

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

BMC Software, Inc.,

Plaintiff,

-against-

Cherwell Software, LLC and
FireScope, Inc.,

Defendants.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

BMC Software, Inc. (“BMC”), by and through its undersigned attorneys, based upon personal knowledge with respect to its own actions and on information and belief as to other matters, for its complaint avers as follows:

THE PARTIES

A. BMC Software, Inc.

1. Plaintiff BMC is a leading provider of information technology (“IT”) service management (“ITSM”) systems and serves thousands of customers worldwide, from small and mid-size businesses to the largest companies in the world. BMC is a corporation organized under the laws of Delaware with its headquarters at 2103 CityWest Boulevard, Houston, Texas 77042.

2. BMC was founded in Houston, Texas and has grown to become one of the world’s leading enterprise software providers.

3. Today, BMC has approximately 6,000 employees who support more than 10,000 customers.

4. The ITSM systems developed by BMC enable companies to easily manage, track, and service the ever-increasing number of network servers, computers, printers, software applications, and other IT resources needed across their networked computer systems (an “enterprise”) to ensure customers are not disrupted in their business activities.

5. BMC’s solutions were developed under the premise that business performance for any company depends on IT performance and, thus, there is a need for ITSM systems that closely link a customer’s business services to its IT resources.

6. To meet this need and build a market for its ITSM solutions and other products, BMC invested approximately 9 billion dollars in research and development. This was no small bet. Furthermore, overcoming the many challenges and risks along the way in building the ITSM market and creating new ITSM solutions for its customers was a major achievement. Defendants, on the other hand, have built their business by copying the functionality of BMC’s products without regard to the intellectual property rights of BMC.

BMC Patented Technologies

7. The innovations resulting from BMC’s investments in research and development are the subject of more than 500 granted patents and pending patent applications before the U.S. Patent and Trademark Office (“USPTO”) and other patent offices around the world.

8. BMC has selected a diverse group of patents in this action to demonstrate the scope and strength of BMC’s innovations and its patent portfolio, and to show the widespread infringement of BMC’s intellectual property rights by Defendants.

9. BMC’s massive research and development investment in building the ITSM market has resulted in numerous patented inventions required for an enterprise to build and

deploy both on-premise and cloud-based ITSM systems, including the following core functions of a modern ITSM system:

(i) CMDB “Hierarchical Dynamic Inheritance”: To simply and automatically track the configuration, provisioning, and health status of IT resources in an enterprise, BMC engineers invented and developed a Configuration Management Database (“CMDB”) that creates a logical representation of enterprise IT resources using hierarchical, object-oriented Configuration Items (“CIs”) employing dynamic inheritance. This novel architecture enables a business to maintain a complete, accurate, and timely representation of its IT resources—allowing IT personnel to quickly determine the root cause of any IT problem when it occurs and to minimize the cost of disruptions in business services.

(ii) CMDB “Federation”: BMC engineers invented and developed technologies that allow an ITSM system to work across different offices and locations in an enterprise, and to access data stored in multiple databases regarding the configuration, provisioning, and health status of IT resources as though that data were contained within a single, centrally located database, regardless of differences in the structure and organization of such disparate CMDB data sources.

(iii) “Metadata Driven” Discovery Tools: In addition to their work in developing a modern CMDB architecture, BMC engineers invented and developed discovery tools for discovering the IT resources of an enterprise across the different offices and locations of a business, including how such IT resources are configured and provisioned and their status. These discovery tools include a metadata layer that provides efficiency and flexibility in configuring discovery tools to meet the specific service monitoring needs of each enterprise. The metadata

layer also functions to allow data collected about disparate IT resources to be seamlessly integrated into the CMDB.

(iv) “Extensible” Discovery Tools: Recognizing that customers desire the flexibility to extend the types of data collected regarding IT resources beyond those included with “out of the box” discovery tools, BMC engineers invented and developed techniques that allow ITSM systems to receive and integrate script-based programs from a user that define additional data types specific to a customer’s needs.

(v) “Mid-server” Communications: Certain key elements of ITSM systems, including tools for populating and updating a CMDB, can be delivered today by software running outside the enterprise, for example, in the cloud. To be acceptable to customers, such elements must be able to communicate reliably, securely, and efficiently with enterprise systems that lie inside a customer’s firewall, without compromising the security of the firewall. To meet this fundamental requirement, BMC’s engineers invented and developed Mid-server technologies to allow ITSM elements that lie outside the firewall to communicate with internal ITSM systems without compromising firewall integrity and enterprise security.

(vi) “Business Service” Monitoring and “Impact Visualization”: BMC engineers developed numerous software innovations, including visualization tools for rendering and displaying information about the health status of each Business Service of an enterprise, and for mapping the underlying IT resources that impact each service. This enables IT personnel to prioritize their efforts when a problem occurs in order to minimize the cost of service disruptions.

(vii) “Mergeable Apps”: Understanding that each customer is different in its needs, BMC engineers developed technologies to allow base software applications included with an

ITSM system to be customized and extended in functionality. BMC's technologies allow for numerous mergeable software apps to be seamlessly and efficiently integrated with an ITSM system using various object overlay technologies. These object overlay technologies allow a wide range of updates to be made to base ITSM software applications, without losing the custom changes that extend the applications' functionality, and therefore minimize the risk of service disruptions.

10. To encourage these and its many other innovations, BMC has an Inventor Recognition Program designed to recognize and reward employees for their inventions. Innovating, inventing, and protecting BMC's investments through patents are so central to BMC's success that employees' inventive contributions are recognized through the memorialization of their names and patents on patent walls located at BMC's Houston headquarters and in other of BMC's offices around the world.



11. To ensure that companies do not free-ride on BMC's enormous investments in research and development, BMC relies on the protection of its intellectual property rights.

12. BMC's ability to earn sufficient profits from its innovations is harmed when infringers, such as Defendants, use BMC's patented technologies in their ITSM solutions without permission or compensation to BMC. Defendants are able to offer such ITSM products at below market prices because they have not incurred the enormous research and development investments that BMC made to develop the underlying technologies and the market itself. Indeed, because Defendants did not bear the financial burden of developing the core technologies that are the subject of BMC's patents, or the risks in building the ITSM market, they are able to unfairly compete by marketing their products to customers as having the same or similar functionality "at a considerably lower price" and serving as a "cost effective alternative." Defendants repeatedly highlight this unfair advantage in their marketing materials.¹

13. If Defendants' infringement is not enjoined, BMC will be unable to sustain the amount of research and development investment needed to further develop, build, and grow the industry to meet customer needs. And, ultimately, this will have an adverse impact on BMC's ability to continue to create thousands of jobs for the people of Texas and many other locations worldwide.

B. The Defendants

Cherwell

14. Defendant Cherwell Software, LLC ("Cherwell") is a corporation organized under the laws of the State of Delaware and registered to do business in the State of Texas, with a principal place of business at 10125 Federal Drive, Suite 100, Colorado Springs, Colorado 80908.

15. Cherwell maintains offices around the world and regularly conducts business in Texas, including providing conferences and forums for its Texas based customers (1) to connect

¹ See, e.g., <http://www.firescope.com/Resources/The-End-Of-Legacy-BMC-Cherwell.pdf>.

with and learn from each other; (2) to ask Cherwell's technologists for advice on problems they are experiencing; and (3) to share thoughts with Cherwell's product management personnel about product and service direction.²

16. Cherwell has not innovated like BMC and has only a single patented invention of its own.³ Despite their lack of innovation, Cherwell openly acknowledges that in order to be successful, it is important to have an advanced technology platform like BMC's—that has all the functionality customers desire.

17. In public statements, Cherwell's Co-Founder and Executive Chairman, Vance Brown, states: "There are probably over two hundred companies out there that Gartner recognizes as in the service management space; by all accounts we're clearly in the top three of that. But we really believe we have the technology platform over the next three years to be clearly number one in the space . . ." (emphasis added).⁴ Upon information and belief, the technology platform to which Mr. Brown is referring is built based upon BMC's patented technologies.

18. In pursuit of his quest to be number one in the ITSM space, Mr. Brown hired BMC's former Vice President of North America Sales and Services, Craig Harper, as its CEO.⁵

² See <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>; *see also* <https://www.cherwell.com/community/c/e/97>; <https://csm.cherwell.com/leave-legacy-behind-event-series-dallas-registration>; <https://csm.cherwell.com/xmatters-cherwell-incident-management-best-practices-event-dallas-sept-2016>; <https://www.cherwell.com/company/events/2015/12/hdi-analyst-and-desktop-technician-of-the-year-awards-show-dfw-chapter>; <https://www.cherwell.com/company/events/2015/11/hdi-analyst-and-desktop-technician-of-the-year-award-show-houston-chapter>; <https://www.cherwell.com/company/events/2015/10/dell-world>; <https://www.cherwell.com/company/events/2015/02/educause-connect-san-antonio-2015>; <https://www.cherwell.com/company/events/2015/01/malcolm-fry-unplugged-texas-tour>.

³ On April 26, 2017, a search was performed on the uspto.gov website which identified the Cherwell patent.

⁴ https://www.youtube.com/watch?v=fVuh6tfg_rA at 3:53.

⁵ See <https://www.cherwell.com/company/newsroom/press-releases/2016/08/cherwell-board-names-craig-harper-as-chief-executive-officer>.

19. To fuel the growth that Mr. Brown desires to achieve, Mr. Harper in turn hired key BMC sales executives who he knew from his fourteen-year career at BMC and who Cherwell presents as “Key ITSM Executives.”⁶

20. Cherwell knows that the results of these and other actions have spurred growth mainly at the expense of BMC (and others) in the marketplace. Indeed, Cherwell publicly states: “[t]he majority of the work we are doing now is replacing . . . BMC.”⁷

Firescope

21. Defendant FireScope, Inc. (“FireScope”) is a corporation organized under the laws of the State of Delaware, registered to do business in the State of Texas, with a principal place of business at 3414 Midcourt Road, Suite 108, Carrollton, Texas 75006.

22. FireScope maintains offices around the world, and is doing business in Texas from its offices in Carrollton, Texas and Dallas, Texas.

23. Similar to Cherwell, FireScope has not innovated like BMC, and upon information and belief has no patents of its own.

Partnership

24. Cherwell and FireScope have a deep partnership relationship and have integrated the technology platform that each company offers such that they jointly offer products and together compete in the marketplace against others.⁸ In addition, Cherwell and FireScope sell and/or market each other’s products.⁹ Cherwell and FireScope also use each other’s products,

⁶ See <https://www.cherwell.com/company/newsroom/press-releases/2014/12/cherwell-software-doubles-employee-base-and-hires-new-itsm-executives>.

⁷ Computer Reseller News UK, “Cherwell Squares up to BMC as it Hunts UK Partners,” June 27, 2016, *available at* <http://www.channelweb.co.uk/crn-uk/news/2462931/cherwell-squares-up-to-bmc-as-it-hunts-uk-partners>.

⁸ See, e.g., <https://www.cherwell.com/company/newsroom/press-releases/2016/03/cherwell-software-and-firescope-deepen-strategic-partnership-and-technology-integration>.

