

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

VIRTAMOVE, CORP.,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE
COMPANY,

Defendant.

Case No. 2:24-cv-00093-JRG-RSP
(Lead Case)

JURY TRIAL DEMANDED

VIRTAMOVE, CORP.,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORP.,

Defendant.

Case No. 2:24-CV-00064-JRG-RSP
(Member Case)

JURY TRIAL DEMANDED

**PLAINTIFF'S THIRD SUPPLEMENTAL OBJECTIONS AND RESPONSES TO
DEFENDANTS' FIRST SET OF COMMON INTERROGATORIES (NOS. 1-9)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff VirtaMove, Corp. ("Plaintiff" or "VirtaMove") supplements its responses to Defendants Hewlett Packard Enterprise Company ("HPE") and International Business Machines Corp.'s ("IBM") (collectively, "Defendants") First Set of Common Interrogatories as follows:

VirtaMove's responses are based on information known and available to it at the time of these responses. VirtaMove's investigation in this matter is ongoing. Further, because all information and documents that are possibly within the scope of the Interrogatories may have yet to be located and/or identified, the development of VirtaMove's contentions with respect to its

claims and defenses is ongoing. VirtaMove reserves the right to assert additional objections to the Interrogatories and to modify and supplement its responses pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

VirtaMove's responses to these Interrogatories are not to be construed as admissions that any of the requested information exists or that any contention or assumption contained in the Interrogatories, whether implicit or explicit, is correct.

By making any responses, VirtaMove does not concede that the information given is properly discoverable or admissible, and VirtaMove reserves its right to object to the introduction of these responses into evidence for any purpose.

VirtaMove is willing and prepared to discuss definitions of vague, ambiguous, or otherwise objectionable terms, as well as the appropriate discoverable scope of each interrogatory in light of the objections contained herein.

GENERAL OBJECTIONS

These General Objections are incorporated into the specific responses below.

1. VirtaMove objects to these Interrogatories to the extent that they attempt to impose an obligation on VirtaMove different from or greater than that required by the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Texas, the Court's Standing Orders, any other Order entered in this action, and any agreements between the parties.

2. VirtaMove objects to these Interrogatories to the extent that they request information related to patents or patent claims that have not been asserted, and thus are irrelevant, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

3. VirtaMove objects to these Interrogatories to the extent that they request the disclosure of information protected by the attorney-client privilege, work-product doctrine,

common interest privilege, mediation privilege, or any other privilege or immunity. VirtaMove hereby asserts all such applicable privileges and protections, and excludes privileged and protected information from its responses to the Interrogatories. Unless explicitly stated, any disclosure of such privileged or protected documents is inadvertent and should not be construed as a waiver of the attorney-client privilege, work-product doctrine, or any other applicable privilege, protection or doctrine.

4. VirtaMove objects to these Interrogatories to the extent they are neither relevant to any claim or defense in this case nor proportional to the needs of the case.

5. VirtaMove objects to these Interrogatories as unduly vague and overly broad to the extent that they fail to identify the information sought with reasonable particularity, thereby requiring VirtaMove to resort to conjecture and speculation as to what information is sought.

6. VirtaMove objects to these Interrogatories to the extent they seek information that VirtaMove is not permitted to disclose pursuant to confidentiality obligations, Protective Orders, or agreements with third parties. VirtaMove will not provide such information without the consent of the relevant party or a court order.

7. VirtaMove objects to these Interrogatories to the extent that they seek information from an individual or entity outside of VirtaMove's control. VirtaMove cannot reasonably respond to such Interrogatories, and objects to them as unreasonable and unduly burdensome. VirtaMove further objects to the extent these Interrogatories would require it to produce or disclose information that is already in Defendants' possession, that is publicly available, or that is as readily identifiable and accessible to Defendants as to VirtaMove.

8. VirtaMove objects to these Interrogatories to the extent that they are unreasonably cumulative or duplicative, or obtainable from some other source that is more convenient, less

burdensome, or less expensive.

9. VirtaMove objects to these Interrogatories to the extent that they are speculative, lack foundation, or improperly assume the existence of hypothetical facts that are incorrect or unknown to VirtaMove.

10. VirtaMove objects to these Interrogatories to the extent that they assume facts not in evidence.

11. VirtaMove objects to these Interrogatories to the extent that they call for legal conclusions and/or the rendering of expert opinions.

