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

VALTRUS INNOVATIONS LIMITED, Plaintiff, v. DAWN ACQUISITIONS LLC (d/b/a Evoque Data Center Solutions) Defendant, and VERTIV CORPORATION Intervenor,	Civil Action No. 2:24-cv-00142-JRG (Lead Case) **JURY TRIAL DEMANDED** [redacted]
VALTRUS INNOVATIONS LIMITED, Plaintiff, v. DIGITAL REALTY TRUST, INC. AND DIGITAL REALTY TRUST, L.P., Defendants, and VERTIV CORPORATION, Intervenor,	Civil Action No. 2:24-cv-00139-JRG (Member Case) **JURY TRIAL DEMANDED**

VERTIV'S MOTION TO INTERVENE

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Pursuant to Federal Rule of Civil Procedure ("Rule") 24, Movant, Vertiv Corporation ("Vertiv"), the manufacturer and supplier of products at issue in the above-captioned actions, moves for leave to intervene in these actions as of right under Rule 24(a)(2) or, alternatively, with the Court's permission under Rule 24(b)(1)(B). Intervention is appropriate here to allow Vertiv to defend against Valtrus' allegations of patent infringement against Vertiv's data center cooling, control and sensor products allegedly provided to Defendants, Digital Realty Trust, Inc. and Digital Realty Trust, L.P. (collectively, "Digital Realty") and Dawn Acquisitions LLC ("Dawn") (collectively with Digital Realty, "Customer Defendants").[1]

Vertiv seeks to intervene in these cases to provide the most efficient and complete resolution of the dispute between Valtrus and Vertiv's products placed at issue by Valtrus' infringement allegations. Valtrus' reliance on Vertiv products necessarily creates a substantial and direct interest in the outcome of the litigation for numerous reasons, and at least due to Vertiv's contractual obligation to indemnify, defend, and hold its customers harmless from these unfounded claims. Vertiv also has a substantial reputational interest in the litigation as a potential infringement determination against its products would impair its customer relationships and reputation as an innovator in the industry. And Valtrus' infringement allegations necessarily require discovery from Vertiv in the form of technical, industry and financial information, prior art, and deposition testimony from its employees.

None of the Customer Defendants opposes Vertiv's intervention to defend against allegations of infringement of its products. Counsel for Valtrus and Vertiv have met and conferred,

[1] Where necessary to differentiate between the consolidated actions, the Lead Case against Dawn, Civil Action No. 2:24-cv-00142-JRG, shall be referred to as the "Dawn Action"; the Member Case against Digital Realty, Civil Action No. 2:24-cv-00139-JRG, shall be referred to as the "Digital Realty Action."

and the parties were unable to reach an agreement concerning Vertiv's intervention. Valtrus stated that it reserves its right regarding opposition pending its review of Vertiv's motion and supporting materials. Vertiv has, accordingly, filed the instant motion as opposed.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Valtrus' Patent Assertion Campaign Against Vertiv's Customers

Vertiv, an American multi-national publicly traded corporation, is a major provider of critical infrastructure and services for data centers and related facilities.

Valtrus recently initiated a patent assertion campaign against Vertiv's data center customers by asserting that the use of certain Vertiv data center cooling, control, and sensor products infringe at least one claim of several patents recently acquired by Valtrus. The patents asserted by Valtrus are United States Patent Nos. 6,718,277 ("the '277 Patent"), 6,854, 287 ("the '287 Patent"); 6,862,179 ("the '179 Patent"); 7,031,870 ("the '870 Patent"); and 7,339,490 ("the '490 Patent") (collectively, "Patents Asserted Against Vertiv Products").

Valtrus' campaign includes four separate lawsuits in this District against Vertiv's customers, including the present consolidated case against Dawn and Digital Realty, and separate lawsuits against CyrusOne (Civil Action No. 2:24-cv-00259-JRG (the "CyrusOne Action")) and NTT (Civil Action No. 2:24-cv-00361-JRG (the "NTT Action")). Each of the Customer Defendants in the present action, and the defendants in the CyrusOne Action and the NTT Action, are valued customers of Vertiv.[2] Valtrus has threatened additional enforcement proceedings against at least ten other alleged Vertiv customers. *See* Civil Action No. 3:24-cv-01152-G, Dkt. 1 at ¶ 21-

[2] Valtrus also alleges infringement of additional patents that do not accuse Vertiv products of infringing. *See* Valtrus' Amended Complaints in each case filed June 7, 2024: Valtrus Amended Complaint Against Digital Realty, Digital Realty Action, Dkt. 20, and Valtrus Amended Complaint Against Dawn, Dawn Action, Dkt. 27.