⁹ See, e.g., <https://www.cherwell.com/company/newsroom/press-releases/2016/06/cherwell-software-and-firescope-announce-discovery-and-dependency-mapping-solution> (“The new offering will be sold exclusively by both FireScope and Cherwell.”); <http://www.firescope.com/Resources/The-End-Of-Legacy-BMC-Cherwell.pdf>.

including for demonstration purposes, testing, and/or in the process of validating integrations.¹⁰

25. FireScope, through its “tight integration” with Cherwell, is directly targeting BMC for sales growth and together with Cherwell offers a technology platform that provides the same functionality as BMC’s products, as highlighted in public statements and in marketing literature to its customers.¹¹ In one example, shown on the following page of this Complaint, FireScope markets to its customers the sameness in BMC products’ functionality that Defendants provide:

¹⁰ See, e.g., https://www.youtube.com/watch?v=-n_eI98HslY (demonstration using a FireScope product with a Cherwell product).

¹¹ <http://www.firescope.com/Resources/The-End-Of-Legacy-BMC-Cherwell.pdf>.

Replacement by BMC Product

To better understand how the two solutions, and their integration, can effectively replace a BMC implementation, the following outlines the products that comprise the BMC suite, their function and how they would be supplanted. Please note that the following assumes that the currently implemented product is utilizing out of box functionality to support publicly documented use cases. In scenarios where the currently implemented product has been extended through custom development or professional services, a deeper discussion will be necessary to evaluate how FireScope or Cherwell CSM could achieve the desired outcome.

BMC Product	Function	Replacement	Comments
BMC Application Diagnostics	Real-time monitoring of application middleware.	FireScope	
BMC Atrium	Configuration Management Database (CMDB)	Cherwell	
BMC Atrium Analytics	Reporting capability for BMC Atrium	FireScope & Cherwell	Both include native report generation capabilities
BMC Atrium Discovery & Dependency Mapping (ADDM)	Discovery of environment and dependency mapping	FireScope	
BMC Atrium Orchestrator	Runbook automation	Cherwell	
BMC Atrium Service Level Management	Define and manage service levels and service level agreements	FireScope	
BMC Bladelogic Automation Suite	Automated deployment and configuration of infrastructure	Cherwell	
BMC Capacity Optimization	Capacity analysis and planning	FireScope	
BMC Dashboard for BSM	Dashboard views of service health	FireScope	
BMC End User Experience Manager (EUEM)	User experience monitoring	FireScope	
BMC Event Manager (BEM)	Consumes event data from the various BMC products to correlate events across silos		Unnecessary as FireScope approaches event enrichment in an entirely different way. Please see previous section.
BMC Patrol	Monitoring	FireScope	
BMC ProactiveNet Performance Management	Monitoring	FireScope	
BMC Remedy Action Request System (ARS)	Workflow and process management and automation	Cherwell	
BMC Remedy Asset Management	Tracking of asset inventory	Cherwell	
BMC Remedy Change and Release Management	Change request management	Cherwell	
BMC Remedy Knowledge Management	Knowledge base	FireScope & Cherwell	Both include knowledge base capabilities.
BMC Remedy Service Desk	Incident ticketing and management	Cherwell	
BMC Service Impact Management (SIM)	Event correlation from a Service perspective	FireScope	FireScope approaches event correlation from an entirely different perspective, see previous section for more details.
BMC Transaction Management Application Response Time	Application monitoring	FireScope	

26. Cherwell has turned to two private equity firms, Insight Ventures and KKR.

These firms have a business model that invests in software companies that deliver software

services from the “cloud.” Cherwell sought funds from its investors not for R&D purposes, but in order to disrupt key players in the service management market. In its most recent financing, Cherwell “raised \$50 million from KKR, the private equity firm. The funding positions Cherwell to accelerate its business to disrupt . . . BMC Software” according to CEO Craig Harper.”¹²

JURISDICTION AND VENUE

27. This is a civil action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This court has jurisdiction of such claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

28. Personal jurisdiction is proper in the State of Texas and in this judicial district. Among other things, Defendants conduct business, sell infringing products, and are engaged in activities that infringe BMC’s ITSM patents in the State of Texas, including in this judicial district.

29. Venue is proper under 28 U.S.C. §§ 1391 and 1400(b).

THE PATENTS IN SUIT

U.S. Patent No. 6,895,586 – CMDB “Hierarchical Dynamic Inheritance”

30. On May 17, 2005, the United States Patent and Trademark Office (“USPTO”) duly and legally issued United States Patent No. 6,895,586 (“the ’586 patent”) entitled “Enterprise Management System and Method which includes a Common Enterprise-Wide Namespace and Prototype-Based Hierarchical Inheritance.” BMC holds all substantial rights, title, and interest to the ’586 patent. A true and correct copy of the ’586 patent is attached as Exhibit A.

¹² <https://www.channele2e.com/2017/02/27/cherwell-raises-50-million-to-counter-servicenow-bmc-in-itsm/>.

31. Serving as the central repository for data characterizing the configuration, provisioning, and health status of the IT resources of an enterprise, the CMDB lies at the core of BMC's and Defendants' ITSM offerings. BMC's CMDB patent for hierarchical dynamic inheritance (the '586 patent) is essential for the automatic updating of IT data in the CMDB as a customer's software and hardware IT infrastructure changes, which happens constantly (e.g., thousands of times per day). Without use of the '586 patent, Defendants' customers would be forced to manually maintain that information—such manual updating would materially impact the timeliness, completeness, and accuracy of the IT data in the CMDB and would be unacceptable to Defendants' customers.

32. In 2015, the validity of the '586 patent was challenged before the USPTO at the United States Patent Trial and Appeal Board ("PTAB") in a petition for Inter Partes review brought by another BMC competitor, and that request was rejected in its entirety by the PTAB.

U.S. Patent No. 8,082,222 – CMDB "Federation"

33. On December 20, 2011, the USPTO duly and legally issued United States Patent No. 8,082,222 ("the '222 patent") entitled "CMDB Federation Method and Management System." BMC holds all substantial rights, title, and interest to the '222 patent. A true and correct copy of the '222 patent is attached as Exhibit B.

34. The '222 patent explains that a CMDB serves as a point of integration between various IT management processes and explains that data from multiple sources often needs to be managed directly or by reference in commercial CMDBs. The '222 patent addresses the need to provide a solution for organizing or federating the data from disparate Management Data Repository ("MDR") sources and/or CMDBs into a single view that appears seamless and integrated to the end user.

U.S. Patent No. 6,168,898 – “Metadata Driven” and “Extensible” Discovery Tools

35. On November 9, 2004, the USPTO duly and legally issued United States Patent No. 6,816,898 (“the ’898 patent”) entitled “Interfacing External Metrics into a Performance Management System.” BMC holds all substantial rights, title, and interest to the ’898 patent. A true and correct copy of the ’898 patent is attached as Exhibit C.

36. BMC’s ’898 patent includes at least two relevant innovations. The first innovation in the ’898 patent is directed to service monitoring tools for collecting data regarding a customer’s IT resources and processes and using metadata to afford these tools flexibility of configuration in order to meet the specific service monitoring needs of an enterprise. Another innovation in the ’898 patent is directed to extensible discovery tools for collecting data about the IT resources of an enterprise through custom data types not provided by the ITSM system and that may be specific to the unique service monitoring needs of an enterprise customer. Defendants’ use of BMC’s ’898 patent technology enhances the flexibility of the enterprise platforms of their customers and allows Defendants to better manage the complexity of their customers’ systems and meet the specific priorities and unique needs of each customer.

37. In 2015, the validity of the ’898 patent was challenged before the USPTO at the PTAB in a petition for Inter Partes review brought by another BMC competitor, and that request was rejected in its entirety by the PTAB.

U.S. Patent No. 7,877,783 – “Mid-Server” Communications

38. On January 25, 2011, the USPTO duly and legally issued United States Patent No. 7,877,783 (“the ’783 patent”) entitled “System and Method for Secure Communications with a Remote Software Program.” BMC holds all substantial rights, title, and interest to the ’783 patent. A true and correct copy of the ’783 patent is attached as Exhibit D.

39. Elements of ITSM systems, such as those in the “cloud,” must be able to communicate with all of the hardware and software IT infrastructure that lies behind a customer’s firewall. BMC’s ’783 patent teaches, among other things, means by which communication between a computer on an enterprise and another computer, for example in the cloud, can be securely and flexibly mediated using the same or similar protocols used in enterprise Web communications, i.e., with no significant changes to the firewall.

U.S. Patent No. 9,239,857 – “Business Service” Level Monitoring and “Impact” Visualization

40. On January 19, 2016, the USPTO duly and legally issued United States Patent No. 9,239,857 (“the ’857 patent”) entitled “System and Method for Building Business Service Model.” BMC holds all substantial rights, title, and interest to the ’857 patent. A true and correct copy of the ’857 patent is attached as Exhibit E.

41. The ’857 patent is directed to providing a mechanism to facilitate modeling of IT resources and business service relationships of a computing system. The modeling system claimed in the ’857 patent includes a database that stores information about the resources of a computer network service, and a server functionally coupled to the database having a graphical user interface application for creating and editing business service models. Using information obtained through searching, the application is used to create a business service model for the computer network service that relates a business service with its underlying IT resources.

U.S. Patent No. 8,832,652 – “Mergeable Apps” Technology

42. On September 9, 2014, the USPTO duly and legally issued United States Patent No. 8,832,652 (“the ’652 patent”) entitled “Method for Customizing Software Applications.” BMC holds all substantial rights, title, and interest to the ’652 patent. A true and correct copy of the ’652 patent is attached as Exhibit F.

43. The '652 patent is directed to various techniques for overlaying objects onto the base objects of an ITSM software application so as to allow customization or modification of that application. The '652 patent teaches techniques for allowing numerous mergeable software applications to be seamlessly and efficiently integrated with an ITSM system using various object overlay technologies. Further, these patented overlay technologies allow a wide range of updates to be installed for the base software applications included with an ITSM platform, while minimizing the risk of service disruptions in implementing upgrades or changes to the base software.

U.S. Patent No. 9,363,252 – Additional “Mergeable Apps” Technology

44. On June 7, 2016, the USPTO duly and legally issued United States Patent No. 9,363,252 (“the '252 patent”) entitled “Method for Customizing Software Applications.” BMC holds all substantial rights, title, and interest to the '252 patent. A true and correct copy of the '252 patent is attached as Exhibit G.

45. The '252 patent, a continuation of the related '652 patent, includes additional BMC technology for overlaying objects of a software application onto base objects of an ITSM system to allow customization or modification of the ITSM system. The '252 patent includes additional technology for allowing numerous mergeable software apps to be seamlessly and efficiently integrated with an ITSM system using various object overlay technologies. Like the '652 patent, the overlay technologies further allow a wide range of updates to be installed for the base software applications included with an ITSM platform, while minimizing the risk of service disruptions in implementing upgrades or changes to the enterprise software.

DEFENDANTS' ACTS OF INFRINGEMENT

46. Defendants are unlawfully using BMC's patented technologies. Indeed, each significant aspect of Defendants' businesses is built around the infringement of BMC's patents, and Defendants' websites tout their offerings of ITSM technologies that are the subject of numerous BMC patents, including (i) CMDB Hierarchical Dynamic Inheritance, (ii) CMDB Federation, (iii) Metadata Driven Discovery Tools, (iv) Extensible Discovery Tools (v) Mid-Server Communications, (vi) Business Service Level Monitoring and Impact Visualization, and (vii) Mergeable Apps.