12. To the extent these Interrogatories seek discovery of information within the scope of Fed. R. Civ. P. 26(b)(4), VirtaMove objects to these Interrogatories as premature and improper discovery of expert opinion.

13. Pursuant to Federal Rule of Civil Procedure 26(b)(2)(B), VirtaMove states that it will not search sources of electronically stored information that are not reasonably accessible regardless of whether those sources may contain electronically stored information responsive to these Interrogatories. However, VirtaMove reserves the right to supplement its responses in the event that other potentially responsive information becomes known. To the extent these Interrogatories seek different data or data in configurations different from those for which such databases are configured, VirtaMove will not search or attempt to produce information from such databases because it believes they are “not reasonably accessible because of undue burden or cost” as contemplated by Fed. R. Civ. P. 26(b)(2)(B).

14. VirtaMove objects to the Interrogatories to the extent they seek “all” information about a topic; such Interrogatories are overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence.

15. VirtaMove objects to these Interrogatories to the extent that they seek information or documents already in the possession of or are more readily available to Defendants, in the public domain, or equally available to Defendants as they are to VirtaMove.

16. VirtaMove objects to these Interrogatories to the extent that they seek information not within VirtaMove's possession, custody, or control.

17. VirtaMove objects to these Interrogatories to the extent that they seek information that is cumulative of information sought by other discovery requests or duplicative of disclosures already provided by VirtaMove.

18. VirtaMove objects to these Interrogatories to the extent they contain multiple subparts asserted as individual interrogatories. Each subpart counts towards the limit on Interrogatories that Defendants are permitted to propound.

19. By responding to Defendants' Interrogatories, VirtaMove does not waive any objection that may be applicable to: (a) the use, for any purpose, by VirtaMove of any information produced; (b) the admissibility, relevance, or materiality of any such information to any issue in this case; or (c) the competency or authenticity of any such information.

20. VirtaMove objects to Defendants' definitions of "Plaintiff," "VirtaMove," "You," and "Your" as vague, ambiguous, overbroad, unduly burdensome, and/or seeking documents that are not proportional to the needs of the case because of its inclusion of "any officers, directors, partners, associates, employees, staff members, agents, representatives, divisions, predecessor companies (including at least Trigence Corp. and AppZero Software Corp.), parent or subsidiary corporations, affiliated corporations, or any other related entities of VirtaMove" may include people and entities outside of VirtaMove's control. In responding to these Interrogatories, VirtaMove understands these terms to refer to the plaintiff in this action, VirtaMove, Corp.

21. VirtaMove objects to the definitions of the term “Person” because it makes each Interrogatory that references a person vague, ambiguous, overbroad, and unduly burdensome. VirtaMove will interpret this term using its common and ordinary meaning.

22. VirtaMove objects to the definition of the term “Documents” as overbroad and unduly burdensome. Accordingly, VirtaMove will interpret this term consistent with its obligations pursuant to the Federal Rules of Civil Procedure, Local Rules of this District and any applicable Court orders.

23. VirtaMove objects to the definition of the term “Docker” as overbroad, unduly burdensome, and vague and ambiguous, particularly with respect to the phrase “third party Docker, Inc and any functionalities developed by Docker, Inc.”

24. VirtaMove objects to the definition of the term “Kubernetes” as overbroad, unduly burdensome, and vague and ambiguous, particularly with respect to the phrase “functionalities related to.”

25. VirtaMove objects to the definition of the term “Agreement” to the extent it is overbroad, unduly burdensome, and vague and ambiguous.

26. VirtaMove objects to the definition of the term “and” as overbroad and unduly burdensome. VirtaMove will interpret this term using its common and ordinary meaning.

27. VirtaMove objects to the definition of the term “or” as overbroad and unduly burdensome. VirtaMove will interpret this term using its common and ordinary meaning.

28. VirtaMove objects to Defendants’ Instructions as overbroad, unduly burdensome and calling for a legal conclusion. VirtaMove will provide responses and produce documents, subject to its objections consistent with applicable statutes, the Federal Rules of Civil Procedure, the rules of this District and any court orders.

OBJECTIONS AND RESPONSES TO COMMON INTERROGATORIES

COMMON INTERROGATORY NO. 1

For any Asserted Patent that You assert is entitled to priority to an earlier-filed provisional application (as contended in Your Infringement Contentions served on HPE and in Your Infringement Contentions served on IBM), identify for each element of each Asserted Claim, by column, line, and/or figure number of each earlier-filed provisional application, all disclosures You contend provide written description and enablement support as required by 35 U.S.C. § 112.

