

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

VALTRUS INNOVATIONS LTD.

Plaintiff,

v.

NTT DATA SERVICES, LLC ET AL

Defendants,

and

VERTIV CORP.,

Intervenor.

Case No. 2:24-cv-00361-JRG (Lead Case)
Case No. 2:24-cv-00259-JRG (Member Case)
Case No. 2:24-cv-00139-JRG (Member Case)
Case No. 2:24-cv-00534-JRG (Member Case)
Case No. 2:24-cv-00535-JRG (Member Case)

Jury Trial Demanded

**VERTIV CORPORATION'S FIRST SUPPLEMENTAL INITIAL
AND ADDITIONAL DISCLOSURES**

Intervenor, Vertiv Corp., ("Vertiv") hereby provides its initial and additional disclosures to Plaintiff Valtrus Innovations Ltd. ("Plaintiff") pursuant to Federal Rule of Civil Procedures 26, Local Rule CV-26 of the Eastern District of Texas and the Court's Order at Dkt. No. 16 and the Joint Motion for Entry of an Agreed Docket Control Order at Dkt No. 33.

This case is at its earliest stages; as discussed below, much of the information relating to the claims and defenses in this lawsuit is in the possession, custody, or control of Plaintiff; and Vertiv's investigation into the claims and defenses at issue in this lawsuit is continuing. Consequently, the following disclosures are preliminary and subject to supplementation or amendment.

The deficiencies in Plaintiff's Complaint and Preliminary Infringement Contentions discussed more fully below have impeded Vertiv's investigation and search for relevant and responsive information. Moreover, to the extent Plaintiff's claims also implicate the products,

systems, services, or actions of other parties, any documents, records, and information related to Plaintiff's claims may be in the hands of other parties and third parties and not Vertiv. Vertiv therefore reserves the right to supplement, amend or withdraw these Initial Disclosures. Subject to and without waiving these objections, Vertiv provides the following Initial Disclosures.

I. Initial Disclosures (Discovery Order at ¶ 1)

(a) The correct names of the parties to the lawsuit.

On information and belief, Plaintiff, Valtrus Innovations Ltd. ("Plaintiff") has sued Defendant, CyrusOne, LLC, ("CyrusOne") and Vertiv Corporation ("Vertiv") has intervened.¹

(b) The name, address, and telephone number of any potential parties.

Vertiv Corporation is located at 505 N. Cleveland Ave., Westerville, OH 43082 in Franklin County. The telephone number is 1 (614) 888-0246.

On information and belief, Valtrus' address is The Glasshouses GH2, 92 Georges Street Lower, Dun Laoghaire, Dublin A96 VR66, Ireland. No telephone number is known to Vertiv for Plaintiff.

On information and belief, CyrusOne's address is 2850 North Harwood St., Suite 2200, Dallas, TX 75201. CyrusOne's telephone number is 1 (855) 564-3198.

¹Vertiv Corporation has been granted intervention in both the Digital Realty Case and CyrusOne Case: *Plaintiff Innovations Ltd. v. Digital Realty Trust, Inc.*, No. 2:24-cv-00139-JRG ("Digital Realty Case"), which is a member of Lead Case *Plaintiff Innovations Ltd. v. Dawn Acquisitions LLC*, No. 2:24-cv-00142-JRG ("Dawn Case"). Dkt. No. 55. and *Plaintiff Innovations Ltd. v. CyrusOne, LLC*, No. 2:24-cv-00259-JRG ("CyrusOne Case"), which is a member of Lead Case *Plaintiff Innovations Ltd. v. NTT Data Services, LLC*, No. 2:24-cv-00361-JRG ("NTT Data Services Case") Dkt. No. 27. The parties have jointly and collectively moved to consolidate these matters for pre-trial matters, and those motions are currently pending. Dkt Nos. 34.

(c) The legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial).