DEFENDANTS' INFRINGING PRODUCTS¹³

47. Cherwell has infringed, and continues to infringe, directly and indirectly through induced and/or contributory infringement, the asserted patents by making, having made, using, importing into, offering to sell, or selling in the United States, and/or providing installation, operational support, and instructions for one or more of the products identified in this Complaint, including Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope Discovery and Dependency Mapping ("DDM"), FireScope Stratis Enterprise Monitoring ("Stratis"), Cherwell Service Management with DDM, and Cherwell Service Management with Stratis. Further discovery may reveal additional infringing products and/or models.

48. FireScope has infringed, and continues to infringe, directly and indirectly through induced and/or contributory infringement, the asserted patents by making, having made, using, importing into, offering to sell, or selling in the United States and/or providing installation, operational support, and instructions for one or more of the products identified in this Complaint,

¹³ To the extent any accused infringing products have gone through name changes but were used or sold with the same accused features, earlier corresponding products under different names also are accused.

including Cherwell Service Management; Cherwell Service Management with Discovery and Inventory, DDM, Stratis; Cherwell Service Management with DDM; and Cherwell Service Management with Stratis. Further discovery may reveal additional infringing products and/or models.

COUNT 1: INFRINGEMENT OF THE '586 PATENT

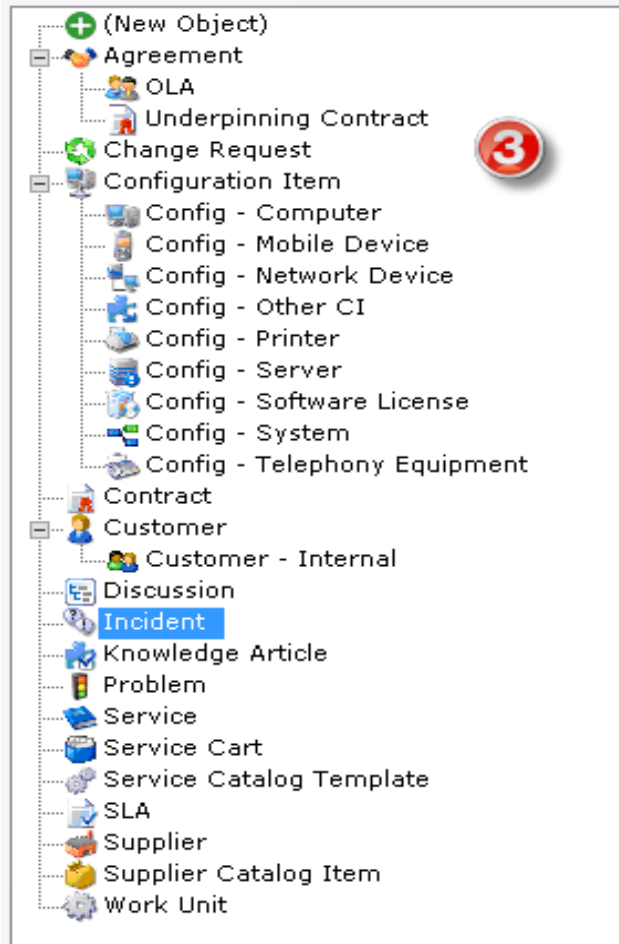
49. Paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

50. On information and belief, Cherwell and FireScope, individually and collectively, have directly infringed and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '586 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the Cherwell Service Management product.

51. For example, Cherwell and FireScope, individually and collectively, have directly infringed one or more claims of the '586 patent by making, using, offering to sell, and/or selling a CMDB with the Cherwell Service Management product, in a manner that infringes the claims of the '586 patent. Cherwell's CMDB infringes one or more claims of the '586 patent, including but not limited to claim 1,¹⁴ by practicing a method for managing an enterprise, wherein the enterprise comprises one or more networked computer systems. Cherwell's CMDB provides a hierarchical namespace in the form of objects that are instances of a defined class hierarchy schema. For example, the Cherwell Object Manager depicts a CMDB schema having parent CI objects, and child objects including "Config—Computer," "Config—Mobile Device," etc.¹⁵

¹⁴ In accordance with this Court's jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. BlackBerry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

¹⁵ https://cherwellsupport.com/WebHelp/en/9.0/content/suite_features/business_objects/object_manager.html.



52. A plurality of these objects is added to Cherwell's CMDB through the Cherwell Service Management product, and these objects relate to software and hardware comprising the IT resources in an enterprise. Cherwell's CMDB objects are furthermore shared with computer systems in the enterprise and elsewhere by way of Cherwell's user interface and other application programming interfaces such as REST (Representational State Transfer) and SOAP (Simple Object Access Protocol). The objects stored in the CMDB also exhibit dynamic inheritance, where changes made to traits in a prototype object are immediately inherited by instance objects.

53. On information and belief, Cherwell and FireScope, individually and collectively, are inducing infringement, and will continue to induce infringement, of one or more claims of

the '586 patent for at least the following reasons. Defendants have had actual notice of the '586 patent no later than the filing of this Complaint. Despite Defendants' actual notice of infringement, Defendants continue to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the Cherwell Service Management product, with the knowledge or willful blindness that their conduct will induce customers to infringe the '586 patent. Defendants engage in many activities that encourage their customers (direct infringers) to infringe the '586 patent, including (i) advertising and promotion efforts for the Cherwell Service Management product;¹⁶ (ii) the publication of demonstrational videos concerning the Cherwell Service Management product;¹⁷ (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the Cherwell Service Management product;¹⁸ (iv) the publication of "white papers" that purport to describe the alleged virtues of the Cherwell Service Management product;¹⁹ (v) the publication of alleged success stories involving customers who have embraced the Cherwell Service Management product;²⁰ (vi) the publication both directly and indirectly through the training site, Beyond20, including through the website <http://www.beyond20.com/>, of tutorial, demonstration, and best practices instructional videos concerning the Cherwell Service Management product;²¹ and (vii) the provision of user forums, blogs, and product documentation.²² Through these

¹⁶ [https://www.cherwell.com/products/it-service-management](https://www.cherwell.com/products/it-service-management;);

<http://www.infoadv.it/Documentazione/Brochures/DiscoveryInventory.pdf>.

¹⁷ See, e.g., https://www.youtube.com/watch?v=-n_eI98HsIY ("Cherwell & Discovery Dependency Mapping"); <https://www.cherwell.com/products/it-service-management>.

¹⁸ See, e.g., <https://community.firescope.com/documentation/w/documentation/>; <https://cherwellsupport.com>; <http://www.firescope.com/Resources>.

¹⁹ See, e.g., <https://www.cherwell.com/uk/resources/ebooks-and-white-papers>; <http://www.firescope.com/Resources>.

²⁰ See, e.g., <https://www.cherwell.com/resources/customer-success>; <http://www.firescope.com/Resources/>.

²¹ See, e.g., <https://www.youtube.com/watch?v=iWbLa3UAjI4&t=199s> ("New Cherwell mApp by Beyond20: Email Monitoring Log"); https://www.youtube.com/watch?v=-n_eI98HsIY ("Cherwell & FireScope Discovery and Dependency Mapping").

²² See, e.g., <https://www.cherwell.com/community/>; <https://community.firescope.com/>; See <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>; see also <https://www.cherwell.com/community/c/e/97>.

activities, Cherwell specifically intends that its customers directly infringe the '586 patent.

54. On information and belief, Defendants Cherwell and FireScope, individually and collectively, are contributorily infringing, and will continue to contributorily infringe, one or more claims of the '586 patent for at least the following reasons. Defendants have had actual notice of the '586 patent no later than the filing of this Complaint. Defendants provide to their customers (direct infringers) components, such as the Cherwell Service Management product, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the Cherwell or FireScope platform and related products used by Defendants' customers. These infringing components are a material part of the Cherwell or FireScope platform and related products, which would not function properly without them.

55. Defendants derive revenue from selling such infringing products.

COUNT 2: INFRINGEMENT OF THE '222 PATENT

56. Paragraphs 1 through 55 are incorporated by reference as if fully set forth herein.

57. On information and belief, Cherwell and FireScope, individually and collectively, directly infringe and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '222 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the Cherwell Service Management product.

58. For example, Cherwell and FireScope, individually and collectively, have directly infringed one or more claims of the '222 patent, including but not limited to claim 1,²³ by making, using, offering to sell, and/or selling the Cherwell Service Management product, in a

²³ In accordance with this Court's jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

manner that infringes the claims of the '222 patent. The Cherwell Service Management product consists of a computer processor programmed to perform a data federation method for a CMDB.

59. The Cherwell Service Management product receives information from a CMDB client where the information comprises a selection of a federated data class. The Cherwell Service Management product provides a client known as Cherwell Service Management (“CSM”) Administrator, among other clients, that is used in conjunction with Cherwell’s CMDB. The CSM Administrator client provides the selection of a federated data class to the Cherwell Service Management product. For example, when creating an external business object to link external data, the user selects a federated data class by identifying an external connection to connect to an external database and selecting a particular table or view to link to in Cherwell’s CMDB using the External Data Wizard:²⁴

Managing External Connections

Before CSM can share data with an External Database, create an External Connection to the External Database. An External Connection is a named connection between CSM and an External Database that passes the External Database's location and access information to CSM. The connection defines the:

- Data Source
- Provider
- Location of the database server
- Name/location of the database
- Login options (credentials)
- Owner/schema
- Pooling options

To help manage (create, edit, and delete) External Connections, CSM provides the External Connection Manager and the External Connection Wizard.

Note: The connection is made from the Cherwell Application Server to the External Database. The connection should be configured to work from that location and, if applicable, use the account of the Cherwell Application Server.

60. In addition, the Cherwell Service Management product’s External Connection Wizard is used to create connections to external data sources. The Cherwell Service Management product receives information from a CMDB client; that information comprises

²⁴ See, e.g., https://cherwellsupport.com/WebHelp/en/9.0/content/system_administration/database_tools/managing_external_connections.html.

interface connection information, wherein the interface connection information also comprises a selection of one or more join conditions. For example, when creating an External Business Object, the Cherwell Service Management product receives information regarding join conditions that include a selection of fields that are one or more join conditions. Those fields are used to relate the federated data class to a business object class in the Cherwell Service Management product's CMDB via, for example, mapping. Likewise, when an External Business Object is created in the Cherwell Service Management product, the user can define how the Management Data Repository (MDR) can be queried.

61. On information and belief, Cherwell and FireScope, individually and collectively, are inducing infringement, and will continue to induce infringement, of the '222 patent for at least the following reasons. Defendants have had actual notice of the '222 patent at least as of the filing of this Complaint. Despite Defendants' actual notice of infringement, Defendants continue to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the Cherwell Service Management product, with the knowledge or willful blindness that its conduct will induce customers to infringe the '222 patent. Defendants engage in many activities that encourage its customers to infringe the '222 patent, including (i) advertising and promotion efforts for the Cherwell Service Management product;²⁵ (ii) the publication of demonstrational videos concerning the Cherwell Service Management product;²⁶ (iii) the publication of data sheets that purport to describe alleged

²⁵ See, e.g., https://cherwellsupport.com/WebHelp/en/9.0/content/system_administration/database_tools/managing_external_connections.html.

²⁶ See, e.g., https://www.youtube.com/watch?v=-n_eI98HslY ("Cherwell & Discovery Dependency Mapping"); <https://www.youtube.com/watch?v=8-PW2m9P7ro> ("Cherwell Asset Intelligence:"); https://www.youtube.com/watch?v=5I_9NoFemo4 ("FireScope IT and Business Data Blending").

benefits customers will derive from embracing the Cherwell Service Management product;²⁷ (iv) the publication of “white papers” that purport to describe the alleged virtues of the Cherwell Service Management product;²⁸ (v) the publication of alleged success stories involving customers who have embraced the Cherwell Service Management product;²⁹ (vi) the publication both directly and indirectly through Beyond20, including through the website <http://www.beyond20.com/>, of tutorial, demonstration, and best practices instructional videos concerning Cherwell Service Management product;³⁰ and (vii) the provision of user forums, blogs, and product documentation.³¹ Through these activities, Cherwell specifically intends that its customers directly infringe the ’222 patent.

