would have to pay for one year of Support Services would increase based on the increased number of products and licenses on the list. It therefore can be reasonably inferred that Siemens took care to ensure that the September 9 List was accurate and accordingly that Siemens possessed and used every copy of every product on its September 9 List.

73. Further, as set forth above, Siemens did not merely present the September 9 List once and then promptly withdraw and correct it. Siemens repeatedly insisted that the September 9 List accurately reported its use of VMware products; it demanded that VMware accept the list as accurate and accept a purchase order on that basis to provide Support Services for the products on the list; and it issued multiple threats to pursue legal action against VMware if it did not accept the September 9 List and the purchase order based on it.

74. As noted, VMware proposed methods to independently verify the number of products Siemens has deployed through an audit or by running a script on its systems to identify the population of VMware products it was using. But Siemens refused. Given the possibility that Siemens may attempt to conceal its deployment of unlicensed products by removing or hiding them so that they can no longer be detected by conducting an audit or running a script at this point, discovery will be needed to verify the actual number of products Siemens and its affiliates have downloaded, copied, distributed, and deployed.

75. Because Siemens has failed to rectify the situation by acknowledging its unlicensed and infringing use of VMware's copyrighted products and attempting to resolve the matter, VMware has no choice but to bring this action to address Siemens's unlicensed and infringing downloading, copying, distribution, and use of VMware's copyrighted software products.

H. Siemens's Downloading, Copying, Distribution, and Use of VMware Products in Violation of VMware's United States Copyrights

76. Siemens's conduct violates VMware's U.S. copyrights in multiple respects, including without limitation by downloading, copying, distributing, and using without a license, the following copyrighted VMware products:

- VMware *vSphere*
 - VMware ESX Server 2.5 (Registration No. TX 9-477-075)
 - VMware ESX Server 3 (Registration No. TX 9-476-905)
 - VMware ESX Server 3.5 (Registration No. TX 9-477-079)
 - VMware vSphere 4 (Registration No. TX 9-477-072)
 - VMware vSphere 4.1 (Registration No. TX 9-477-070)
 - VMware vSphere 5 (Registration No. TX 9-477-064)
 - VMware vSphere 5.1 (Registration No. TX 9-477-054)
 - VMware vSphere 5.5 (Registration No. TX 9-477-043)
 - VMware vSphere 6 (Registration No. TX 9-477-103)
 - VMware vSphere 6.5 (Registration No. TX 9-476-029)
 - VMware vSphere 6.7 (Registration No. TX 9-476-031)
 - VMware vSphere 7 (Registration No. TX 9-476-034)
 - VMware vSphere 8 (Registration No. TX 9-476-036)

- *VMware vRealize Suite*
 - VMware vRealize Operations Manager 6.0.0 (Registration No. TX 9-476-702)
 - VMware vRealize Operations Manager 6.5.0 (Registration No. TX 9-476-699)
 - VMware vRealize Operations Manager 7.0.0 (Registration No. TX 9-476-763)
 - VMware vRealize Operations Manager 7.5.0 (Registration No. TX 9-476-772)
 - VMware vRealize Operations Manager 8.0.0 (Registration No. TX 9-476-777)
 - VMware vRealize Operations Manager 8.6.0 (Registration No. TX 9-476-783)
 - VMware Aria Operations 8.14.0 (Registration No. TX 9-476-700)
 - VMware Aria Operations 8.18.0 (Registration No. TX 9-476-775)
- *VMware vCenter Server*
 - VirtualCenter 2.5 (Registration No. TX 9-476-773)
 - vCenter Server 4 (Registration No. TX 9-476-766)
 - vCenter Server 4.1 (Registration No. TX 9-476-769)
 - vCenter Server 5 (Registration No. TX 9-477-063)
 - vCenter Server 5.1 (Registration No. TX 9-477-055)
 - vCenter Server 5.5 (Registration No. TX 9-477-058)
 - vCenter Server 6 (Registration No. TX 9-477-059)