22. Valtrus has further accused non-Vertiv technology as separate grounds of infringement by certain customers. (*See*, *e.g.*, Dawn Action, Dkt. 27, Exh. 8 at 1-5 ("[Dawn] also, or alternatively, uses Vigilent's dynamic cooling management which provides cooling to the server racks of a data center.")) Accordingly, this motion only seeks intervention to resolve issues related to Vertiv's technology.

B. Each Claim of Valtrus' Allegations Accuses Vertiv's Products

Valtrus bases its infringement allegations against the Customer Defendants on their use of Vertiv products, including Vertiv's Liebert branded products. As the purported support for its infringement assertions, Valtrus relies on features and methodologies provided and executed by Vertiv products in their normal modes of operation, as reflected in the Vertiv product information cited throughout Valtrus' claim charts. For example, one of Valtrus' allegations is that Dawn infringes because it "uses Vertiv and Liebert cooling in its U.S. data centers to control atmospheric conditions. Liebert's cooling units are controlled, for example, by Liebert's iCOM and/or iCOM-S Intelligent Communication and Monitoring System, which uses a method for evaluating one or more components in a data center." (Dawn Action, Dkt. 27, Exh. 7 at 5; *see also* Digital Realty Action, Dkt. 20, Exh. 8 at 1 ("[Digital Realty] uses Vertiv (Liebert) cooling units in each colocation data center. Liebert cooling units are controlled by Liebert's iCOM Intelligent Communication and Monitoring system.")).

Every element of the claim charts for the Patents Asserted Against Vertiv Products attached to the Amended Complaints in both cases identify a Vertiv product as a basis for Valtrus' claims that the Customer Defendants infringe those patents. *See generally*, Digital Realty Action, Dkt. 20, Exhs. 7-11, and Dawn Action, Dkt. 27, Exhs. 7-11.

[redacted]

C. Vertiv Has a Substantial and Direct Interest in Protecting Its Technology

Vertiv highly values its relationship with its customers. As part of highly valuing its customer relationships, Vertiv stands by its products through indemnity agreements. Vertiv has contractual indemnity obligations to its customers, including the Customer Defendants, for infringement allegations such as Valtrus' assertions directed to Vertiv's products and technology. *See* Ex. A, Declaration of E. Broxterman, ¶3. The contractual indemnity provisions require Vertiv to indemnify, defend and hold harmless the Customer Defendants. *Id*. at ¶¶ 3-11. The Customer Defendants have pursued their indemnity rights with Vertiv. *Id*. at ¶¶ 7, 11. Due to the indemnity provisions, in the event any of the claims of the Patents Asserted Against Vertiv Products are finally determined to be valid and infringed based on the use of Vertiv's products (and consistent with the indemnity provisions), Vertiv would be responsible for any such damages asserted against the Customer Defendants. *Id*. at ¶¶ 4, 6, 9, 10.

Vertiv's interest further extends to the substantive rulings in these cases. While the Customer Defendants can assert defenses and counterclaims of non-infringement for their use of Vertiv products, a ruling on those counterclaims will apply only to that particular Defendant and its use of Vertiv products. Accordingly, without intervention, Vertiv and its other customers remain at risk regardless of the outcome of these cases, *e.g,* creating conflicting findings and/or rulings on issues regarding Vertiv's technology in the various cases.

Vertiv also has a substantial reputational interest in the litigation as a potential infringement determination against Vertiv products would impair its present and future customer relationships and reputation as an innovator in the industry. Vertiv understandably has a right to clear this cloud of controversy and maintain its reputation.

Valtrus' individual suits against Vertiv customers have made apparent the need for discovery from Vertiv as it relates to its products/technology. Unless permitted to intervene, these suits will require third-party discovery from Vertiv, including technical, industry and financial information, prior art, and deposition testimony from its employees.

Additionally, Valtrus also has a legal interest in the Court's determination of claim constructions that will apply to its technology, the prior art and potential 35 U.S.C. §§101, 102, 103 and 112 issues, and has a further interest in participating in any appeals of the issues decided in these cases.

D. The Present Actions Are in the Initial Stages

The present cases are in the initial stages. Valtrus recently filed Amended Complaints in both cases and neither Customer Defendant has yet to file an answer/response. Digital Realty Action, Dkt. 20 and Dawn Action, Dkt. 27. The Court only recently entered a Docket Control Order on June 14, 2024. Dawn Action, Dkt. 31. That order contemplates a Markman Hearing approximately 11 months from now on May 30, 2025, and trial commencing in approximately 17 months in November 2025.