62. On information and belief, Cherwell and FireScope, individually and collectively, are contributorily infringing, and will continue to contributorily infringe, the ’222 patent for at least the following reasons. Defendants have had actual notice of the ’222 patent no later than the filing of this Complaint. Cherwell provides to its customers (direct infringers) components, such as the Cherwell Service Management product, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the Cherwell or FireScope platforms and related products used by customers. These infringing components are a material part of the Cherwell or FireScope platforms and related products, which would not function properly without them.

²⁷ See, e.g., <https://community.firescope.com/documentation/w/documentation/>; <https://cherwellsupport.com/http://www.firescope.com/Resources/>.

²⁸ See, e.g., <https://www.cherwell.com/uk/resources/ebooks-and-white-papers/http://www.firescope.com/Resources/>.

²⁹ See, e.g., <https://www.cherwell.com/resources/customer-success>; <http://www.firescope.com/Resources/>.

³⁰ See, e.g., <https://www.youtube.com/watch?v=iWbLa3UAjI4&t=199s> (“New Cherwell mApp by Beyond20: Email Monitoring Log”); https://www.youtube.com/watch?v=-n_eI98HsIY (“Cherwell & FireScope Discovery and Dependency Mapping”).

³¹ See, e.g., <https://www.cherwell.com/community/>; <https://community.firescope.com/>; See <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>; see also <https://www.cherwell.com/community/c/e/97>.

63. Defendants derive revenue from selling its infringing products.

COUNT 3: INFRINGEMENT OF THE '898 PATENT

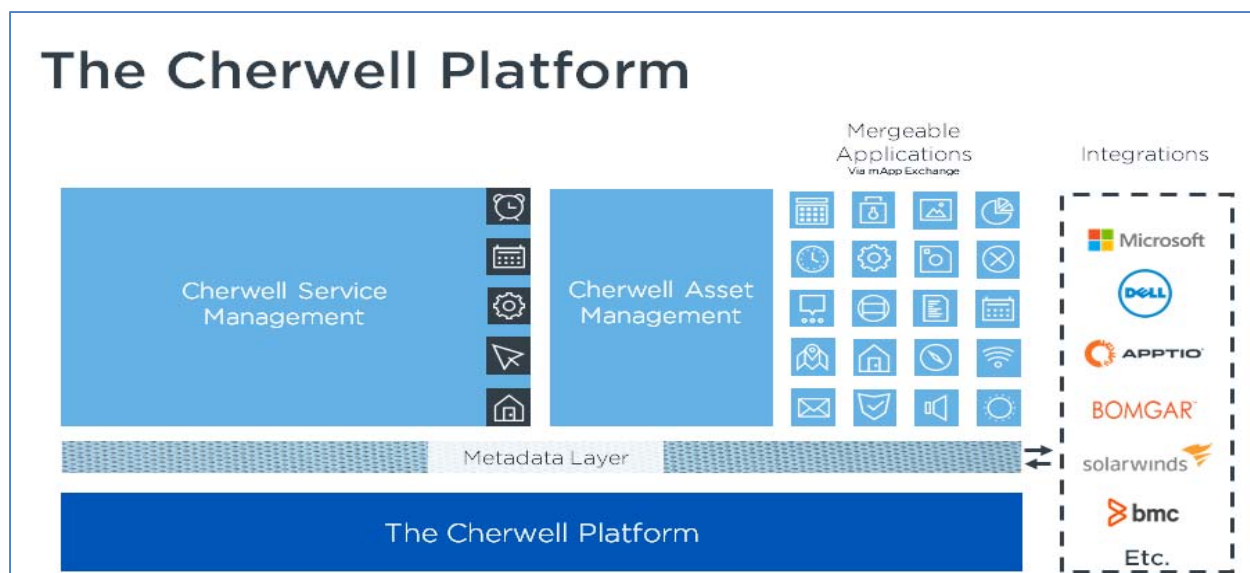
64. Paragraphs 1 through 63 are incorporated by reference as if fully set forth herein.

65. On information and belief, Cherwell and FireScope, individually and collectively, directly infringe and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '898 patent by making, using, offering to sell, selling, importing, and/or providing installation, operational support, and instructions for infringing products, including the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products.

66. For example, Cherwell and FireScope, individually and collectively, have directly infringed one or more claims of the '898 patent by making, using, offering to sell, selling and/or importing the Cherwell Service Management with Discovery and Inventory product, in a manner that infringes the claims of the '898 patent. For example, the product infringes one or more claims of the '898 patent, including but not limited to claim 1,³² through its metadata driven architecture for collecting and processing performance management data about the IT resources of an enterprise in a Cherwell database and allowing visualizations to be displayed regarding those IT resources based on the data. As described in Cherwell documentation, "Cherwell products are meta-data driven designed, which is one of the most powerful tools at the disposal of IT professionals . . . Cherwell customers are afforded extreme flexibility of configuration and customization."³³ The Cherwell "Metadata layer" is shown in the below figure.

³² In accordance with this Court's jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

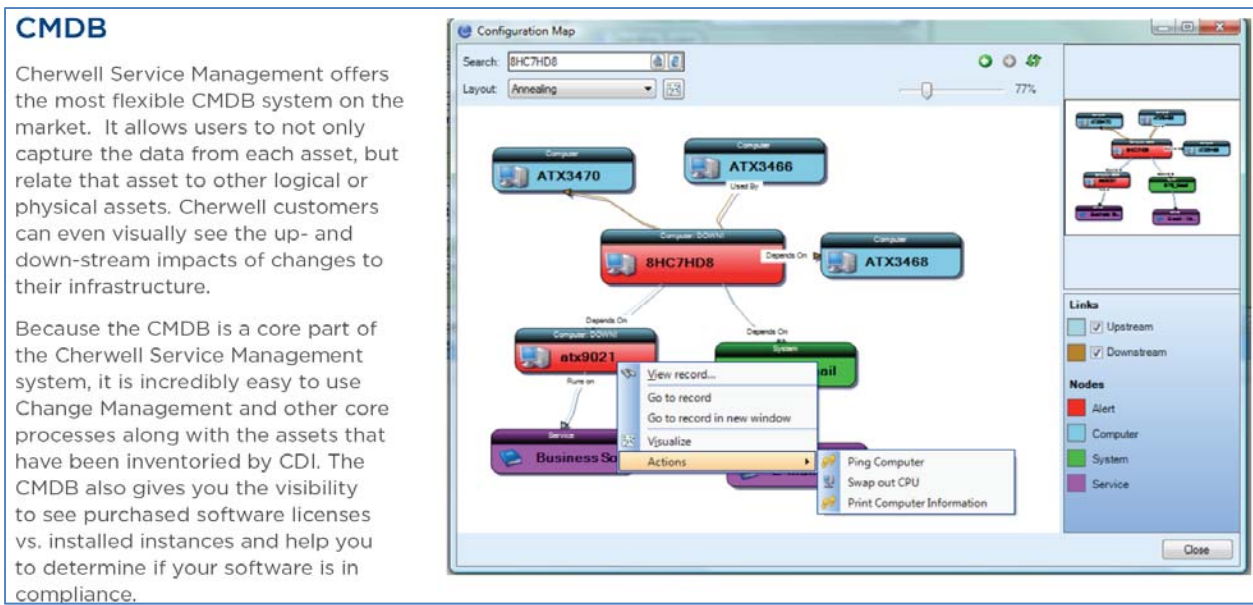
³³ https://it.uoregon.edu/system/files/Cherwell_Integration_Security.pptx.



67. Performance management data may be collected, for example, in an enterprise and communicated to a Cherwell server in the cloud.³⁴ The data has accompanying metadata, which define the data and indicate operations to be performed, including but not limited to appropriately processing the data for a Cherwell database or other operations on the collected data. Further, the product generates output data for display. The product provides an interface for viewing output data for display using the collected data, which allows, for example, a user to visually see how IT resources in the enterprise are performing, including visually seeing the upstream and downstream impacts of changes to their infrastructure as shown in the exemplary figure below:³⁵

³⁴ See, e.g., <http://www.infoadv.it/Documentazione/Brochures/DiscoveryInventory.pdf>.

³⁵ <http://www.infoadv.it/Documentazione/Brochures/DiscoveryInventory.pdf>.



68. In addition, Cherwell and FireScope, individually and collectively, have directly infringed one or more claims of the '898 patent by making, using, offering to sell, selling and/or importing the Cherwell Service Management product in a manner that infringes the claims of the '898 patent. For example, that product infringes one or more claims of the '898 patent, including but not limited to claim 1,³⁶ based on the same or similar functionality discussed above with respect to Cherwell Service Management with Discovery and Inventory product. Cherwell Service Management is “metadata driven,” as described above. Further, the Cherwell Service Management product collects performance management data from a variety of sources, including from FireScope, other Cherwell products, and other sources. The data has accompanying metadata, which define the data and indicate operations to be performed, including but not limited to appropriately processing the data for a Cherwell database or other operations on the collected data. Further, Cherwell Service Management generates output data for display.

³⁶ In accordance with this Court’s jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

Cherwell Service Management allows visualizations based on the data as shown, for example, in the preceding paragraph.

69. In addition, Cherwell and FireScope, individually and collectively, have directly infringed one or more claims of the '898 patent by making, using, offering to sell, selling, and/or importing the FireScope DDM and Stratis products, in a manner that infringes the claims of the '898 patent. For example, these products infringe one or more claims of the '898 patent, including but not limited to claim 6,³⁷ by facilitating service management over a plurality of components such as IT resources within an enterprise, including servers, network equipment, *etc.*, through the collection of different types of data associated with the IT resources in the manner claimed in the '898 patent. These products employ a method for providing an interface between a user and a performance management system connected to a network. The Firescope DDM and Stratis products receive a script-based program from the user, which can be integrated into the system as a “service monitor” to periodically collect data types not provided “out of the box” with the ITSM system. FireScope, by way of example, markets its products as “capable of being extended to collect your own custom metrics” using a script-based program received from a user.³⁸ On information and belief, the same or similar functionality discussed above is present in both the FireScope DDM and FireScope Stratis products.³⁹

70. On information and belief, Cherwell and FireScope, individually and collectively, induce infringement, and will continue to induce infringement, of one or more claims of the '898

³⁷ In accordance with this Court’s jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

³⁸ *See, e.g.*, <https://community.firescope.com/documentation/w/documentation/491.agent-extension>; <https://community.firescope.com/documentation/w/documentation/676.agent-extension>.