- vCenter Server 6.5 (Registration No. TX 9-476-970)
- vCenter Server 6.7 (Registration No. TX 9-476-963)
- vCenter Server 7 (Registration No. TX 9-476-974)
- vCenter Server 8 (Registration No. TX 9-476-979)
- VMware *NSX*
 - VMware NSX T-Data Center 1.1 (Registration No. TX 9-480-367)
 - VMware NSX-T Data Center 2.0 (Registration No. TX 9-480-022)
 - VMware NSX-T Data Center 3.0 (Registration No. TX 9-480-089)
 - VMware NSX 4.0.0.1 (Registration No. TX 9-480-017)
- VMware *NSX Advanced Load Balancer*
 - VMware NSX Advanced Load Balancer 21.1.1 (Registration No. TX 9-480-016)
 - VMware NSX Advanced Load Balancer 22.1.1 (Registration No. TX 9-480-371)
 - VMware NSX Advanced Load Balancer 30.1.1 (Registration No. TX 9-480-415)
 - VMware Avi Advanced Load Balancer 31.1.1 (Registration No. TX 9-480-113)
- VMware *Cloud Foundation*
 - (included within Registration Numbers for each of the VMware *vSphere*, the VMware *NSX*, the VMware *Virtual SAN*, and the VMware *vRealize Suite* products)

- VMware *Virtual SAN*
 - (included within Registration Numbers for *vSphere*)

77. As noted, VMware's copyright registrations are attached hereto as Annex I.

78. As set forth above, the MSLA makes clear that a license for a copy of a product is granted only upon Siemens's compliance with the license conditions, including the payment of the required license fee. Accordingly, Siemens's downloading, copying, distribution, and use of copies of VMware products for which it did not purchase a license is unlicensed and therefore infringing. Further, Siemens has likely used the Support Services that VMware agreed to provide, under a reservation of rights, to download additional patches, updates, and upgrades to maintain and use the numerous copies of products for which it does not have a license, thus exacerbating its infringing conduct.

79. Siemens has engaged in these infringing activities in the United States. To begin, the process by which Siemens downloaded the VMware products entailed using VMware's customer support portal, hosted on servers in the United States, to request and receive access and authorization to download VMware's software. Such downloads of products without a license constitute violations of VMware's U.S. copyrights, as does any subsequent copying, use or distribution of such copies.

80. In addition, Siemens has directly downloaded, copied, distributed, and used VMware software products in the United States. While Siemens's September 9 List of deployed products does not show the locations where the products are deployed, other evidence establishes that Siemens has copied, distributed, and deployed large numbers of VMware products in the United States and therefore supports the inference that a substantial portion of Siemens's infringing copying, distribution and use of VMware products has occurred in the United States.

81. As noted, on October 29, 2024, Siemens provided VMware with a revised list of deployed VMware products, which does show the locations where the products are deployed. The October 29 List demonstrates that approximately 20% of the VMware products were deployed in Siemens operations in the United States (totaling more than 23,000 deployments) and therefore must have been downloaded, copied and/or distributed to and in the United States. Because the October 29 List covers fewer products than listed on Siemens's September 9 List, the October 29 List should be regarded as only a partial accounting of the total number of products that Siemens has downloaded, copied, distributed and deployed, including in the United States. In other words, the evidence supports an inference that Siemens has downloaded, copied, distributed, and used a greater number of VMware products than those shown on its October 29 List, including unlicensed products, in the United States.

82. Siemens's October 29 List shows that the more than 23,000 deployments of VMware products in the United States under the ELA period include deployments by at least 18 Siemens entities:

- "Siemens Corp.," which, upon information and belief, refers to Defendant Siemens Corporation.
- "SISW Inc." and "S'Industry," which, upon information and belief, refers to Defendant Siemens Industry Software, Inc.
- "SMS Med. Solutions," which, upon information and belief, refers to Defendant Siemens Medical Solutions USA, Inc.
- "SHD," which, upon information and belief, refers to Defendant Siemens Healthcare Diagnostics, Inc.