RESPONSE TO COMMON INTERROGATORY NO. 1:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not proportional to the needs of the case, particularly as to the phrases “for each element of each Asserted Claim, by column, line, and/or figure number of each earlier-filed provisional application” and “all disclosures.” It is Defendants’ burden to prove lack of written description or lack of enablement by clear and convincing evidence, and this interrogatory improperly shifts the burden to VirtaMove to identify written description and enablement support for claim elements, including because Defendants have not even alleged to lack enablement or written description support. VirtaMove further objects to this Interrogatory as containing multiple subparts asserted as a single interrogatory, each of which counts toward the limit on interrogatories that Defendants are permitted to propound. Defendants’ reference to this as a singular interrogatory is an impermissible attempt to circumvent the number of interrogatories permitted to be served. VirtaMove further objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove’s possession, custody, and

control. VirtaMove further objects to this Interrogatory as calling for legal conclusions and expert opinions.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

VirtaMove is willing to meet and confer at a mutually agreeable time to discuss a deadline for this contention interrogatory.

Pursuant to Rule 33(d), information responsive to this interrogatory may be derived from the provisional applications to the Asserted Patents, the file histories to the Asserted Patents, and its forthcoming expert report(s) regarding validity.

Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

FIRST SUPPLEMENTAL RESPONSE TO COMMON INTERROGATORY NO. 1
(09/05/24):

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

The Asserted Claims of the '814 patent are entitled to a priority date at least as early as September 15, 2003, the filing date of provisional application No. 60/502,619.

The Asserted Claims of the '058 patent are entitled to a priority date at least as early as September 22, 2003, the filing date of provisional application No. 60/504,213.

Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

SECOND SUPPLEMENTAL RESPONSE TO COMMON INTERROGATORY NO. 1
(10/04/24):

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

The Asserted Claims of the '814 patent are entitled to a priority date at least as early as follows:

Claims 1, 2, 6, 9: September 18, 2002.

Claim 10: September 23, 2002.

Otherwise, the Asserted Claims of the '814 patent are entitled to the September 15, 2003 filing date of provisional application No. 60/502,619, the October 20, 2003 filing date of provisional application No. 60/512,103, or any of the intervening dates: September 23, 2002; September 24, 2002; January 28, 2003; May 20, 2003; July 25, 2003; or July 28, 2003. Pursuant to Rule 33(d), VirtaMove identifies the following documents in support of its asserted priority date: VM_HPE_0000865-VM_HPE_0000880.

The Asserted Claims of the '058 patent are entitled to a priority date at least as early as follows:

Claims 1-3 and 18: June 18, 2002.

Claim 4: July 2, 2002.

Otherwise, the Asserted Claims of the '058 patent are entitled to the September 22, 2003 filing date of provisional application No. 60/504,213, or any of the intervening dates: September 23, 2002; September 24, 2002; January 28, 2003; May 20, 2003; July 25, 2003; or July 28, 2003. Pursuant to Rule 33(d), VirtaMove identifies the following documents in support of its asserted priority date: VM_HPE_0000865-VM_HPE_0000880.

Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

COMMON INTERROGATORY NO. 2

For each Asserted Claim, state when, where, by whom, to whom, and under what terms the alleged invention, in whole or in part, was first publicly disclosed, demonstrated, used, sold, given away, or offered for sale by an inventor or any other Person. For clarity, this includes (on a claim-by-claim basis) an identification of all Documents and things evidencing and Persons knowledgeable about each such demonstration, use, disclosure, sale, gift, or offer for sale.

RESPONSE TO COMMON INTERROGATORY NO. 2:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory as overbroad and unduly burdensome. VirtaMove further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order. VirtaMove further objects to this Interrogatory to the extent that it seeks information in Defendants' possession, custody, or control, or that is equally accessible to Defendants from public sources or from third parties. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove's possession, custody, and control. VirtaMove further objects to this Interrogatory as calling for legal conclusions.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

VirtaMove contends that the claimed invention(s) of the Asserted Claims of the '814 patent were each publicly disclosed on or about September 15, 2003, in U.S. Provisional Patent Application No. 60/502,619.