³⁹ *See generally* <https://www.cherwell.com/company/newsroom/press-releases/2016/06/cherwell-software-and-firescope-announce-discovery-and-dependency-mapping-solution>; <https://www.cherwell.com/products/it-service-management>.

patent for at least the following reasons. Defendants have had actual notice of the '898 patent no later than the filing of this Complaint. Despite actual notice of infringement, Defendants continue to make, use, sell, offer to sell, import, and provide installation, operational support, and instructions for infringing products, including the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products, with the knowledge or willful blindness that their conduct will induce customers to infringe the '898 patent. Defendants engage in many activities that encourage their customers (direct infringers) to infringe the '898 patent, including (i) advertising and promotion efforts for the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁴⁰ (ii) the publication of demonstrational videos concerning the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁴¹ (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁴² (iv) the publication of “white papers” that purport to describe the alleged virtues of the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM,

⁴⁰ See, e.g., https://it.uoregon.edu/system/files/Cherwell_Integration_Security.pptx; <http://www.infoadv.it/Documentazione/Brochures/DiscoveryInventory.pdf>; <https://community.firescope.com/documentation/w/documentation/491.agent-extension>; <https://community.firescope.com/documentation/w/documentation/676.agent-extension>.

⁴¹ See, e.g., https://www.youtube.com/watch?v=-n_eI98HsIY (“Cherwell & Discovery Dependency Mapping”); <https://www.youtube.com/watch?v=8-PW2m9P7ro> (“Cherwell Asset Intelligence.”); https://www.youtube.com/watch?v=5I_9NoFemo4 (“FireScope IT and Business Data Blending”); <https://www.cherwell.com/products/it-service-management>.

⁴² See, e.g., <https://community.firescope.com/documentation/w/documentation/>; <https://cherwellsupport.com>; <http://www.firescope.com/Resources/>.

and FireScope Stratis products;⁴³ (v) the publication of alleged success stories involving customers who have embraced the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁴⁴ (vi) the publication both directly and indirectly through Beyond20, including through the website <http://www.beyond20.com/>, of tutorial, demonstration, and best practices instructional videos concerning the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁴⁵ and (vii) the provision of user forums, blogs, and product documentation.⁴⁶ Through these activities, Defendants specifically intend that customers directly infringe the '898 patent.

71. On information and belief, Cherwell and FireScope, individually and collectively, contributorily infringe and will continue to contributorily infringe one or more claims of the '898 patent for at least the following reasons. Defendants have had actual notice of the '898 patent no later than the filing of this Complaint. Defendants provide to their customers (direct infringers) components, such as the Cherwell Service Management, Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the Cherwell or FireScope platform and related products used by customers. These infringing components are a material part of the Cherwell or FireScope platform and related products, which would not function properly without them.

⁴³ See, e.g., <https://www.cherwell.com/uk/resources/ebooks-and-white-papers/>; <http://www.firescope.com/Resources/>.

⁴⁴ See, e.g., <https://www.cherwell.com/resources/customer-success>; <http://www.firescope.com/Resources/>;

⁴⁵ See, e.g., <https://www.youtube.com/watch?v=iWbLa3UAjI4&t=199s> ("New Cherwell mApp by Beyond20: Email Monitoring Log"); https://www.youtube.com/watch?v=-n_eI98HsIY ("Cherwell & FireScope Discovery and Dependency Mapping").

⁴⁶ See, e.g., <https://www.cherwell.com/community/>; <https://community.firescope.com/>; See <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>; see also <https://www.cherwell.com/community/c/e/97>.

72. Defendants derive revenue from selling such infringing products.

COUNT 4: INFRINGEMENT OF THE '783 PATENT

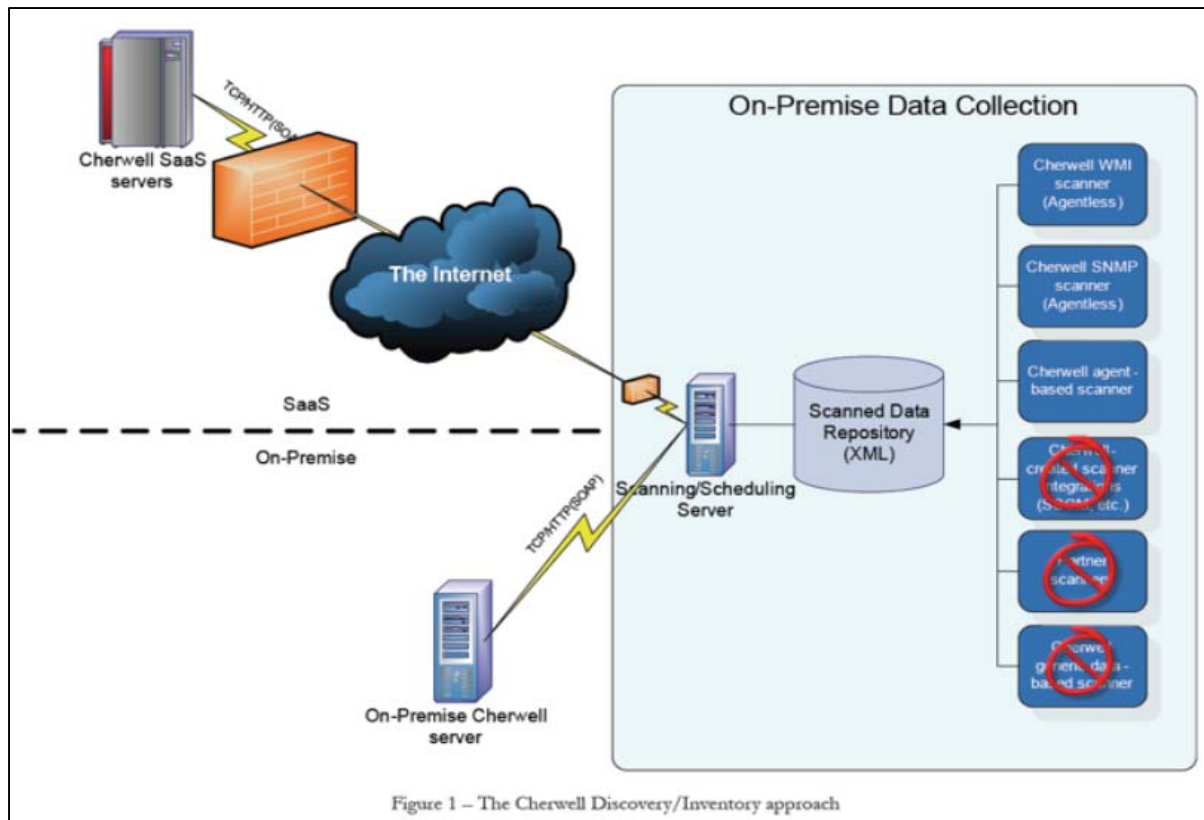
73. Paragraphs 1 through 72 are incorporated by reference as if fully set forth herein.

74. On information and belief, Cherwell and FireScope, individually and collectively, have directly infringed and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '783 patent by making, using, offering to sell, selling, importing, and/or providing installation, operational support, and/or instructions for infringing products, including the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products.

75. Cherwell and Firescope, individually and collectively, have directly infringed one or more claims of the '783 patent by making, using, offering to sell, selling, and/or importing instances of the Cherwell Service Management with Discovery and Inventory product, in a manner that infringes the claims of the '783 patent. As examples, this product infringes one or more claims of the '783 patent, including but not limited to claim 1,⁴⁷ because data that may be collected inside an enterprise is communicated from a "Scanning/Scheduling Server" or other computer inside the enterprise to a "Cherwell SaaS server" or other portal computer according to a one-way protocol such as HTTP or HTTPS as shown in the Cherwell Figure below:⁴⁸

⁴⁷ In accordance with this Court's jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

⁴⁸ *See* <http://www.infoadv.it/Documentazione/Brochures/DiscoveryInventory.pdf>.

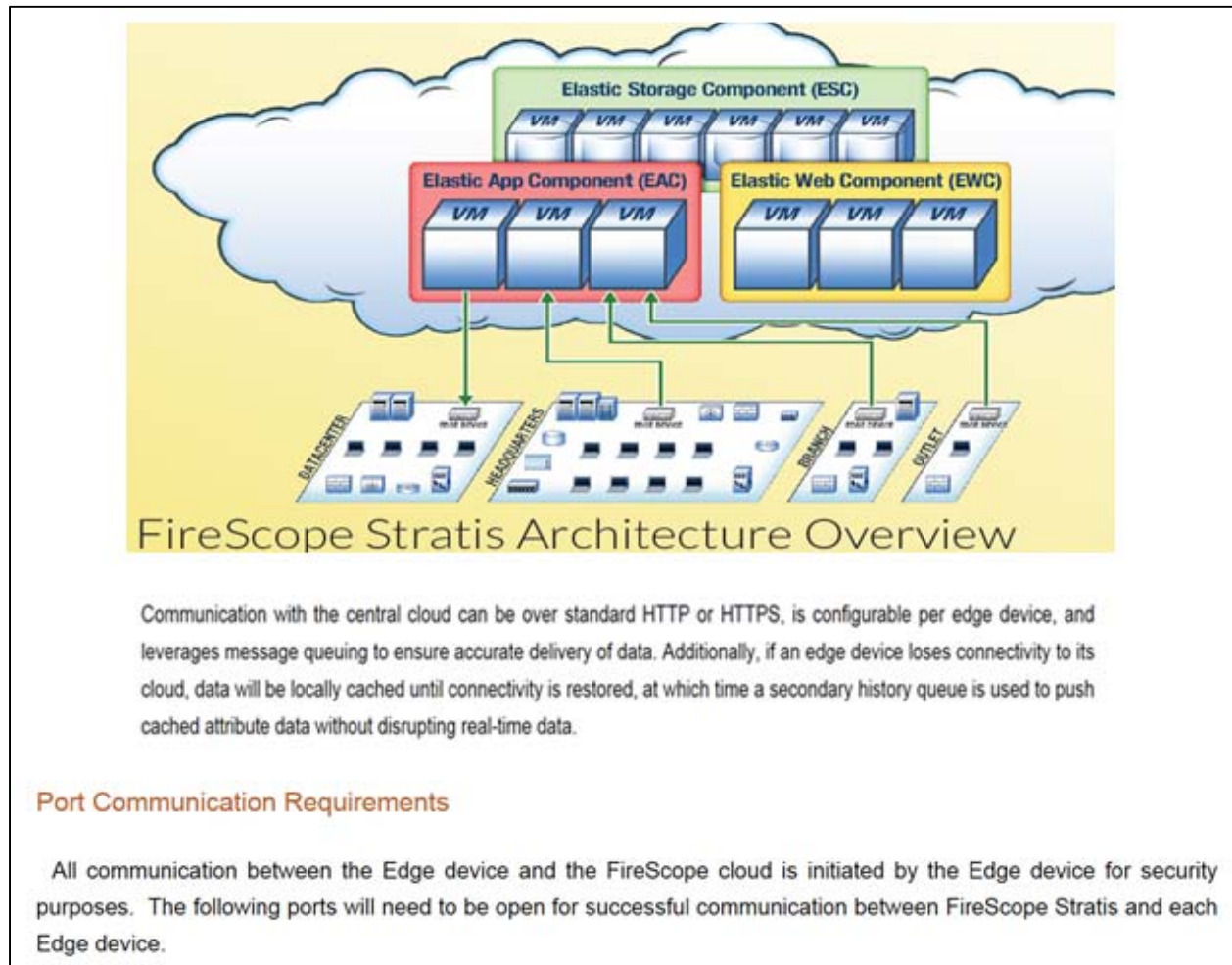


76. Further, the “Cherwell SaaS server” or other portal computer further responds to the “Scanning/Scheduling Server” or other computer inside the enterprise with configuration control data, as claimed in the ’783 patent, which is used to configure software executing at the computer inside the enterprise firewall, and closes the connection.