- “SHD Distribution,” which, upon information and belief, refers to Defendant Siemens Healthcare Diagnostics, Inc.
- “S’ Mobility, Inc.,” which, upon information and belief, refers to Defendant Siemens Mobility, Inc.
- “SMS Inc.,” which, upon information and belief, refers to Defendant Siemens Medical Solutions USA, Inc.
- “PETNET Solutions Inc.,” which, upon information and belief, refers to Defendant PETNET Solutions, Inc.
- “dARE of 591x VMS Oncology Systems,” which, upon information and belief, refers to Varian Medical Systems, Inc., a U.S. subsidiary of Siemens AG incorporated in Delaware and headquartered in California.
- “Corindus, Inc.,” which, upon information and belief, refers to Corindus Vascular Robotics, Inc., a U.S. subsidiary of Siemens AG incorporated in Delaware and headquartered in Massachusetts.
- “Build. Robot., Inc.,” which, upon information and belief, refers to Building Robotics, Inc., a U.S. subsidiary of Siemens AG incorporated in Delaware and headquartered in California.
- “S’ Logistics LLC,” which, upon information and belief, refers to Siemens Logistics LLC, a U.S. subsidiary of Siemens AG incorporated in Delaware and headquartered in Texas.
- “D3 Oncology Inc.,” which, upon information and belief, refers to D3 Oncology, Inc., a U.S. subsidiary of Siemens AG incorporated in Delaware and headquartered in Illinois.

- “J2 Innov., Inc.,” which, upon information and belief, refers to J2 Innovations, Inc., a U.S. subsidiary of Siemens AG incorporated in California and headquartered in California.
- “S’ Gov. Tech., Inc.,” which, upon information and belief, refers to Siemens Government Technologies, Inc., a U.S. subsidiary of Siemens AG incorporated in Delaware and headquartered in Virginia.
- “VMS Inc.,” which, upon information and belief, refers to Varian Medical Systems, Inc., a subsidiary of Siemens AG incorporated in Delaware and headquartered in California.
- “BS Inc.,” which, upon information and belief, refers to Brightly Software, Inc., a U.S. subsidiary of Siemens AG incorporated in Delaware and headquartered in North Carolina.

83. The vast majority of these deployments in the United States were by wholly-owned subsidiaries of Siemens AG, including Siemens Corporation, Siemens Industry Software, Inc., Siemens Medical Solutions USA, Inc., and others. Again, all such downloads, copying, distributions, and uses by Siemens of VMware products in the United States without valid licenses constitute violations of VMware’s U.S. copyrights.

84. In light of the foregoing, there is a reasonable basis to infer and find that each Siemens US Defendant has downloaded, copied, distributed and/or deployed unlicensed and therefore infringing copies of these products in the United States. This conclusion is further reinforced by the facts set forth below with respect to the deployment by each Siemens US Defendant of products that were copied and deployed in numbers exceeding the number of licenses purchased by Siemens – and therefore were unlicensed and infringing.

85. Siemens's deployment records reflect that Siemens Corporation deployed *vSphere* and *vCenter Server* in the United States.

86. Siemens's deployment records reflect that Siemens Industry Software, Inc. deployed *NSX*, *vSphere*, *vCenter*, *Virtual SAN*, and *vRealize Suite* in the United States.

87. Siemens's deployment records reflect that Siemens Medical Solutions USA, Inc. deployed *NSX Advanced Load Balancer*, *vSphere*, *vCenter*, *Virtual SAN*, and *vRealize Suite* in the United States.

88. Siemens's deployment records reflect that Siemens Healthcare Diagnostics, Inc. deployed *vSphere*, *vCenter Server*, *Virtual SAN*, and *vRealize Suite* in the United States.

89. Siemens's deployment records reflect that Siemens Mobility, Inc. deployed *vSphere* and *vCenter Server* in the United States.

90. Siemens's deployment records reflect that PETNET Solutions, Inc. deployed *vSphere*, *vCenter Server*, and *Virtual SAN* in the United States.

91. Because each of the VMware products referenced in the preceding paragraphs were reported by Siemens to have been deployed in numbers exceeding the number of licenses it has purchased, and therefore were unlicensed and infringing, there is a reasonable basis to infer and find that Siemens US entities downloaded, copied, distributed, and deployed infringing copies of these products.

92. Further, as discussed, the number of deployments acknowledged by Siemens AG represents an undercount of the total number of deployments by Siemens entities. Accordingly, the actual instances of unlicensed and infringing activities by Siemens US entities and other Siemens entities can be inferred and found to have exceeded summaries referenced above with respect to the scope and number of unlicensed and infringing products.