VirtaMove contends that the claimed invention(s) of the Asserted Claims of the '058 patent were each publicly disclosed on or about September 22, 2003, in U.S. Provisional Patent Application No. 60/504,213.

Additional information responsive to this interrogatory may be found at VM_HPE_0000865-VM_HPE_0000880.

Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement

this response as discovery in this case proceeds.

COMMON INTERROGATORY NO. 3

For each Asserted Claim, describe any secondary considerations (also known as objective indicia) relating to the alleged non-obviousness of the claimed subject matter, including without limitation any alleged long felt but unfulfilled need, failure of others, commercial success, commercial acquiescence, licensing, professional approval, lack of contemporaneous invention, copying, or laudatory statements by others. For clarity, this includes (on a claim-by-claim basis) an identification of all Documents and things evidencing and Persons knowledgeable about any such secondary considerations.

RESPONSE TO COMMON INTERROGATORY NO. 3:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory as overbroad, unduly burdensome, irrelevant, and not proportional to the needs of the case. VirtaMove further objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory to the extent that it seeks information in Defendants' possession, custody, or control, or that is equally accessible to Defendants from public sources or from third parties. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove's possession, custody, and control. VirtaMove further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order. VirtaMove further objects to this Interrogatory as calling for legal conclusions and expert opinions.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows: Though the issue of obviousness is not Plaintiffs' burden to carry, in the interest of full disclosure, Plaintiff now provides its contentions regarding secondary considerations applicable to this case, each of which points to a finding of non-obviousness as to the asserted claims. Fact discovery is

ongoing and Plaintiff reserves the right to supplement this response with additional information obtained from party and third-party document production and depositions. Plaintiff also reserve the right to supplement these points with expert opinions. Additionally, any contention raised in response to any particular secondary considerations factor is incorporated into any other factor where that contention would also be relevant. With respect to nexus, in addition to material contained in the below response, responsive information may also be derived from Plaintiff's infringement contentions, including any supplements or amendments thereto.

Commercial Success.

This case involves a large amount of evidence showing commercial success. In particular, there are numerous documents, including at least: (a) those from Defendants, which are identified in Plaintiff's infringement contentions, including any supplements or amendments thereto; and (b) those sold by any other defendant or third-party supplier where Plaintiff is asserting infringement of one or more of the Asserted Patents, which are identified in Plaintiff's complaints, including any amendments thereto.

As demonstrated in various documents and pleadings in this case, these products enjoy vast commercial success. Information responsive to this Interrogatory may be derived from Plaintiff's Response to Interrogatory No. 4, including any supplements or amendments thereto.

Moreover, the evidence demonstrating that customer demand for these products is derived, at least in part, by the claimed inventions and patented subject matter. For example, Defendants' accused products would not enjoy the same degree of sales if they did not include the claimed inventions and would not be able to offer the same degree of benefits that they do through including the claimed inventions. Not including these elements would put them at a competitive disadvantage to others. Additional exemplary evidence, supporting one or more of these points for

various asserted claims, can be found at least in the Asserted Patents and their respective file histories.

For example, HPE describes the importance of its Ezmeral Runtime Enterprise on its website as: “an enterprise-grade container orchestration platform that is designed for the containerization of both cloud-native and non-cloud-native monolithic applications with persistent data. It deploys 100% open-source Kubernetes for orchestration, provides state-of-the-art file system and data fabric for persistent container storage, and provides enterprises with the ability to deploy non-cloud-native AI and Analytics workloads in containers. Enterprises can now easily extend the agility and efficiency benefits of containers to more of their enterprise applications—running on either bare-metal or virtualized infrastructure, on-premises, in multiple clouds, or at the edge.” <https://buy.hpe.com/us/en/enterprise-solutions/artificial-intelligence-analytics/artificial-intelligence-analytics/artificial-intelligence-analytics/hpe-ezmeral-runtime-enterprise/p/1014123493>. HPE’s Ezmeral Runtime Enterprise, including other accused products or services, practices one or more of the Asserted Claims. *See VirtaMove, Corp. v. Hewlett Packard Enterprise Company*, Case No. 2:24-cv-00093-JRG, Complaint (W.D. Tex. February 9, 2024). Numerous other public statements from HPE confirm the importance and value of Plaintiff’s patented inventions as incorporated into HPE’s products.