Plaintiff's infringement contentions are deficient in that they do not adequately identify products or systems purportedly in use at any specific data center, including but not limited to the data centers within the jurisdiction of the Court. Instead, Plaintiff accuses one or more hypothetical data center(s) as the basis for its claims and argue alternative grounds for infringement.

Plaintiff's infringement contentions are also deficient for failing to adequately identify with any particularity the accused products or systems that purportedly infringe. For example, Plaintiff uses vague terminology such as "Liebert CRAC units" and "Liebert cooling units" to accuse the use of multiple and alternative Vertiv products as the basis for its claims. Subject to these limitations, Vertiv states the following:

1. Plaintiff alleges that it has directed allegations of infringement against Vertiv's customers for the method claims and have not accused Vertiv of infringing any of the asserted apparatus claims.

2. Based on Vertiv's investigation, CyrusOne's alleged use of Vertiv's products does not infringe any of the asserted patents in this lawsuit because Plaintiff has failed to establish that CyrusOne's use of Vertiv products practices every limitation of the asserted claims. Among other things, Plaintiff's Infringement Contentions mix-and-match various products and systems; are pled in the alternative; fail to address key claim limitations; and are not specific to any particular data center.

3. Based on Vertiv's investigation, CyrusOne's alleged use of Vertiv products and systems does not infringe any of the asserted patents in this lawsuit because Plaintiff cannot allege a plausible claim for infringement based on the use of Vertiv's products.

4. Based on Vertiv's investigation, CyrusOne does not infringe U.S. 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"); 7,339,490 (the "'490 Patent") (collectively, the "Atmospheric Control Patents") through the use of Vertiv's products because Plaintiff has not accused any specific Vertiv atmospheric control systems or sensors that have been or are being used in an infringing manner at any facilities owned or operated by CyrusOne. Rather, Plaintiff has accused hypothetical atmospheric control system(s), alleged in the alternative, that they allegedly reflect the actual atmospheric control systems that have been and/or are in use at unnamed facilities owned or operated by either Vertiv customer.

5. Based on Vertiv's investigation, CyrusOne does not infringe the Atmospheric Control Patents based on its purported use of Vertiv's products or systems. Among other things, based on Vertiv's investigation to date, CyrusOne has not used any Vertiv products and systems in the manner alleged to infringe the Atmospheric Control Patents, *e.g.*, to monitor and/or adjust temperature in the facility; to monitor or adjust the flow of cooling fluid in the manner claimed in the Atmospheric Control Patents; to use an automated template map and which include temperature sensors and other measurement devices; to manipulate controllable partitions or control cooling devices in the ways required by the Atmospheric Control Patents, and the sensors that are in use do not practice the elements of the '490 patent.

6. Based on Vertiv's investigation, CyrusOne does not infringe the Atmospheric Control Patents based on their purported use of Vertiv products or systems for the reasons set forth in Vertiv's Complaint for Declaratory Judgment in *Vertiv Corporation v. Plaintiff Innovations Limited*, Civil Action No. 3:24-cv-01153-N (N.D. Tex), filed on May 14, 2024 ("*Vertiv Lawsuit*"). Vertiv incorporates the Complaint and its exhibits in their entirety as well as all non-infringement

grounds that Vertiv has or may present in the future in the *Vertiv* Lawsuit, this lawsuit, or in any other action where Vertiv contests infringement of the Atmospheric Control Patents.

7. Based on Vertiv's investigation, CyrusOne does not infringe the Atmospheric Control Patents based on its purported use of Vertiv products or systems for Vertiv products installed or used prior to the effective date of the patents because the Atmospheric Control Patents are subject to a prior use noninfringement defense and/or the Atmospheric Control Patents are invalid as anticipated and/or obvious because Plaintiff has accused the prior art of infringement.

8. Based on Vertiv's investigation, CyrusOne does not infringe the '277, '287 and '179 patents based on its purported use of Vertiv products or systems because the '277, '287 and '179 patents are expired.

9. Additional factual bases for Vertiv's claims and defenses may be presented upon disclosure by Plaintiff of its claim construction positions and as a result of discovery in this case.