Vertiv does not anticipate seeking to alter those dates in light of this motion.

E. Valtrus Knows of Vertiv's Interest in the Present Actions.

Valtrus is also aware of Vertiv's interest in this action due to Vertiv's declaratory judgment action pending in the Northern District of Texas. *See Vertiv Corporation v. Valtrus Innovations Limited*, Civil Action No. 3:24-cv-01152-N (N.D. Texas) (the "DJ Action"). Vertiv filed the DJ Action after Valtrus filed the present cases and in response to Valtrus' continued threats directed to additional Vertiv customers. Vertiv seeks a declaration of non-infringement with respect to the Patents Asserted Against Vertiv Products.

II. ARGUMENT AND APPLICATION OF AUTHORITY

A. Vertiv is Entitled to Intervene as a Matter of Right Under Federal Rule of Civil Procedure 24(a)(2)

i. Applicable Law

Rule 24(a)(2) provides for intervention by right when a party "claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action without it may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." FED. R. CIV. P. 24(a)(2).

The Fifth Circuit permits intervention where "no one would be hurt, and the greater justice could be attained." *Texas v. U.S.,* 805 F.3d 653, 657 (5th Cir. 2015) (internal quotation marks and citation omitted). The inquiry under Rule 24(a)(2) "is a flexible one, which focuses on the particular facts and circumstances surrounding each application . . .." *Entergy Gulf States Louisiana, L.L.C. v. U.S. E.P.A.*, 817 F.3d 198, 203 (5th Cir. 2016) (quoting *Edwards v. City of Hous.*, 78 F.3d 983, 999 (5th Cir. 1996)). "The rule 'is to be liberally construed,' with 'doubts resolved in favor of the proposed intervenor.'" *Id*. (quoting *In re Lease Oil Antitrust Litig.*, 570 F.3d 244, 248 (5th Cir. 2009)); *see also Uniloc 2017 LLC v. Verizon Commc'ns Inc.*, No. 2:18-CV-00513-JRG, 2019 WL 1773118, at *1 (E.D. Tex. Apr. 23, 2019) (same).

The Fifth Circuit assesses whether a proposed intervenor has satisfied four applicable requirements: (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the existing parties to the suit. *Texas*, 805 F.3d at 657.

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As discussed below, Vertiv has met the four requirements and intervention is appropriate here.[3]

ii. Vertiv's Motion to Intervene Is Timely

Vertiv has filed this motion to intervene in a timely manner at the outset of the Dawn Action and the Digital Realty Action. In examining timeliness, courts examine the following factors: "(1) the length of time during which the would-be-intervenor actually knows or reasonably should have known of his interest in the case before he petitioned for leave to intervene, (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be-intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case, (3) the extent of the prejudice that the would-be-intervenor may suffer if his petition for leave to intervene is denied, and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. *Team Worldwide Corp. v. Wal-Mart Stores, Inc.*, No. 2:17-cv-00235-JRG, 2017 WL 6059303, at *3 (E.D. Tex. Dec 7, 2017) (quoting *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264-266 (5th Cir, 1977)) (internal quotation marks omitted).

Valtrus filed these consolidated cases approximately four months ago on February 27, 2024. Dawn Action, Dkt. 1; Digital Realty Action, Dkt. 1. After Dawn and Digital Realty answered the original complaints, Valtrus was permitted to file Amended Complaints in both cases; neither Dawn nor Digital Realty has filed their response to the Amended Complaints yet. *See generally*, Digital Realty Action, Dkt. 20 and Dawn Action, Dkt. 27. The Court recently entered its Docket

[3] As required by Rule 24, Vertiv attaches as Exhs. B and C its proposed Vertiv's Intervenor Answer to Amended Complaint in each of the Dawn Action and the Digital Realty Action, respectively.

Control Order setting the Markman Hearing for May 30, 2025, and trial for November 17, 2025. Dkt. 31. The Customer Defendants have not served preliminary invalidity contentions.