93. Siemens AG, the German parent, is responsible for infringing activities involving its subsidiaries and affiliates. As set forth above, Siemens AG is the designated “Customer” under the MSLA and ELA. See MSLA at 1; ELA at 1. The ELA provides that “VMware shall deliver the Software to Customer.” ELA, Section 1 b). As the ELA explains, the software may be delivered to the Customer in multiple ways, including: “(a) making the Software available for download and emailing the corresponding license key(s); (b) making the Software available for download in a fashion that does not require a license key; or (c) shipping the Software on physical media and emailing the corresponding license key(s).”

94. Further, on information and belief, Siemens AG’s Asset Management Group is responsible for managing the MSLA and ELA, including managing and tracking the downloading, copying, distribution and deployment of VMware software products, and the licenses and license keys for them, under the ELA – effectively acting as a broker for such licenses and products, distributing them to Siemens divisions and affiliates and charging for them.

95. Accordingly, when VMware software products have been delivered to and deployed by Siemens entities and operations in the United States, it is because Siemens AG has obtained the VMware software (and the license keys needed to activate it) from VMware and has in turn copied, distributed, or transferred the VMware software products to its affiliates and operations in the United States or because Siemens AG has directed and permitted the Siemens entities and operations in the United States to download, copy, distribute, and use such products. Such downloading, copying, distribution, and use in the United States, and distribution to the United States, without a license infringes VMware’s U.S. copyrights; and Siemens AG is responsible for directing, permitting, and materially contributing to those activities.

96. In addition, Siemens AG had the right and ability to control the downloading, copying, distribution and use of VMware’s copyrighted software in the United States by Siemens AG’s affiliates and operations in the United States, and it failed to exercise such right and ability to control these activities in order to prevent the downloading, copying, distribution, and use of unlicensed and infringing copies of VMware’s copyrighted software in the United States by Siemens AG’s affiliates and operations in the United States. Siemens AG directly benefited financially from these infringing activities, including as a result of their contribution to the revenues and profits of Siemens AG.

97. As further evidence of the foregoing, a primary point person for Siemens AG with responsibility for managing and tracking the use of VMware’s copyrighted products by Siemens AG and its affiliates, Astrid Mueller, is based in the United States. On information and belief, Ms. Mueller is a member of the Siemens Asset Management group. Her role and responsibility for managing and tracking Siemens’s use of VMware’s products is reflected by the fact that, when Siemens AG issued the September 25, 2024 purchase order for the one-year renewal of Support Services based on the September 9 List, it identified Ms. Mueller as the Siemens “Technical Contact Person.” Further, Ms. Mueller was responsible for preparing and providing Siemens AG’s October 29 List of its deployments of VMware’s products. In addition, Ms. Mueller served as Siemens’s point person in discussions with VMware about Siemens’s tracking and management of its use of VMware’s products.

98. In sum, through the acts set forth above, Siemens AG and Siemens US have engaged in infringing activities subject to U.S. copyright law and in violation of VMware’s U.S. copyrights.

I. The Actual Damages Caused By And Substantial Profits Attributable To Siemens's Infringement

99. In addition to its actual damages, VMware is entitled to recover from Siemens any profits attributable to its infringing activities as to VMware's copyrighted software products. The damages caused by and the profits attributable to Siemens's infringing activities are far greater than the license fees that would have been owed under the ELA if Siemens had properly purchased and paid for licenses and Support Services for the products at issue.

100. VMware's products provide customers such as Siemens with immense cost-savings and efficiency enhancements, with the result that the value of use of the VMware software, and the increased profits achieved from using them, greatly exceed the standard license fees for the products.

101. In addition, VMware's products enable the operation of programs and applications that Siemens uses to design, develop, make, and deliver products. The VMware products thus directly contribute to the revenues and profits Siemens generates in the operation of its various business lines. Accordingly, the profits attributable to Siemens's infringing use of the VMware products far exceed the license fees that would have been charged for them if Siemens had properly purchased licenses and Support Services for them.

FIRST CAUSE OF ACTION

Copyright Infringement As To All Defendants

(17 U.S.C. § 101, *et seq.*)

102. Plaintiff VMware repeats and realleges the allegations set forth in paragraphs 1-101, as though fully set forth herein.