Similarly, IBM has incorporated Plaintiff’s patented technology into its Cloud Kubernetes Service, which “provides a fully managed container service for Docker (OCI) containers, so clients can deploy containerized apps onto a pool of compute hosts and subsequently manage those containers.” <https://www.ibm.com/products/kubernetes-service>. IBM’s public statements confirm a nexus between the commercial success of the Cloud Kubernetes Service and Plaintiff’s technology. For example, IBM’s marketing for the

Kubernetes service emphasizes that its enterprise customers “[e]xperience a certified, managed Kubernetes solution, built for creating a cluster of compute hosts to deploy and manage containerized apps on IBM Cloud. IBM manages the master, freeing you from having to administer the host OS, container runtime and Kubernetes version-update process.” *Id.* IBM’s Cloud Kubernetes Service, including other accused products or services, practices one or more of the Asserted Claims. *See VirtaMove, Corp. v. International Business Machines Corp.*, Case No. 2:24-cv-00064-JRG, Complaint (W.D. Tex. January 31, 2024).

Additional evidence of the commercial success of the claimed inventions can be found in Defendants’ responses to Plaintiff’s financial interrogatories, including all produced documents cited or related thereto.

Long-felt Need and Failure by Others.

The patented inventions solved long-felt, but unresolved needs of the industry. Indeed, the inventor(s) for each patent sought to solve tough problems, as demonstrated by at least the Asserted Patents themselves, and the file histories.

For example, there was a long-felt need for applications to more effectively share a common compute platform, and also allow applications to be easily moved between platforms, without the requirement for a separate and distinct operating system for each application. This need is evidenced by the significant amount of development across all aspects of the use of containerization (*see, e.g.* <https://digiworld.news/news/56020/application-containers-market-to-reach-43-billion-by-2022>), the marketing of application containers as a critical selling proposition in the portable computing environment, and the potential of improved application containers to lower software and operational costs, provide greater scalability (e.g., compared to virtual machines), and provide a lightweight and fast infrastructure to run updates and make

changes.

Prior art solutions that address the single use nature of computing systems did not solve these long-felt needs. For example, while Virtual Machine technology, pioneered by VmWare, offers the ability for multiple application/operating system images to effectively co-exist on a single compute platform, this requires an operating system (including files and a kernel) to be deployed for each application, thus imposing significant performance overhead. Furthermore, The Virtual Machine approach does nothing to alleviate the requirement that an operating system must be licensed, managed and maintained for each application.

Fact discovery is ongoing, and Plaintiff reserves the right to supplement this response with additional information obtained from party and third-party document production and depositions. Plaintiff also reserves the right to supplement these points with expert opinions.

COMMON INTERROGATORY NO. 4

For each Asserted Patent, identify and describe in detail all Agreements or offers to make an Agreement between VirtaMove and any third party relating to any Asserted Patent, and for each Agreement or offer to make an Agreement, identify and describe in detail all related facts and circumstances, including but not limited to: dates on which negotiations began and ended; all Persons involved with negotiations or the decision to negotiate; all Documents exchanged during negotiations; all proposed financial terms, whether accepted or not; all final financial terms; any terms or bases on which such proposed or final terms were calculated; any other consideration or value to be paid or given in the Agreement; any payments made or received; any royalty or royalty rate offered, and the terms or basis on which such proposed royalty or royalty rate was calculated; and any supporting or associated Documentation or agreement(s).

RESPONSE TO COMMON INTERROGATORY NO. 4:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory as overbroad, unduly burdensome, and vague and ambiguous, particularly with respect to the phrases “Agreements,” “offers to make an Agreement,” “all related

facts and circumstances,” and “any supporting or associated Documentation or agreement(s).”

VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove’s possession, custody, and control. VirtaMove further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

Information responsive to this Interrogatory may be derived from VirtaMove’s response to Common Interrogatory No. 7. Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

COMMON INTERROGATORY NO. 5

For each Asserted Patent, identify any validity or invalidity analysis(-es), any enforceability or unenforceability analysis(-es), any infringement or non-infringement analysis(-es), any analysis(- es) or statement(s) related to patent value, and any analysis(-es) relating to infringement of any VirtaMove patent by Docker and/or the Cloud Native Computing Foundation or any product using or incorporating Docker or Kubernetes functionality that You are aware of. For clarity, this includes but is not limited to any such analysis(-es), Document(s), or statement(s) brought to Your attention by a third party and a description of the circumstances under which You acquired this knowledge.