Vertiv has petitioned for intervention in a reasonable time after Valtrus' initiation of the litigation. *See Team Worldwide,* 2017 WL 6059303, at *4 (finding intervention approximately four months after learning of interest in the matter timely); *TOT Power Control, S.L. v. AT&T Mobility LLC*, No. 6:21-CV-00107-ADA, 2021 WL 4712691, at *2 (W.D. Tex. Oct. 8, 2021) (finding timely a motion for intervention filed "less than four months after" the filing of a patent infringement complaint). Valtrus and the Customer Defendants will not be prejudiced by Vertiv's intervention because there has not been meaningful discovery in these matters. Indeed, the Customer Defendants do not oppose this motion and Valtrus has not suffered any prejudice related to the timing of this motion. Instead, Vertiv's addition as a party will streamline discovery in these cases because Vertiv possesses the most knowledge about its own products, such as the development, operation and inner workings of its products, sales and marketing information related to those products, and materials related to prior art and development of the asserted patented technology. Vertiv would be extremely prejudiced by a denial of intervention because it would be the subject of discovery in this matter without having a chance to defend its products directly.

Indeed, Vertiv's motion early in the matter, *e.g.*, well before claim construction, squares with this Court's prior consideration of such intervention issues. *See Team Worldwide Corp.*, 2017 WL 6059303, at *3-4 (finding motion filed after the scheduling conference, but before claim construction and trial as timely because intervenors moved in a reasonable time period after learning of their interest in the case); *cf. Edwards*, 78 F.3d at 1001 ("[M]ost of our case law rejecting petitions for intervention as untimely concern motions filed after judgment was entered in the litigation.").

[redacted]

Finally, no unusual circumstances exist that suggest intervention is untimely. For these reasons, Vertiv's petition is timely.

iii. Vertiv Has a Substantial Legal Interest in this Case

Mandatory interventions also require the intervenor to have an interest relating to the property or transaction that is subject of the action that "goes beyond a generalized preference that the case come out a certain way." *Id*. at *4 (citing *Sierra Club v. Espy,* 18 F.3d 1202, 1207 (5th Cir. 1994)).

Vertiv's interest in these cases is direct, substantial, and legally protectable because its products will be a focus of the litigation. *See id.* at *4. Valtrus accuses Vertiv's customers of patent infringement for using Vertiv products in their data center facilities as they are intended to be used. Dawn Action, Dkt. 27, Exhs. 7-11 (claim charts relying on Vertiv products); Digital Realty Action, Dkt. 20, Exhs. 7-11 (claim charts relying on Vertiv products). As set forth above, Valtrus has placed Vertiv's products at issue and made them the centerpiece of the infringement assertions for the Patents Asserted Against Vertiv Products. Those claim charts provide numerous and comprehensive references to Vertiv's technology for each and every claim element and make clear that the accused infringement is based on Vertiv's technology. Indeed, Valtrus' contentions across all four lawsuits against each customer are factually and substantively the same in this respect. CyrusOne Action, Dkt. 1, Exhs. 8-12 (claim charts relying on Vertiv products); NTT Action, Dkt. 1, Exhs. 8-12 (claim charts relying on Vertiv products). It is thus axiomatic that Valtrus has a legal interest in the Court's determination of claim constructions that will apply to its technology, the prior art and potential 35 U.S.C. §§101, 102, 103 and 112 issues (and a further interest in any appeals of these issues).

Valtrus' infringement allegations putting Vertiv, the manufacturer/supplier of accused products, at legal risk has been the basis of permitting intervention by this Court. *See Team Worldwide*, 2017 WL 6059303, at *4 (granting intervention as a right and noting that a supplier's ongoing sale and distribution of their products is put at risk by patent infringement allegations); *Uniloc 2017*, 2019 WL 1773118, at *3 (granting intervention as a right and finding manufacturer of telephone base stations had an interest in case brought against customer using its products).

Vertiv also has a legal interest in these proceedings because it is contractually obligated to indemnify its Customer Defendants against Valtrus' patent infringement allegations for the use of Vertiv's products. *See generally* Ex. A, Declaration of E. Broxterman; *Team Worldwide,* 2017 WL 6059303, at *4 (acknowledging a contractual obligation for the intervenor to defend and indemnify the named defendant meets the interest requirement). As set forth in Mr. Broxterman's Declaration, Vertiv's agreements require it to indemnify, defend, and hold harmless the Customer Defendants. *Id*. at ¶¶3-11. The Customer Defendants have invoked their contractual rights and sought indemnification from Vertiv for these matters. *Id*. at ¶7 and ¶11. Accordingly, Vertiv may represent the Customer Defendants with respect to the allegations against Vertiv's products (but not with respect to any products of other manufacturers/suppliers accused by Valtrus), and in the event any of the asserted claims of Patents Asserted Against Vertiv Products are finally determined to be valid and infringed, Vertiv may be responsible for any damages asserted against the Customer Defendants. *Id*. at ¶¶4-5, 7-8, 11. In such circumstances, Vertiv's interest in the outcome of these cases is direct and substantial, and intervention is appropriate. *See U.S. Ethernet Innovations, LLC v. Acer, Inc.*, No. 6:09-cv-448-JDL, 2010 WL 11488729, at *2 (E.D. Tex. May 10, 2010) ("Courts have held that beyond the injury that might arise from having to indemnify customers, a manufacturer such as Intel faces the loss of its customer base and reputation as a result of patent