10. Based on Vertiv's investigation, the use of Vertiv products by CyrusOne does not infringe the '490 Patent for the following reasons. In general, the software programs allegedly provided by Vertiv do not use an atmospheric template map or manipulate or measure temperature in the manner required by the asserted claims of the Atmospheric Control Patents. In addition, the software allegedly provided by Vertiv does not manipulate controllable partitions or control cooling devices in the ways required by the Atmospheric Control Patents, such as by calculating the recited indices. Moreover, Vertiv's temperature sensors do not meet the limitations of the '490 Patent. Vertiv may supplement this response upon the receipt of additional information from Plaintiff concerning the grounds for its infringement claims, including but not limited to its claim

construction positions and/or from discovery regarding the operation of the accused products and systems.

11. Based on Vertiv's investigation, the use of Vertiv products by CyrusOne does not infringe claim 1 of the '277 Patent because Vertiv's cooling units and iCOM and iCOM-S control system products do not practice a method of controlling atmospheric conditions within a building upon sensing atmospheric parameters at locations inside the building involving the steps of "generating an empirical atmospheric map from the results of said sensing step using software for processing input from said sensing step and for producing output in the form of said empirical atmospheric map"; "comparing said empirical atmospheric map to a template atmospheric map"; and "identifying pattern differential between said empirical and template atmospheric maps" as required by independent claim 1 of the '277 patent and all dependent claims that depend on claim 1.

12. Based on Vertiv's investigation, the use of Vertiv products by CyrusOne does not infringe claim 12 of the '277 Patent because Vertiv's cooling units and iCOM and iCOM-S control system products do not practice the method of cooling a data center involving supplying cooling fluid to cool equipment within the data center and sensing temperature locations within the data center that includes "generating an empirical thermal map of said data center from the results of said sensing step using software for processing input from said sensing step and for producing output in the form of said empirical thermal map"; "comparing said empirical thermal map tot a template thermal map"; and 'identifying pattern differentials between said empirical and template thermal maps" as required by claim 12 of the '277 patent and all dependent claims that depend on claim 12.

13. Based on Vertiv’s investigation, the use of Vertiv products by CyrusOne does not infringe claim 1 of the ‘287 Patent because Vertiv’s cooling units and iCOM control system products do not practice method of cooling a room housing computer system involving the steps of “supplying [a] plurality of heat exchanger units with cooling fluid from an air conditioning unit”; “cooling . . . received air through heat exchange with the cooling fluid in the plurality of heat exchanger units”; “controlling at least one of the temperature of said cooling fluid in the plurality of heat exchanger units”; “controlling at least one of the temperature of said cooling fluid and said air delivery by said plurality of heart exchanger units to said room in response to said sensed temperatures at said one or more locations”; and “controlling . . . air delivery by said plurality of heart exchanger units [by] individually manipulating a mass flow rate of the cooling fluid supplied to each of the plurality of heart exchanger units” as required by claim 1 of the ‘287 patent and all dependent claims that depend on claim 1.

14. Based on Vertiv’s investigation, the use of Vertiv products by CyrusOne does not infringe claim 1 of the ‘179 Patent because Vertiv’s cooling units and iCOM control system products do not practice a method of cooling a plurality of racks in a data center involving the steps of “opening a controllable partition configured to vary a supply of cooling fluid within a zone of said data center, said zone including at least one associated rack of said plurality of racks”; and “manipulating said controllable partition to vary said supply of said cooling fluid to said zone in response to [a] sensed temperature being outside said predetermined temperature range” as required by claim 1 of the ‘179 patent and all dependent claims that depend on claim 1.