RESPONSE TO COMMON INTERROGATORY NO. 5:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory as not relevant to any claim or defense at issue in this litigation and not proportional to the needs of the case. VirtaMove further objects to this Interrogatory as overbroad and unduly burdensome. VirtaMove further objects to this Interrogatory as containing multiple subparts asserted as a single interrogatory, each of which counts toward the limit on

interrogatories that Defendants are permitted to propound. Defendants' reference to this as a singular interrogatory is an impermissible attempt to circumvent the number of interrogatories permitted to be served. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove's possession, custody, and control. VirtaMove further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order. VirtaMove further objects to this Interrogatory to the extent it calls for legal conclusions and expert opinions.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

Information responsive to this Interrogatory may be derived from the Complaint, including any amendments thereto, and from VirtaMove's infringement contentions. Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

COMMON INTERROGATORY NO. 6

Your first awareness of Docker and/or the Cloud Native Computing Foundation or any product using or incorporating Docker or Kubernetes functionality and any contributions you have made to any Docker or Kubernetes functionality.

RESPONSE TO COMMON INTERROGATORY NO. 6:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory as not relevant to any claim or defense at issue in this litigation and not proportional to the needs of the case. VirtaMove further objects to this Interrogatory as overbroad and unduly burdensome. VirtaMove objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove's possession, custody, and control. VirtaMove

further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order. VirtaMove further objects to this Interrogatory to the extent it calls for legal conclusions and expert opinions.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

VirtaMove first became aware of Docker on or about March of 2013. *See, e.g.,*

<https://docs.docker.com/engine/release-notes/prior-releases/>;

<https://www.infoq.com/news/2013/03/Docker/>.

Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

COMMON INTERROGATORY NO. 7

If You contend that You own all necessary rights for the assertion of the Asserted Patents in these lawsuits, please provide the factual and legal basis for Your contention, including a description of all assignments, transfers, or licenses relating to the Asserted Patents and/or each link in the chain of title between the inventors and VirtaMove and an identification of all facts and documents supporting Your contention.

RESPONSE TO COMMON INTERROGATORY NO. 7:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory as overbroad, unduly burdensome, and not proportional to the needs of the case. VirtaMove further objects to this Interrogatory to the extent that it seeks information in Defendants' possession, custody or control, or that is equally accessible to Defendants from public sources or from third parties. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove's possession, custody, and control.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

As demonstrated by the records, Donn Rochette, Paul O'Leary, and Dean Huffman, the inventors of U.S. Patent No. 7,519,814, assigned their rights to Trigence Corp. on September 1, 2004; Trigence Corp. executed a change of name, thus assigning its rights to the '814 patent to AppZero Corp. on March 2, 2009; AppZero Corp. assigned its rights to the '814 patent to AppZero Software Corp. on August 20, 2010; AppZero Software Corp. executed a security interest to Comerica Bank on September 4, 2015; Comerica Bank released the September 4, 2015 security interest on August 2, 2018 to AppZero Software Corp. Information responsive to this Interrogatory may be derived from VM_HPE_0000881-VM_HPE_0000983.

As further demonstrated by the records, Donn Rochette, Paul O'Leary, and Dean Huffman, the inventors of U.S. Patent No. 7,784,058, assigned their rights to Trigence Corp. on September 15, 2004 and September 16, 2004; AppZero Corp. assigned its rights to the '058 patent to AppZero Software Corp. on August 20, 2010; AppZero Software Corp. executed a security interest to Comerica Bank on September 4, 2015; Comerica Bank released the September 4, 2015 security interest on August 2, 2018 to AppZero Software Corp. Information responsive to this Interrogatory may be derived from VM_HPE_0000881-VM_HPE_0000983.

Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

COMMON INTERROGATORY NO. 8

If you contend that any products or services practice or have practiced any of the claims of the Asserted Patents, either alone or in combination (a) identify the name, model number, trade name, or trademark of the product or service; (b) identify the dates the product or service was first made, sold, offered for sale, or licensed and the dates during which that product or service was in operation; (c) identify any third parties involved in the product or service; (d) identify each claim of each Asserted Patent that is or was practiced by such products and services; (e) provide a claim chart that compares the product or service to each applicable claim on a claim element by claim element basis; (f) provide the complete legal and factual bases for Your contention regarding whether the marking requirements of 35 U.S.C. § 287 have been met, including identifying how, whether, and when such product or service has been marked throughout the time that that product or service was made, used, sold, or offered for sale; and (g) all persons with knowledge of the

foregoing.