infringement allegations.")(citation omitted); *TOT Power Control*, 2021 WL 4712691, at *3 (finding Ericsson had a right to intervene and stating: "The TOT complaint's reference to Ericsson BTSs puts Ericsson's customer base and reputation at risk-'a risk that is only magnified by its indemnity obligation to AT&T.'") (quoting *Uniloc 2017*, 2010 WL 11488729, at *3).

iv. Disposition of this Action Without Vertiv Would Impair Vertiv's Ability to Protect Its Interests

As the manufacturer of products accused in this case, if Vertiv is not permitted to intervene, its ability to defend itself against these infringement allegations would be irreconcilably impaired. *See Team Worldwide*, 2017 WL 6059303, at *5 (finding lack of intervention would impede intervenors' ability to protect their interests when an indemnification obligation brought potential for money damages, adverse rulings could impact customer relationships, and an adverse judgment could create precedent in other proceedings); *LED Wafer Sols. LLC v. Samsung Elecs. Co.*, No. W-21-CV-00292-ADA, 2021 WL 5450145, at *4 (W.D. Tex. Nov. 22, 2021) ("As the manufacturer of some of the accused products, a ruling of infringement could certainly impact SSC's customer relationships and trigger indemnity obligations it . . . owes to Samsung.") (citations omitted). Here, as discussed above, in the event of an infringement finding based on Vertiv's technology, Vertiv has an obligation to hold harmless the Customer Defendants by paying any damages awarded to Valtrus for that infringement (consistent with the contractual indemnity obligations). *See generally* Ex. A, Declaration of E. Broxterman.

The possibility of such a ruling adversely affects Vertiv's relationship with the Customer Defendant and its other customers by clouding their ability to continue to use Vertiv products. Such a ruling may also harm Vertiv's reputation in the industry at least to the extent Vertiv is viewed as a leading innovator in the data center infrastructure market. *See Indus. Tech. Rsch. Inst. v. LG Elecs., Inc.*, No. 3:13-cv2016-GPC-WVG, 2014 WL 5325709, at *4 (S.D. Cal. Oct. 17, 2014) ("As

[redacted]

there is no dispute and LG may be unable to sell liquid crystal displays to U.S. Customers if Plaintiff were to succeed in this litigation, the Court finds that disposition of this action may adversely impair LG Display's significantly protectable interest."). Finally, an adverse judgment could also create precedent that could be used against Vertiv and its customers in other proceedings related to the accused products. *See Team Worldwide*, 2017 WL 6059303, at *5 (finding this requirement met when intervenors argued that an adverse judgment would impair their interests). In fact, there are two additional cases pending before this Court on these same patents, the CyrusOne Action and the NTT Action, as noted above. Valtrus would certainly seek to use any adverse precedent created in this case in other cases involving additional Vertiv products; indeed, Valtrus has used nearly identical allegations in those other cases. CyrusOne Action, Dkt. 1, Exhs. 8-12 and NTT Action, Dkt. 1, Exhs. 8-12.

For these reasons, Vertiv should be permitted to intervene to protect its interests.

v. Vertiv's Interest Is Inadequately Represented by the Defendants

An intervenor seeking mandatory intervention has only a minimal burden to show that the representation of the intervenor's interest "may be inadequate." *See Texas*, 805 F.3d at 661 (internal citation omitted). Vertiv's customers are rightly concerned with defending their own businesses, but Vertiv has an interest in defending its products which are at issue here. A resolution of the claims against one customer, for example, may not resolve the allegations against the other Customer Defendants, thereby creating the possibility of conflicting rulings in the various actions. Further, resolution of any customer case may not vindicate Vertiv's non-infringement positions if the Customer Defendants succeed on issues unrelated to the operation of the products that eliminate Valtrus' claims, *e.g.*, license or estoppel issues.