15. Based on Vertiv’s investigation, the use of Vertiv products by CyrusOne does not infringe claim 1 of the ‘870 patent because Vertiv’s cooling units and iCOM and iCOM-S control system products do not practice a method for evaluating one or more components in a data center

involving the steps of “calculating indices of air re-circulation for the one or more heat dissipating devices based upon . . . detected [heat dissipating device] inlet temperatures, [heat dissipating device] outlet temperatures and supplied air temperatures”; “determining whether the indices of air re-circulation has changed in response to the varied flow field settings [of air delivered to one or more heat dissipating devices]”; and “evaluating the one or more components based upon changes in the indices of air re-circulation for the one or more heat dissipating devices at the various flow field settings” as required by claim 1 of the ‘870 patent and all dependent claims that depend on claim 1.

16. Based on Vertiv’s investigation, the use of Vertiv products by CyrusOne does not infringe claim 1 of the ‘490 Patent because Vertiv’s cooling units and modular sensor products do not include a modular sensor assembly that comprises an elongate flexible body, configured to attach to a computer rack” and “a plurality of addressable sensors, disposed along the body and interconnected to a common connector wire” as required by claim 1 of the ‘490 patent and all dependent claims that depend on claim 1.

17. Based on Vertiv’s investigation, the use of Vertiv products by CyrusOne does not infringe claim 11 of the ‘490 Patent because Vertiv’s cooling units and modular sensor products do not include a sensor system that includes “a modular sensor assembly, having a flexible elongate body, attached to [a] computer rack” and “a plurality of addressable sensors, disposed along the elongate body of the modular sensor assembly, and interconnected in parallel to a common connector wire, configured to independently measure an environmental condition in the immediate vicinity of the sensor” as required by claim 11 of the ‘490 patent and all dependent claims that depend on claim 11.

18. Based on Vertiv's investigation, the use of Vertiv products by CyrusOne does not infringe claim 28 of the '490 Patent because Vertiv's cooling units and modular sensor products do not include a computer rack system that includes "a modular sensor assembly, attached to the rack body, comprising an elongate flexible sensor body having a plurality of addressable sensors connected in parallel to a common connector wire, each sensor being configured to generate a digital signal representative of an environmental condition" and "a connector board, associated with the rack body, interconnected to the connector wire and to a central computer system configured to receive data from the plurality of sensors and to monitor environmental conditions associated with the rack" as required by claim 28 of the '490 patent and all dependent claims that depend on claim 28.

19. Plaintiff does not make any allegations implicating the use of Vertiv products related to U.S. Patent No. 9,310,855 (the "'855 Patent") or U.S. Patent No. 7,939,967 (the "'967 Patent"). Vertiv reserves the right to amend these Disclosures should Plaintiff make additional accusations that related to or implicate Vertiv products.

20. Plaintiff's infringement and damage claims are barred or limited because one or more of the Asserted patents has expired; Plaintiff's predecessors-in-interest and/or their licensees have failed to mark; and/or by operation of the statute of limitations under 35 U.S.C. §§ 286 and/or 287. The factual basis for these defenses include at least the following:

21. At least some of the accused instrumentalities for the asserted patents existed and were in use more than six years prior to the filing of the original Complaint. Accordingly, the six-year statute of limitations applicable to patent claims bars liability for any alleged infringement(s). 35 U.S.C. § 286.

22. Under the apparent claim constructions implied by Plaintiff's Complaint and Preliminary Infringement Contentions, Vertiv reasonably believes at least one prior owner and/or at least one prior or current licensee or owner of one or more of the asserted patents practiced at least one asserted claim of such asserted patent(s).

23. Plaintiff has not alleged compliance with the patent marking statute, however, and Vertiv is not aware of any compliance with the marking statute. As notice of infringement was only delivered upon filing of the original Complaint in this action, all pre-Complaint damages are barred. 35 U.S.C. § 287.

24. The '277, '287 and '179 patents all expired prior to the filing of the Complaint in this lawsuit and the '870 patent expires later this year. There can be no infringement of an expired patent and thus no damages associated with alleged infringement occurring after the expiration of an expired patent. Consequently, Plaintiff's damage claims for alleged infringement of the '277 patent ended on April 17, 2022, when it expired; Plaintiff's damage claims for alleged infringement of the '287 patent ended on August 2, 2022, when it expired; Plaintiff's damage claims for alleged infringement of the '179 patent ended on April 15, 2023, when it expired; and Plaintiff's damages claims for the '870 patent and the other asserted patents will end when they expire.