77. Cherwell and FireScope, individually and collectively, have directly infringed one or more claims of the ’783 patent by making, using, offering to sell, selling, and/or importing instances of the FireScope DDM and FireScope Stratis products, in a manner that infringes the claims of the ’783 patent. As examples, these products infringe one or more claims of the ’783 patent, including but not limited to claim 1,⁴⁹ because FireScope collects data using these products inside an enterprise and communicates the data from a computer (such as an Edge

⁴⁹ In accordance with this Court’s jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

device) inside the enterprise to an Elastic Application Component (EAC) or other portal computer according to a one-way protocol as claimed in the '783 patent (such as HTTP or HTTPS) as shown in FireScope's documentation:⁵⁰



78. The EAC or other portal computer further responds with configuration control data, as claimed in the '783 patent, which is used to configure software executing at the computer inside the firewall of the enterprise, and closes the connection. On information and belief, the same or similar functionality discussed above is present in both the FireScope DDM

⁵⁰ <http://www.firescope.com/resources/FireScope%20IT%20Operations.pdf>;
<https://community.firescope.com/documentation/w/documentation/638.edge-device>;
<https://community.firescope.com/documentation/w/documentation/372.system-requirements>.

and FireScope Stratis products.⁵¹

79. On information and belief, Cherwell and FireScope, individually and collectively, are inducing infringement and will continue to induce infringement of one or more claims of the '783 patent for at least the following reasons. Defendants have had actual notice of the '783 patent at least as of the filing of this Complaint. Despite Defendants' actual notice of infringement, Defendants continue to make, use, sell, offer to sell, import, and/or provide installation, operational support, and instructions for infringing products, including the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products, with the knowledge or willful blindness that their conduct will induce customers to infringe the '783 patent. Defendants engage in many activities that encourage their customers (direct infringers) to infringe the '783 patent, including (i) advertising and promotion efforts for the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁵² (ii) the publication of demonstrational videos concerning the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁵³ (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁵⁴ (iv) the publication of "white papers" that purport to describe the alleged virtues of the Cherwell Service Management with

⁵¹ See generally <https://www.cherwell.com/company/newsroom/press-releases/2016/06/cherwell-software-and-firescope-announce-discovery-and-dependency-mapping-solution>; <https://www.cherwell.com/products/it-service-management>.

⁵² See, e.g., https://it.uoregon.edu/system/files/Cherwell_Integration_Security.pptx; <http://www.infoadv.it/Documentazione/Brochures/DiscoveryInventory.pdf>; <http://www.firescope.com/resources/FireScope%20IT%20Operations.pdf>; <https://community.firescope.com/documentation/w/documentation/638.edge-device>; <https://community.firescope.com/documentation/w/documentation/372.system-requirements>.

⁵³ See, e.g., https://www.youtube.com/watch?v=-n_eI98HsIY ("Cherwell & Discovery Dependency Mapping"); <https://www.youtube.com/watch?v=8-PW2m9P7ro> ("Cherwell Asset Intelligence"); https://www.youtube.com/watch?v=5I_9NoFemo4 ("FireScope IT and Business Data Blending").

⁵⁴ See, e.g., <https://community.firescope.com/documentation/w/documentation/>; <https://cherwellsupport.com>; <http://www.firescope.com/Resources/>.

Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁵⁵ (v) the publication of alleged success stories involving customers who have embraced the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁵⁶ (vi) the publication both directly and indirectly through Beyond20, including through the website <http://www.beyond20.com/>, of tutorial, demonstration, and best practices instructional videos concerning the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁵⁷ and (vii) the provision of user forums, blogs, and product documentation.⁵⁸ Through at least these activities, Defendants specifically intend that their customers directly infringe the '783 patent.

80. On information and belief, Cherwell and FireScope, individually and collectively, are contributorily infringing and will continue to contributorily infringe one or more claims of the '783 patent for at least the following reasons. Defendants have had actual notice of the '783 patent no later than the filing of this Complaint. Defendants provide to their customers (direct infringers) components, such as the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of Cherwell or FireScope platform and related products used by Defendants' customers. These infringing components are a material part of the Cherwell or FireScope platform and related products, which would not function properly without them.

⁵⁵ See, e.g., <https://www.cherwell.com/uk/resources/ebooks-and-white-papers/>; <http://www.firescope.com/Resources/>.

⁵⁶ See, e.g., <https://www.cherwell.com/resources/customer-success>; <http://www.firescope.com/Resources/>.

⁵⁷ See, e.g., <https://www.youtube.com/watch?v=iWbLa3UAjI4&t=199s> ("New Cherwell mApp by Beyond20: Email Monitoring Log"); https://www.youtube.com/watch?v=-n_eI98HsIY ("Cherwell & FireScope Discovery and Dependency Mapping").

⁵⁸ See, e.g., <https://www.cherwell.com/community/>; <https://community.firescope.com/>; See <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>; see also <https://www.cherwell.com/community/c/e/97>.

81. Defendants derive revenue from selling such infringing products.

COUNT 5: INFRINGEMENT OF THE '857 PATENT

82. Paragraphs 1 through 81 are incorporated by reference as if fully set forth herein.

83. On information and belief, Cherwell and Firescope, individually and collectively, directly infringe and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '857 patent by making, using, offering to sell, selling, and/or providing installation, operational support, and instructions for infringing products, including the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products.

84. For example, Cherwell and Firescope, individually and collectively, directly infringe one or more claims of the '857 patent, including but not limited to claim 1.⁵⁹ The Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products discover, reconcile, and store information (such as assets on a network) in the Cherwell CMDB, as the exemplary illustration describes below:⁶⁰

⁵⁹ In accordance with this Court's jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

⁶⁰ *See, e.g.,* https://cherwellsupport.com/WebHelp/en/8.2/content/mapps_and_integrations/csm_intergrations/about_cherwell_discovery_and_inventory.html.

About Cherwell Discovery and Inventory

Cherwell Discovery and Inventory™ (CDI), formerly called Cherwell Asset Intelligence (CAI), is an add-on to Cherwell Service Management (CSM) that allows for agent-less scanning of IP-based assets on your network, with the overall goal of populating your Configuration Management Database (CMDB), and keeping it up to date. There are two distinct processes that comprise a CDI asset scan: Discovery and Inventory.

Note: Currently, CSM inventories Windows and Macintosh computers, installed software, routers, printers, and switches. CDI does not inventory network drives, Linux systems, etc.

Discovery and Inventory are executed by the Cherwell Configuration Scheduling Service, which is a Windows service generally installed when the Cherwell Application Server is installed. The Configuration Scheduling Service passes data to the Cherwell Application Server (like any other client), where data is stored for the database. The operation in progress determines which data goes where in the database.

Note: Install multiple instances of the Configuration Scheduling Service, which might be necessary if the server does not have access to the network to be scanned (ex: If running in a SaaS environment and the hosted server cannot talk to the network). Additional scanners might be needed to work around VPN issues because VPNs often block ports required for scanning.

85. In addition, the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products provide service model editors that accept queries from users and show impact relationships between, for example, assets on a network, as described below:⁶¹

About Visualizations

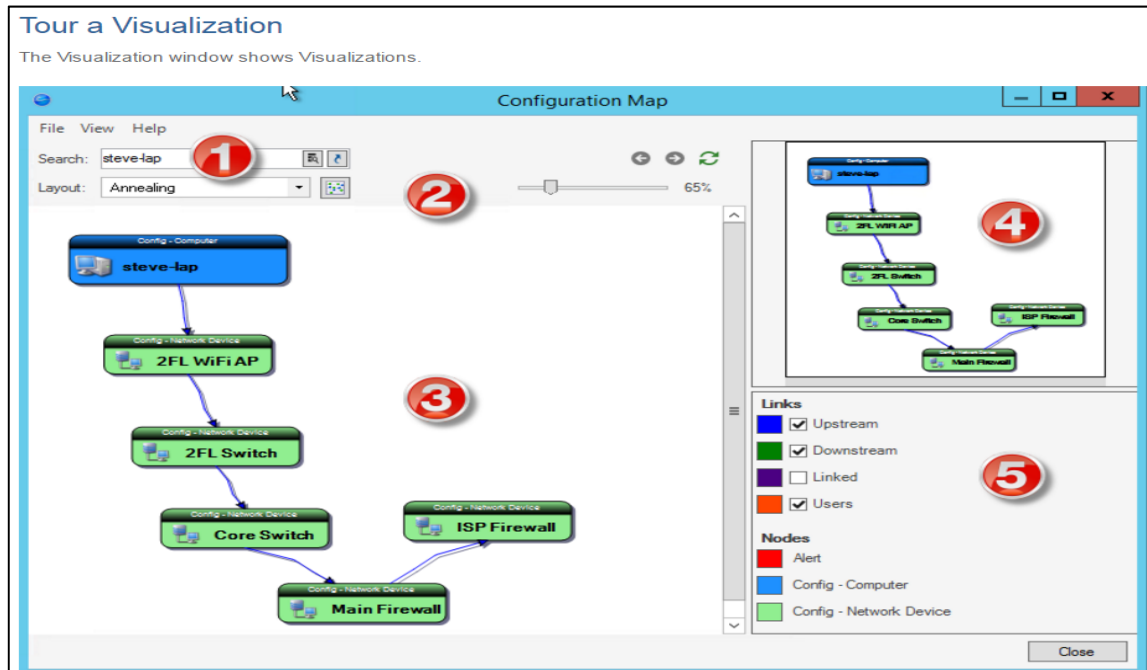
A Visualization is an interactive graphical representation of related data, represented as a relationship chain with colored nodes (boxes) and links (arrows). Defined alerts can also be added to indicate potential risk. Use Visualizations to graphically view any type of Relationship in CSM, including:

- Relationships between Configuration Items (CIs) to assess potential risks for an Incident or Change.
- Relationships between personnel (ex: Executive, manager, technician).
- Relationships between Service Level Agreements (SLAs), Operational Level Agreements (OLAs), Configuration Items, Underpinning Contracts, and Services.

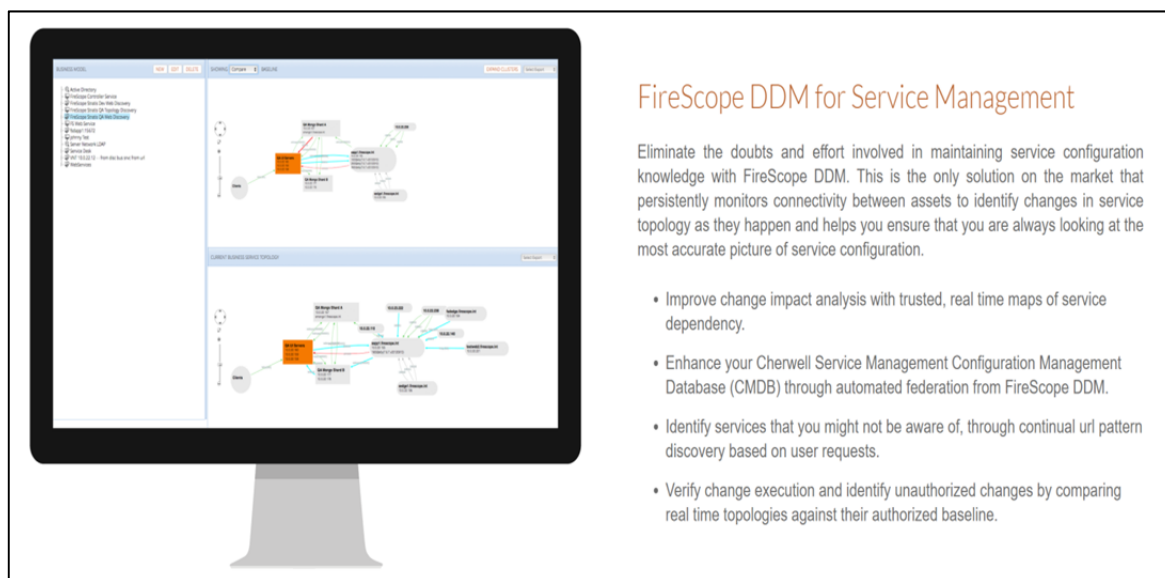
The following example Visualization is a Configuration Map that shows a Task's relational data:

⁶¹ See, e.g., https://cherwellsupport.com/WebHelp/en/8.3/content/suite_features/visualizations/about_visualizations.html.