103. VMware owns valid registered copyrights covering each of VMware's products at issue in this suit, as set forth in Annex I.

104. Under the MSLA and ELA, Siemens AG and its affiliates were entitled to download, copy, distribute or use VMware products and copies of such products only when and if they purchased a license for each copy of each such product.

105. According to Siemens AG's September 9 List, Siemens has engaged in downloading, copying, distributing and deploying copies of VMware's copyrighted software far in excess of the number of licenses it has purchased. Siemens therefore has infringed and is continuing to infringe VMware's copyrights.

106. Siemens's infringements were willful and with full knowledge of VMware's exclusive rights in its works. In fact, Siemens continued to use VMware's software products without a license even after being informed by VMware that its use was unlicensed.

107. VMware is entitled to actual damages and any profits of Siemens attributable to the infringement not taken into account in computing the actual damages.

108. VMware is also entitled to an injunction restraining Siemens, its officers, agents, employees, and all persons acting in concert with them, from continuing to engage in acts in violation of the copyright laws.

SECOND CAUSE OF ACTION

Contributory Copyright Infringement – As To Siemens AG

(17 U.S.C. § 101, *et seq.*)

109. Plaintiff VMware repeats and realleges the allegations set forth in paragraphs 1-101, as though fully set forth herein.

110. Siemens AG is responsible and liable for all infringing activities by its affiliates and operations in the United States. Siemens AG had knowledge or reason to know of such activities, and Siemens AG induced, caused, and materially contributed to such activities.

111. As set forth above, pursuant to the ELA between VMware and Siemens AG, all VMware software products and the license keys needed to activate and use them were to be provided to Siemens AG.

112. Accordingly, any infringing activities by Siemens US and other subsidiaries and affiliates of Siemens AG in the United States, including the unlicensed downloading, copying, distribution and deployment of VMware products, is the result of Siemens AG having provided, directed, induced, and authorized such activities.

113. Siemens AG therefore induced and materially contributed to the downloading, copying, distribution and use of unlicensed and infringing copies of VMware's copyrighted software in the United States by Siemens AG's affiliates and operations in the United States, including without limitation the Siemens US entities named in this complaint.

114. Accordingly, Siemens AG is liable based on contributory infringement for the downloading, copying, distribution and use of unlicensed and infringing copies of VMware's copyrighted software in the United States by Siemens AG's affiliates and operations in the United States, including without limitation the Siemens US entities named in this complaint.

THIRD CAUSE OF ACTION

Vicarious Copyright Infringement – As To Siemens AG

(17 U.S.C. § 101, et seq.)

115. Plaintiff VMware repeats and realleges the allegations set forth in paragraphs 1-101, as though fully set forth herein.

116. Siemens AG is responsible and liable for all infringing activities by its affiliates and operations in the United States. On information and belief, Siemens AG had the right and ability to control the downloading, copying, distribution, and use of VMware's copyrighted software in the

United States by Siemens AG's affiliates and operations in the United States and it failed to exercise such right and ability to control these activities in order to prevent the downloading, copying, distribution, and use of unlicensed and infringing copies of VMware's copyrighted software in the United States by Siemens AG's affiliates and operations in the United States.

117. Siemens AG directly benefited financially from the infringing activities by its affiliates and operations in the United States, including as a result of the contribution of these activities to the revenues and profits of Siemens AG.

118. Accordingly, Siemens AG is liable based on vicarious infringement for the downloading, copying, distribution and use of unlicensed and infringing copies of VMware's copyrighted software in the United States by Siemens AG's affiliates and operations in the United States, including without limitation the Siemens US entities named in this complaint.

PRAYER FOR RELIEF

WHEREFORE, VMware prays for relief and judgment as follows:

- a) Awarding VMware all recoverable damages in an amount to be established at trial, including without limitation actual damages and profits attributable to the infringement;
- b) Awarding prejudgment interest and post-judgment interest on any amounts awarded;
- c) Awarding VMware injunctive relief prohibiting Siemens from continuing to violate VMware's copyrights, including without limitation through infringement of VMware's copyrights;
- d) Awarding VMware such other and further relief as this Court may deem proper.

JURY DEMAND

VMware hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and District of Delaware Local Rule 38.1.

Dated: March 21, 2025

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