25. The combination of Vertiv's marking defense with the fact that Plaintiff has asserted expired patents means that no damages are available in connection with Plaintiff's infringement claims relating to the '277, '287 and '179 patents.

26. Plaintiff's claims for relief are barred, in whole or in part, by one or more equitable doctrines, including but not limited to the doctrines of waiver, unclean hands, patent misuse and/or estoppel. Based on Vertiv's investigation, the factual basis for these defenses include that the

accused instrumentalities at CyrusOne were well-known. Plaintiff and/or its predecessors-in-interest unreasonably and misleadingly delayed in bringing this lawsuit to the economic and evidentiary prejudice of CyrusOne Vertiv, which included their continued investments in data centers and the natural loss of employees, memories and documentation over time, as well as a change in their position or behavior based on the actions and lack of communications from Plaintiff and their predecessors-in-interest. Plaintiff also sought to misuse the asserted patents by improperly seeking to expand the scope of their coverage and claims, including by accusing systems that did not exist until after relevant patents expired; applying unreasonable claim construction positions; failing to identify the purported accused instrumentalities that are actually present at any data center; and accusing the prior art of infringement.

Furthermore, the asserted claims of the Atmospheric Control Patents are invalid for multiple reasons, as Vertiv will explain in its invalidity and patent ineligibility contentions, which are not yet due.

Discovery is just commencing and the foregoing is not an exhaustive list of Vertiv's defenses, the factual basis for their defenses, or a projection of the evidence that will be used to support their defenses in motion practice, hearings, or a future trial. Moreover, the factual basis for certain defenses (such as patent invalidity or lack of patent eligibility) are not yet due under the Discovery Order and the Local Patent Rules of the Eastern District of Texas. Evidence concerning the existence of defenses that are not included this Initial Disclosure, as well as evidence supporting the defenses that are, is also not in Vertiv's possession, custody, or control but rather in the possession, custody, or control of Plaintiff and/or one or more third parties. Plaintiff has also served inadequate infringement contentions, as discussed above, and claim construction proceedings have not yet started. All of the foregoing factors impede Vertiv's ability

to further develop its defenses. Consequently, Vertiv's factual basis for its defenses will continue to develop over the course of discovery and claim construction in this litigation.

(d) The name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person.

Vertiv's investigation is continuing. Vertiv preliminarily identifies the following individuals:

27. Angela Quinlan. Ms. Quinlan is a Director of Valtrus. On information and belief, she may be contacted through counsel for Plaintiff. She is likely to have information related to the corporate structure of Plaintiff, document retention policies of Plaintiff, operations of Plaintiff, the assignment of the asserted patents, the licensing efforts related to the asserted patents, and the finances of Plaintiff.

28. One or more representatives, agents, or employees of Valtrus. These individuals are expected to have likely to have information related to the corporate structure of Plaintiff, document retention policies of Plaintiff, operations of Plaintiff, the assignment of the asserted patents, the licensing efforts related to the asserted patents, and the finances of Plaintiff.

29. One or more representatives, agents or employees of Hewlett Packard Enterprise, Hewlett Packard Enterprise Development, and Hewlett Packard Company, L.P. These individuals are expected to have knowledge of the development, prosecution, and assignment of the asserted patents. The identity of these third parties are not yet known to Vertiv, but will be provided via notice of deposition, subpoena or otherwise once they have been identified.

30. Unknown Patent Prosecution Counsel or Agents who worked on the asserted patents and related patents. These individuals are expected to have knowledge of the development, prosecution, and assignment of the asserted patents. The identity of these third parties are not yet known to Vertiv, but will be provided via notice of deposition, subpoena or otherwise once they have been identified.

31. Matt Raven. Mr. Raven is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Raven has knowledge related to Vertiv's DSE and chilled water products.