86. The following provides an aspect of the Cherwell Service Management product that shows a service model as recited in claim 1 of the '857 patent:⁶²



87. As yet another example, Firescope DDM and Firescope Stratis provide a service model as recited in claim 1 of the '857 patent:⁶³



⁶² See, e.g., https://cherwellsupport.com/WebHelp/en/8.3/content/suite_features/visualizations/tour_a_visualization.html.

⁶³ See, e.g., <http://www.firescope.com/Products/DDM/>; <http://www.firescope.com/Products/Stratis/>.

The Easiest Path to Transforming IT from Cost Center to Key Business Partner



1. SaaS-based delivery eliminates long, complex installation projects and enables you to start realizing value on day-one.
2. Automatically discover your critical IT services and their dependencies.
3. Synchronize changes with your CMDB to ensure all of IT is on the same, up-to-date page.
4. Automatically apply best practice monitoring across the service stack.
5. Leverage user experience monitoring and business metrics to identify which infrastructure events or service degradations are impacting your users or the business.
6. Generate incidents in best of breed ITSM solutions automatically as critical events occur, populated with extensive details and metrics to improve first-time remediation efforts.
7. Communicate the value IT delivers to the business through real time business value dashboards.

88. Cherwell and FireScope allow for the impact relationships as discussed above to be managed by a user, and Cherwell and FireScope update information in the CMDB to reflect impact relationships, as recited in claim 1 of the '857 patent.

89. On information and belief, Cherwell and FireScope, individually and collectively, induce infringement and will continue to induce infringement of the '857 patent for at least the following reasons. Defendants have had actual notice of the '857 patent at least as of the filing of this Complaint. Despite Defendants' actual notice of infringement, Cherwell and FireScope, individually and collectively, continue to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products, with the knowledge or willful blindness that their conduct will induce customers to infringe the '857 patent. Defendants engage in many activities that encourage its customers to infringe the '857 patent,

including (i) advertising and promotion efforts for the Cherwell Service Management with Discovery and Inventory, FireScope DDM, and FireScope Stratis products;⁶⁴ (ii) the publication of demonstrational videos concerning the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products;⁶⁵ (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products;⁶⁶ (iv) the publication of “white papers” that purport to describe the alleged virtues of the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products;⁶⁷ (v) the publication of alleged success stories involving customers who have embraced the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products;⁶⁸ (vi) the publication both directly and indirectly through Beyond20, including through the website <http://www.beyond20.com/>, of tutorial, demonstration, and best practices instructional videos concerning the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis

⁶⁴ See, e.g., <http://www.firescope.com/Products/DDM/>; https://cherwellsupport.com/WebHelp/en/8.3/content/suite_features/visualizations/about_visualizations.html; https://cherwellsupport.com/WebHelp/en/8.3/content/suite_features/visualizations/tour_a_visualization.html.

⁶⁵ See, e.g., https://www.youtube.com/watch?v=-n_eI98HslY (“Cherwell & Discovery Dependency Mapping”); <https://www.youtube.com/watch?v=8-PW2m9P7ro> (“Cherwell Asset Intelligence”).

⁶⁶ See, e.g., <https://community.firescope.com/documentation/w/documentation/>; <https://cherwellsupport.com>; <http://www.firescope.com/Resources/>.

⁶⁷ See, e.g., <https://www.cherwell.com/uk/resources/ebooks-and-white-papers/>; <http://www.firescope.com/Resources/>.

⁶⁸ See, e.g., <https://www.cherwell.com/resources/customer-success>; <http://www.firescope.com/Resources/>.

products;⁶⁹ and (vii) the provision of user forums, blogs, and product documentation.⁷⁰ Through these activities, Cherwell and FireScope specifically intend that their customers directly infringe the '857 patent.

90. On information and belief, Cherwell and FireScope, individually and collectively, contributorily infringe, and will continue to contributorily infringe, the '857 patent for at least the following reasons. Defendants have had actual notice of the '857 patent no later than the filing of this Complaint. Cherwell and FireScope provide to their customers (direct infringers) components, such as the Cherwell Service Management with Discovery and Inventory, Cherwell Service Management with FireScope DDM, and Cherwell Service Management with FireScope Stratis products, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of Cherwell or FireScope platform and related products used by customers. These infringing components are a material part of the Cherwell or FireScope platform and related products, which would not function properly without them.

91. Defendants derive revenue from selling such infringing products.

COUNT 6: INFRINGEMENT OF THE '652 PATENT

92. Paragraphs 1 through 91 are incorporated by reference as if fully set forth herein.

93. On information and belief, Cherwell and FireScope, individually and collectively, directly infringe and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '652 patent by making, using, offering to

⁶⁹ See, e.g., <https://www.youtube.com/watch?v=iWbLa3UAjI4&t=199s> ("New Cherwell mApp by Beyond20: Email Monitoring Log"); https://www.youtube.com/watch?v=-n_eI98HsIY ("Cherwell & FireScope Discovery and Dependency Mapping").

⁷⁰ See, e.g., <https://www.cherwell.com/community/>; <https://community.firescope.com/>; See <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>; see also <https://www.cherwell.com/community/c/e/97>.

sell, selling, importing and/or providing installation, operational support, and instructions for infringing products, including the Cherwell Service Management product.

94. For example, Cherwell and FireScope have directly infringed one or more claims of the '652 patent by making, using, offering to sell, selling and/or importing the Cherwell Service Management product, in a manner that infringes the claims of the '652 patent. For example, the Cherwell Service Management product infringes one or more claims of the '652 patent, including but not limited to claim 16.⁷¹ Cherwell includes a processor and a datastore, coupled to the processor, comprising a plurality of software application base objects and a plurality of software application overlaid objects. The datastore also stores a software application comprising a software application base object and a runtime environment. An overlaid object may come from, for example, a mergeable application ("mApp") or other software modification, and each overlaid object is configured to change a construct definition of a corresponding base object. For example, certain definitions can be added through merge or overwrite actions associated with mApps, as described in the exemplary documentation below.⁷²

⁷¹ In accordance with this Court's jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. BlackBerry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

⁷² *See, e.g.,* <https://www.cherwell.com/community/m/mapp-exchange-documents/50/download>; <https://cherwellsupport.com/webhelp/en/8.0/17394.htm>.

What is a mApp?

mApp™ solutions are “mergeable applications.” A mApp solution contains definitions and data that can be merged into an existing Cherwell Service Management installation to add functionality, based on various instructions included in the mApp solution. When the administrator of the target system applies a mApp, he or she chooses how to apply the mApp, either accepting or overriding the defaults of the mApp.

Configure Merge Actions for Business Object Definitions

Merge actions determine how the system definitions in a mApp are merged into a target system when a mApp is applied. Use the [Add Business Object to mApp Wizard](#) as a convenient method of defining merge actions for Business Objects and their associated Fields, Relationships, Forms, Grids, and Form Arrangements. The definitions added to a mApp using the wizard are imported into a target system when the mApp is applied, and the merge actions you select are applied to the definitions in the target system if they already exist. You can select from the following basic merge actions:

- **Overwrite All:** Overwrites all of the existing definitions of a particular type (ex: All Fields) in the target system, or adds them if they are not already there.
- **Do Not Overwrite Any:** Leaves all of the definitions of a particular type (ex: All Fields) in the target system unchanged (does not overwrite or add the definitions).
- **Overwrite some (the *Let me choose* option in the wizard):** Overwrites the selected definitions of a particular type (ex: Only the Fields you select).

95. The Cherwell Service Management product, which executes in an interpreted or compiled environment, selects a first software application overlaid object of the plurality of software application overlaid objects associated with the first application base object and executes the first software application overlaid object instead of the first application base object.

96. On information and belief, Cherwell and FireScope, individually and collectively, are inducing infringement and will continue to induce infringement of one or more claims of the '652 patent for at least the following reasons. Defendants have had actual notice of the '652 patent at least as of the filing of this Complaint. Despite Defendants' actual notice of infringement, Defendants continue to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the Cherwell Service Management product, with the knowledge or willful blindness that their conduct will induce customers to infringe the '652 patent. Defendants engage in many activities that encourage its customers to infringe the '652 patent, including (i) advertising and promotion efforts for the

Cherwell Service Management product;⁷³ (ii) the publication of demonstrational videos concerning the Cherwell Service Management product;⁷⁴ (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the Cherwell Service Management product;⁷⁵ (iv) the publication of “white papers” that purport to describe the alleged virtues of the Cherwell Service Management product;⁷⁶ (v) the publication of alleged success stories involving customers who have embraced the Cherwell Service Management product;⁷⁷ (vi) the publication both directly and indirectly through Beyond20, including through the website <http://www.beyond20.com/>, of tutorial, demonstration, and best practices instructional videos concerning the Cherwell Service Management product;⁷⁸ and (vii) the provision of user forums, blogs, and product documentation.⁷⁹ Through these activities, Defendants specifically intend that their customers directly infringe the ’652 patent.

97. On information and belief, Cherwell and FireScope, individually and collectively, are contributorily infringing and will continue to contributorily infringe one or more claims of the ’652 patent for at least the following reasons. Defendants have had actual notice of the ’652 patent no later than the filing of this Complaint. Defendants provide to customers (direct

⁷³ See, e.g., <https://www.cherwell.com/community/m/mapp-exchange-documents/50/download>; <https://cherwellsupport.com/webhelp/en/8.0/17394.htm>; <https://www.cherwell.com/uk/wp-content/.../Cherwell-Whitepaper-Codeless-ITSM.pdf>; <https://www.cherwell.com/community/m/mapp-exchange-documents/50/download>.

⁷⁴ See, e.g., https://www.youtube.com/watch?v=cFH_gXrIIxM (“How to Apply a mApp in Cherwell”); <https://www.youtube.com/watch?v=Im9IM826N1w> (“Cherwell mApp Solutions—Innovate without Building from Scratch”).

⁷⁵ See, e.g., <https://community.firescope.com/documentation/w/documentation/>; <https://cherwellsupport.com/http://www.firescope.com/Resources/>.

⁷⁶ See, e.g., <https://www.cherwell.com/uk/resources/ebooks-and-white-papers/>; <http://www.firescope.com/Resources/>.

⁷⁷ See, e.g., <https://www.cherwell.com/resources/customer-success>; <http://www.firescope.com/Resources/>.

⁷⁸ See, e.g., <https://www.youtube.com/watch?v=iWbLa3UAjI4&t=199s> (“New Cherwell mApp by Beyond20: Email Monitoring Log”); https://www.youtube.com/watch?v=-n_eI98HsIY (“Cherwell & FireScope Discovery and Dependency Mapping”).