[redacted]

Further, because Valtrus has also accused Vertiv's competitors of patent infringement in some of its claim charts, the Customer Defendants may take defensive positions that differ from, or even harm, defensive positions related to only Vertiv's products. *See, e.g., Team Worldwide*, 2017 WL 6059303, at *6 (finding inadequate representation because "[e]ach proposed intervenor provides a product sold by Walmart that *directly* competes with other products, sold by Walmart, including those of the other proposed intervenors" and therefore "Walmart's interest . . . may diverge from that of each individual proposed intervenor's interest") (emphasis in original).

Even if the Defendant customers wanted to adequately represent Vertiv's interests and were seeking the same general goals, they could not adequately do so without Vertiv since Vertiv necessarily possesses the most detailed knowledge of its own products and will more vigorously protect its own products. Just the possibility that the Customer Defendants would not vigorously defend Vertiv's products - or are not as capable as Vertiv of defending Vertiv's products - is sufficient to meet this requirement. *See Texas*, 805 F.3d 661 (holding that intervenor need only show that existing parties *may* be inadequate at representing its interest).

Accordingly, Vertiv has met each requirement of Rule 24(a)(2) and should be permitted to intervene in these matters as a matter of right.

B. Vertiv Should Be Allowed to Intervene Permissively if Not as a Matter of Right

i. Applicable Law

Rule 24(b)(1)(B) provides: "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Rule 24(b)(3).

[redacted]

ii. Vertiv also Meets the Lower Standard for Permissive Intervention

For the reasons set forth above, Vertiv has shown that it also meets this less stringent standard. Since Valtrus put Vertiv products at issue, there is a common issue of non-infringement and facts which gives adequate reason for the Court to permit intervention. *See Team Worldwide*, 2017 WL 6059303, at *7 (finding similar defenses of non-infringement and invalidity sufficient to permit intervention under Rule 24(b)); *Lexington Luminance LLC v. Google, Inc.*, Civ. A. No. 12-12218-Gao, 2014 WL 172203, at *1 (D. Mass. Jan. 16, 2014) ("Many district courts have allowed manufacturers and suppliers to intervene in actions where their products were the subject of the suit.")(citations omitted).

Since the lawsuits have only just begun, there is no prejudice to the parties. *See Team Worldwide*, 2017 WL 6059303, at *7 (permitting intervention pursuant to Rule 24(b) where there was sufficient time to prepare for discovery, claim construction and trial). Indeed, there is material benefit to allowing the actual manufacturer of the accused products to intervene and defend itself with its greater knowledge and access to evidence.

Finally, Vertiv's separate DJ Action does not impact any of the intervention factors here and, indeed, a district court has granted intervention in similar circumstances where an intervenor/manufacturer had previously filed a declaratory judgment action arising out of the same patents. *See Lexington Luminance*, 2014 WL 172203, at *1 ("[Manufacturer's] intervention will not cause undue delay or prejudice to either Lexington's or Google's rights, as this action is still in its early stages. Further, [manufacturer's] intervention will not significantly complicate the case and burden Lexington's litigation efforts, since [manufacturer] has already filed a declaratory judgment action against Lexington arising from the same patent.").

[redacted]

Vertiv respectfully asks the Court to allow it to intervene in these cases under Rule 24, either as a matter of right or permissively.

Dated: June 27, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document and all attachments thereto are being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served this June 27, 2024 on all counsel of record, each of whom is deemed to have consented to electronic service. L.R. CV-5(a)(3)(A).

/s/William E. Davis, III
William E. Davis, III

CERTIFICATE OF CONFERENCE

On June 12, 14, 24 and 26, 2024, counsel for Vertiv Corporation (Daniel Schwartz) and counsel for Valtrus (Matthew Berkowitz and Connor Houghton) met and conferred pursuant to Local Rule CV-7(h). The parties could not reach agreement, and Valtrus reserves its right regarding opposition pending its review of Vertiv's motion and supporting materials. As a result, Vertiv files this motion on the ECF system as an "opposed" motion.

On June 26, 2024, counsel for Vertiv Corporation (Daniel Schwartz) and counsel for Dawn (Jeff Barron) met and conferred pursuant to Local Rule CV-7(h). Dawn does not oppose this motion.

On June 26, 2024, counsel for Vertiv Corporation (Daniel Schwartz) and counsel for Digital Realty (Phillip Woo) met and conferred pursuant to Local Rule CV-7(h). Digital Realty does not oppose this motion.

/s/Daniel J. Schwartz
Daniel J. Schwartz

[redacted]