RESPONSE TO COMMON INTERROGATORY NO. 8:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory as overbroad and unduly burdensome. VirtaMove further objects to this Interrogatory as not relevant to any claim or defense at issue in this litigation and not proportional to the needs of the case, particularly with respect to the phrase “any of the claims.” VirtaMove further objects to this Interrogatory to the extent that it seeks information in Defendants’ possession, custody or control, or that is equally accessible to Defendants from public sources or from third parties. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove’s possession, custody, and control. VirtaMove further objects to this Interrogatory on the grounds that it depends on Defendants meeting an initial evidentiary burden, which they have not met. VirtaMove further objects to this Interrogatory to the extent it calls for legal conclusions and expert opinions. VirtaMove further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

VirtaMove is willing to meet and confer at a mutually agreeable time to discuss deadlines for responding to contention interrogatories.

FIRST SUPPLEMENTAL RESPONSE TO COMMON INTERROGATORY NO. 8 (09/05/24):

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

Pursuant to Rule 33(d), information responsive to this Interrogatory may be derived from: <https://virtamove.com/about-us/productpatents/>. Please be advised that this identification and the statements on this webpage may reflect preliminary analyses and are subject to modification based on the Court's claim construction opinions or further legal and/or expert review.

Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

SECOND SUPPLEMENTAL RESPONSE TO COMMON INTERROGATORY NO. 8 (11/18/24):

Subject to and without waiving the foregoing objections, VirtaMove responds as follows:

With respect to the '814 patent, VirtaMove has complied with the requirements of 35 U.S.C. § 287. For instance, the Third Amended Complaint only asserts method claim 1. Thus, VirtaMove contends that is not required to mark any of these products that it makes, offers for sale, and/or sells. To the extent this is not the case, VirtaMove's "Product Patents" website (<https://virtamove.com/about-us/productpatents/>) was first published on July 20, 2023.

With respect to the '058 patent, VirtaMove has complied with the requirements of 35 U.S.C. § 287. 35 U.S.C. § 287 requires the marking of "patented articles." VirtaMove contends that is not required to mark any of these products that it makes, offers for sale, and/or sells. To the extent this is not the case, VirtaMove's "Product Patents" website (<https://virtamove.com/about-us/productpatents/>) was first published on July 20, 2023.

Based on our investigation to date there was no patent marking prior to the date that the "Product Patents" website was first published. Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

COMMON INTERROGATORY NO. 9

Separately for each asserted claim of the Asserted Patents, identify and explain the problem

solved by the claim and any benefit of practicing the claim over the prior art.

RESPONSE TO COMMON INTERROGATORY NO. 9:

Incorporating the General Objections, above, VirtaMove objects to this Interrogatory to the extent it calls for legal conclusions and expert opinions. VirtaMove further objects to this Interrogatory as overbroad, unduly burdensome, not relevant to any claim or defense at issue in this litigation, and not proportional to the needs of the case. VirtaMove further objects to this Interrogatory to the extent that it seeks information in Defendants' possession, custody or control, or that is equally accessible to Defendants from public sources or from third parties. VirtaMove further objects to this Interrogatory to the extent it calls for information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or protection. VirtaMove further objects to this Interrogatory to the extent that it seeks information that is outside of VirtaMove's possession, custody, and control. VirtaMove further objects to this Interrogatory to the extent it is a premature contention interrogatory that purports to require VirtaMove to identify all facts or evidence with respect to a particular topic or issue in advance of the deadline set forth in the Docket Control Order.

Subject to and without waiving the foregoing objections, VirtaMove responds as follows: Pursuant to Rule 33(d), VirtaMove identifies the Asserted Patents, associated file histories, and its forthcoming expert report(s) regarding validity as containing information responsive to this Interrogatory. Discovery in this case is ongoing, and VirtaMove reserves the right to amend or supplement this response as discovery in this case proceeds.

Dated: November 18, 2024

Respectfully submitted,

/s/ Daniel Kolko

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document on November 18, 2024.

/s/ Daniel Kolko
Daniel Kolko