32. Steve Madara. Mr. Madara is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Madara has knowledge related to the operation and development of Vertiv's products.

33. Roger Noll. Mr. Noll is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Noll has knowledge related to the operation and development of Vertiv's DS and DSE products.

34. Jason Gloeckner. Mr. Gloeckner is a former Vertiv employee who can be contacted through Vertiv's counsel. Mr. Gloeckner has knowledge related to the operation and development of Vertiv's sensor products.

35. Tyler Voigt. Mr. Voigt is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Voigt has knowledge related to Vertiv's sensor products.

36. Craig Ward. Mr. Ward is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Ward has knowledge related to Vertiv's iCom and sensor products.

37. Phil Hardybala. Mr. Hardybala is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Hardybala has knowledge related to Vertiv's iCom products.

38. Dan Schutte. Mr. Schutte is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Raven has knowledge related to Vertiv's DSE products.

39. Sean Morrison. Mr. Morrison is a Vertiv employee who can be contacted through Vertiv's counsel. Mr. Morrison has knowledge related to Vertiv's sales to CyrusOne.

40. Matthew Bleiweiss. Mr. Bleiweiss is Vertiv's Vice President of Sales Operations who can be contacted through Vertiv's counsel. Mr. Bleiweiss has knowledge related to records of shipments and sales of Vertiv's products and predecessor Liebert products.

41. One or more representatives, agents, or employees of CyrusOne. These individuals are expected to have knowledge of the use of accused Vertiv products and systems. The identity of these third parties are not yet known to Vertiv, but will be provided via notice of deposition, subpoena or otherwise once they have been identified.

42. To the extent future investigation and/or the discovery process identify a use of an accused Vertiv product at CyrusOne in a manner alleged to infringe one or more of the asserted patents, one or more representatives, agents, or employees of CyrusOne. These individuals are expected to have knowledge of the implementation of accused Vertiv products and systems. The identity of these persons are not yet known to Vertiv.

43. Representatives, agents, or employees of Vertiv, HPE, and persons who were formerly the same or others who work or worked in the field and have experience concerning other systems, including atmospheric control products and systems that predate the accused products and systems at issue in this case. These individuals may have knowledge of the prior art. The identity of these persons are not yet known to Vertiv, but will be provided via notice of deposition, subpoena or otherwise once they have been identified.

44. The named inventors of the asserted patents and the other persons involved in preparing and/or prosecuting the applications that led to the asserted patents. These persons are expected to have knowledge of the subject matter, scope, and alleged inventions of the asserted patents. They may also have knowledge of the prior art, including prior art not submitted to the United States Patent and Trademark Office during the prosecutions of the asserted patents as well as how the purported inventions of the asserted patents purportedly differ from the prior art. Information concerning these individuals may be in the possession, custody, or control of Plaintiff. To the extent this information is not yet known to Vertiv, it will be provided via notice of deposition, subpoena or otherwise once they have been identified.

45. The person(s) involved in the acquisition of the asserted patents by Plaintiff. These person(s) are expected to have knowledge of the alleged value of the asserted patents, their purported scope, the terms and conditions under which the asserted patents may be licensed, the appropriate reasonable royalty, and the basis for the present claims against CyrusOne. Information concerning these individuals are in the possession, custody, or control of Plaintiff.

46. The person(s) involved in licensing one or more of the patents. These person(s) are expected to have knowledge of the alleged value of the asserted patents, their purported scope, the terms and conditions under which the asserted patents may be licensed, the appropriate reasonable royalty, and the basis for the present claims against CyrusOne. Information concerning these individuals are in the possession, custody, or control of Plaintiff.

47. The person(s) involved in asserting the asserted patents against CyrusOne, including the filing of the original Complaints in these lawsuits. These person(s) are expected to have knowledge of the alleged value of the asserted patents, their purported scope, the terms and conditions under which the asserted patents may be licensed, the appropriate reasonable royalty,

and the basis for the present claims against CyrusOne. Information concerning these individuals are in the possession, custody, or control of Plaintiff.