⁷⁹ See, e.g., <https://www.cherwell.com/community/>; <https://community.firescope.com/>; See <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>; see also <https://www.cherwell.com/community/c/e/97>.

infringers) components, such as the Cherwell Service Management product, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the Cherwell or FireScope platform and related products used by customers. These infringing components are a material part of the Cherwell or FireScope platform and related products, which would not function properly without them.

98. Defendants derive revenue from selling such infringing products.

COUNT 7: INFRINGEMENT OF THE '252 PATENT

99. Paragraphs 1 through 98 are incorporated by reference as if fully set forth herein.

100. On information and belief, Cherwell and FireScope, individually and collectively, directly infringe and will continue to infringe, directly and indirectly, through induced and/or contributory infringement, one or more claims of the '252 patent by making, using, offering to sell, selling, importing and/or providing installation, operational support, and instructions for infringing products, including the Cherwell Service Management product.

101. For example, Cherwell and FireScope, individually and collectively, have directly infringed one or more claims of the '252 patent by making, using, offering to sell, selling and/or importing Cherwell Service Management, in a manner that infringes the claims of the '252 patent. For example, the Cherwell Service Management product infringes one or more claims of the '252 patent, including but not limited to claim 17.⁸⁰ Cherwell includes a processor, a datastore, coupled to the processor, comprising a plurality of software application base objects and a plurality of software application overlaid objects. Cherwell also includes a software application, stored in the datastore, including a software application base object and a runtime

⁸⁰ In accordance with this Court's jurisprudence, BMC is identifying a representative claim. *See, e.g., Panoptis Patent Management, LLC v. Blackberry Corporation*, 2017 U.S. Dist. LEXIS 27756 (E.D. Tex. Feb. 10, 2017). BMC may assert other claims in conjunction with the local rules. BMC incorporates by reference its Disclosure of Asserted Claims and Infringement Contentions pursuant to Local Patent Rule 3.1.

environment. An overlaid object may come from, for example, a mergeable application (“mApp”) or other software modification and may be configured to change a corresponding base object while preserving customizations associated with the plurality of software application overlaid objects desired by a user, as described in more detail above in connection with the ’652 patent and in the documentation below.⁸¹

What is a mApp?

mApp™ solutions are “mergeable applications.” A mApp solution contains definitions and data that can be merged into an existing Cherwell Service Management installation to add functionality, based on various instructions included in the mApp solution. When the administrator of the target system applies a mApp, he or she chooses how to apply the mApp, either accepting or overriding the defaults of the mApp.

Configure Merge Actions for Business Object Definitions

Merge actions determine how the system definitions in a mApp are merged into a target system when a mApp is applied. Use the Add Business Object to mApp Wizard as a convenient method of defining merge actions for Business Objects and their associated Fields, Relationships, Forms, Grids, and Form Arrangements. The definitions added to a mApp using the wizard are imported into a target system when the mApp is applied, and the merge actions you select are applied to the definitions in the target system if they already exist. You can select from the following basic merge actions:

- **Overwrite All:** Overwrites all of the existing definitions of a particular type (ex: All Fields) in the target system, or adds them if they are not already there.
- **Do Not Overwrite Any:** Leaves all of the definitions of a particular type (ex: All Fields) in the target system unchanged (does not overwrite or add the definitions).
- **Overwrite some (the *Let me choose* option in the wizard):** Overwrites the selected definitions of a particular type (ex: Only the Fields you select).

102. The Cherwell Service Management product determines a user authorization associated with the use of a first software application overlaid object based on a permission associated with a first overlay group. By way of example, only certain users have authorization to configure the software application to execute using an overlaid object associated with an mApp or other software modification.⁸² After a user authorization is determined, the Cherwell

⁸¹ See, e.g., <https://www.cherwell.com/community/m/mapp-exchange-documents/50/download>; <https://cherwellsupport.com/webhelp/en/8.0/17394.htm>.

⁸² See, e.g., <https://cherwellsupport.com/webhelp/en/5.0/16271.htm>; https://cherwellsupport.com/WebHelp/en/8.1/content/shared/define_business_object_rights_-access_to_data-.html.

Service Management product may configure the application to execute using the overlaid object and the corresponding base object, as claimed in the '252 patent.

103. On information and belief, Cherwell and FireScope, individually and collectively, are inducing infringement and will continue to induce infringement of one or more claims of the '252 patent for at least the following reasons. Defendants have had actual notice of the '252 patent at least as of the filing of this Complaint. Despite Defendants' actual notice of infringement, Defendants continue to make, use, sell, offer to sell, and provide installation, operational support, and instructions for infringing products, including the Cherwell Service Management product, with the knowledge or willful blindness that their conduct will induce customers to infringe the '252 patent. Defendants engage in many activities that encourage their customers to infringe the '252 patent, including (i) advertising and promotion efforts for the Cherwell Service Management product;⁸³ (ii) the publication of demonstrational videos concerning the Cherwell Service Management product;⁸⁴ (iii) the publication of data sheets that purport to describe alleged benefits customers will derive from embracing the Cherwell Service Management product;⁸⁵ (iv) the publication of "white papers" that purport to describe the alleged virtues of the Cherwell Service Management product;⁸⁶ (v) the publication of alleged success stories involving customers who have embraced the Cherwell Service Management product;⁸⁷ (vi) the publication both directly and indirectly through Beyond20, including through the website

⁸³ See, e.g., <https://www.cherwell.com/community/m/mapp-exchange-documents/50/download>; <https://cherwellsupport.com/webhelp/en/8.0/17394.htm>; <https://www.cherwell.com/uk/wp-content/.../Cherwell-Whitepaper-Codeless-ITSM.pdf>; <https://www.cherwell.com/community/m/mapp-exchange-documents/50/download>.

⁸⁴ See, e.g., https://www.youtube.com/watch?v=cFH_gXrIIXM ("How to Apply a mApp in Cherwell"); <https://www.youtube.com/watch?v=Im9IM826N1w> ("Cherwell mApp Solutions—Innovate without Building from Scratch").

⁸⁵ See, e.g., <https://community.firescope.com/documentation/w/documentation/>; <https://cherwellsupport.com>; <http://www.firescope.com/Resources/>.

⁸⁶ See, e.g., <https://www.cherwell.com/uk/resources/ebooks-and-white-papers/>; <http://www.firescope.com/Resources/>.

⁸⁷ See, e.g., <https://www.cherwell.com/resources/customer-success>; <http://www.firescope.com/Resources/>.

<http://www.beyond20.com/>, of tutorial, demonstration, and best practices instructional videos concerning the Cherwell Service Management product;⁸⁸ and (vii) the provision of user forums, blogs, and product documentation.⁸⁹ Through these activities, Defendants specifically intend that their customers directly infringe the '252 patent.

104. On information and belief, Cherwell and FireScope, individually and collectively, are contributorily infringing and will continue to contributorily infringe one or more claims of the '252 patent for at least the following reasons. Defendants have had actual notice of the '252 patent no later than the filing of this Complaint. Defendants provide to their customers (direct infringers) components, such as the Cherwell Service Management product, that lack substantial non-infringing uses and that lead to infringement when combined with other portions of the Cherwell or FireScope platform and related products used by customers. These infringing components are a material part of the Cherwell or FireScope platform and related products, which would not function properly without them.

105. Defendants derive revenue from selling such infringing products.

WILLFUL INFRINGEMENT

106. Paragraphs 1 through 105 are incorporated as if fully set forth herein.

107. BMC developed the market for ITSM products. BMC also developed and patented the functionality that customers consider important in selecting an ITSM system, and did so at considerable expense—at a cost of billions of dollars—none of which was borne by Defendants. In addition, Defendants did not have to bear the technical and commercial risks in creating the ITSM market.

⁸⁸ See, e.g., <https://www.youtube.com/watch?v=iWbLa3UAjI4&t=199s> (“New Cherwell mApp by Beyond20: Email Monitoring Log”); https://www.youtube.com/watch?v=-n_eI98HsIY (“Cherwell & FireScope Discovery and Dependency Mapping”).

⁸⁹ See, e.g., <https://www.cherwell.com/community/>; <https://community.firescope.com/>; see also <https://csm.cherwell.com/cherwell-user-group-texas-01-05-17>, <https://www.cherwell.com/community/c/e/97>.

108. Defendants directly compete with BMC and promote their ITSM products to customers as substitutes for BMC's ITSM offerings, including the core functionality that is the subject of BMC's patents.

109. In addition, Defendants hired several key ex-BMC employees, including engineers and sales personnel, and most critically Craig Harper (as Cherwell's President and CEO) who were intimately familiar with BMC's ITSM products and innovations and, upon information and belief, knew that BMC protects such ITSM products and innovations through patent protection.

110. Upon information and belief, Defendants improperly used those former BMC employees that it hired in their development of key aspects of their ITSM offerings, including Defendants' infringing products.

111. Thus, upon information and belief, Defendants developed their infringing products by copying key functions or features, with full knowledge or willful blindness that these functions were patented by BMC and that copying such functionality would result in patent infringement.

112. Furthermore, there is reason to believe that Cherwell and FireScope, through their hiring of BMC employees and their status as competitors to BMC in the ITSM industry, have had notice of BMC's patents-in-suit prior to the filing of this Complaint. Some of BMC's patents-in-suit were the subject of previous lawsuits against another competitor in the industry and related proceedings before the USPTO. On information and belief, Cherwell and FireScope would have been aware of these previous lawsuits and proceedings prior to the filing of this Complaint.

113. At the very least, Defendants have actual notice of the patents-in-suit as of the day of this Complaint and continue to disregard BMC's patents in a deliberate and wanton manner. Defendants exhibit bad-faith by continuing to infringe BMC's patents despite having actual notice of the claims and the accused products.

114. Defendants' willful and deliberate infringement entitles BMC to enhanced damages under 35 U.S.C. § 285.

IRREPARABLE HARM TO BMC

115. BMC has been irreparably harmed by Defendants' acts of infringement, and will continue to be harmed unless and until Defendants' acts of infringement are enjoined by this Court. BMC has no adequate remedy at law to redress Defendants' continuing acts of infringement. The hardships that would be imposed upon Defendants by an injunction are less than those faced by BMC should an injunction not issue. Furthermore, the public interest would be served by issuance of an injunction.

PRAYER FOR RELIEF

WHEREFORE, BMC prays for the following relief:

116. A judgment that Cherwell directly and/or indirectly infringes the '898, '586, '783, '222, '652, '857, and '252 patents;

117. A judgment that FireScope directly and/or indirectly infringes the '898, '586, '783, '222, '652, '857, and '252 patents;

118. A permanent injunction preventing Cherwell and its respective officers, directors, agents, partners, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '898, '586, '783, '222, '652, '857, and '252 patents;

119. A permanent injunction preventing FireScope and its respective officers, directors, agents, partners, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from engaging in infringing activities with respect to the '898, '586, '783, '222, '652, '857, and '252 patents;

120. A judgment that Cherwell's infringement has been willful;

121. A judgment that FireScope's infringement has been willful;

122. A ruling that this case is exceptional under 35 U.S.C. § 285;

123. A judgment and order requiring each Defendant to pay BMC damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of judgment, with an accounting, as needed, as well as treble damages for willful infringement under 35 U.S.C. § 285;

124. A judgment and order requiring each Defendant to pay BMC's costs of this action (including all disbursements);

125. A judgment and order requiring each Defendant to pay pre-judgment and post-judgment interest on damages awarded; and

126. Such other and further relief as the Court may deem just and proper.

Dated: May 22, 2017

Respectfully submitted,

/s/ Brett E. Cooper

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