48. Each person identified in any interrogatory responses by Vertiv, CyrusOne, or any future replacement or additional defendant in the lawsuit against Vertiv.

49. Any person identified as having knowledge concerning this lawsuit by Plaintiff on its initial disclosures or interrogatory responses.

50. Any person identified as having relevant knowledge concerning this lawsuit by any current or future co-defendant or co-plaintiff in their initial disclosures or interrogatory responses. Information concerning these individuals will be provided in an appropriate manner when they are identified.

51. Any person identified as having relevant knowledge concerning this lawsuit by any additional intervening party in their initial disclosures or interrogatory responses. Information concerning these individuals will be provided in an appropriate manner when they are identified.

52. Any person deposed in this lawsuit and any person noticed for deposition or who has been served with a subpoena, including but not limited to a subpoena *duces tecum*, regardless of whether they have been deposed.

53. Any person required to identify, lay a foundation for, or otherwise admit into evidence any document, record, or thing. Information concerning these individuals will be provided in an appropriate manner when they are identified.

(e) Any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

Vertiv has included in its production certain documents relating to its contractual obligations with CyrusOne, which include certain provisions under which CyrusOne has sought or may seek indemnity. Those documents are at VERTIV_N0005775- VERTIV_N0005791.

(f) Any settlement or licensing agreements relevant to the subject matter of this action.

Vertiv has reason to believe settlement and/or licensing agreements relevant to the subject matter of this action might exist; however, none are within its possession, custody, or control. Vertiv's investigation is continuing.

(g) Any statement of any party to the litigation.

Vertiv is not presently aware of any statement of any party to the litigation within its possession, custody, or control, aside from pleadings, case filings, and correspondence between and among the parties and/or counsel. Vertiv's investigation is continuing.

II. Additional Disclosures (Discovery Order at ¶ 3).

(a) The provisions of Paragraph 3(a) of the Discovery Order are not applicable to Vertiv at this time. Vertiv will comply with any obligations under Paragraph 3(a) only if and/or when they arise. Vertiv will meet and confer with Plaintiff to determine an appropriate production of any identified source code at a mutually agreeable time in a manner that complies with the Court's Protective Order regarding Source Code provisions.

(b) With regard to Paragraph 3(b) of the Discovery Order, Vertiv directs Plaintiff to the production at VERTIV_N0000001- VERTIV_N0005791. Additionally, Vertiv may rely on publicly available documents not included in its production, including but not limited to technical information and details available at www.vigilent.com, www.se.com/us/en/, www.vertiv.com and

www.valtrusinnovations.ie/. Vertiv reserves the right to supplement or amend the production. In addition, Vertiv's production is subject to the following caveats and limitations:

The inclusion of a document or record in this production is not a representation that Vertiv contends that such document or record is relevant evidence in the case or probative of any issue in the case. Rather, Vertiv has sought to include documents and records that it reasonably believes may be subject to Paragraph 3 of the Court's Discovery Order.

(c) provide a complete computation of any category of damages claimed by any party to the action, and produce or permit the inspection of documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered, except that the disclosure of the computation of damages may be deferred until the time for Expert Disclosures if a party will rely on a damages expert.

Vertiv contends that Plaintiff has not adequately alleged or proven infringement of any valid asserted patents and thus, the only damages that are appropriate in this case are \$0. Vertiv also contends that it is entitled to reasonable attorneys fees, expenses and costs associated with this action. As those damages cannot be calculated at this time and depend upon materials that will only be available at the conclusion of this lawsuit, Vertiv reserves its right to provide such calculations at the conclusion of this lawsuit. Vertiv elects to defer to the time for Expert Disclosures for any additional computations and disclosures required by this paragraph.

* * * * *

Vertiv reserves all rights.

Dated: October 3, 2024

Respectfully Submitted,

OF COUNSEL:

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By: /s/ Timothy P. Maloney
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served electronically on October 3, 2024 on all opposing counsel of record.

/s/ Allison Strong
Allison Strong