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 (Lead Case) **JURY TRIAL DEMANDED**
VIRTAMOVE, CORP., Plaintiff, v. INTERNATIONAL BUSINESS MACHINES CORP., Defendant.	§ § § § § § § § § § §	Case No. 2:24-cv-00064-JRG (Member Case) **JURY TRIAL DEMANDED**

DEFENDANT IBM'S ANSWER TO COMPLAINT AGAINST DEFENDANT INTERNATIONAL BUSINESS MACHINES CORP., AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Defendant International Business Machines Corp. ("IBM" or "Defendant") hereby submits its Answer, Affirmative Defenses, and Counterclaims to Plaintiff VirtaMove, Corp.'s ("VirtaMove" or "Plaintiff") Second Amended Complaint for Patent Infringement ("SAC"). Dkt. 47. IBM denies all allegations in VirtaMove's SAC unless expressly admitted in the following paragraphs. Any admissions herein are for purposes of this matter only. IBM also reserves the right to amend or supplement its Answer, Affirmative Defenses, and Counterclaims.

INTRODUCTION AND PARTIES

1. IBM admits that the Complaint purports to allege that IBM infringed two patents purported to be VirtaMove's: U.S. Patent Nos. 7,519,814 (the "'814 Patent") and 7,784,058 (the "'058 Patent") (collectively, the "Asserted Patents"). IBM denies that it has infringed or is infringing the Asserted Patents. IBM is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 of the SAC and, therefore, denies them.

2. IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the SAC and, therefore, denies them.

3. IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the SAC and, therefore, denies them.

4. IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the SAC and, therefore, denies them.

5. IBM is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the SAC and, therefore, denies them.

6. IBM admits that IBM is a corporation organized and existing under the laws of the State of New York, with its corporate headquarters located at One New Orchard Road, Armonk, New York 10504. The remainder of Paragraph 6 of the SAC sets out a legal conclusion to which no response is necessary. To the extent that a response is required, IBM denies the remaining allegations in Paragraph 6 of the SAC.

JURISDICTION AND VENUE

7. To the extent the allegations in Paragraph 7 of the SAC set forth legal conclusions, no response is required. IBM admits that the SAC purports to set forth an action arising under the

patent laws of the United States, 35 U.S.C. § 1 *et seq*. IBM admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). IBM denies any allegations regarding patent infringement contained in this paragraph.

8. To the extent the allegations in Paragraph 8 of the SAC set forth legal conclusions, no response is required. Solely for the limited purpose of this action only, IBM admits that this Court has personal jurisdiction over IBM. IBM denies all allegations of wrongdoing or infringement. IBM denies the remaining allegations in Paragraph 8 of the SAC.

9. No response is required as to the allegations in Paragraph 9 of the SAC asserting that "[v]enue is proper in this District," which are merely conclusions of law. To the extent that a response is required, IBM admits that a data center associated with SoftLayer Technologies, Inc. is located at 1700 Summit Avenue, Plano, Texas 75074. IBM denies that IBM has a regular and established place of business at 1700 Summit Avenue, Plano, Texas 75074. IBM expressly reserves the right to request to seek transfer of venue under 28 U.S.C. §1404(a) in this case and/or contest venue in any other case as to any party.

ADDITIONAL FACTS

10. IBM admits that the quotes in Paragraph 10 appear in a purported publication from "451 Research" that is attached as Exhibit 5 to VirtaMove's SAC. IBM is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10 of the SAC and, therefore, denies them.

11. IBM admits that representatives of IBM had previously met with at least one representative of VirtaMove. IBM denies that it copied or reverse engineered the AppZero technology, that it "would have known" that AppZero was patented as early as 2011, and that it intentionally or willfully blinded itself to whether AppZero was patented. The remainder of

Paragraph 11 of the SAC sets out legal conclusions to which no response is necessary. To the extent that a response is required, IBM denies the remaining allegations in Paragraph 11 of the SAC.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,519,814

12. IBM repeats and incorporates by reference as though fully set forth herein each of its prior admissions, denials, and other statements regarding VirtaMove's incorporated allegations from each of the above paragraphs.

13. IBM admits that '814 Patent is titled "System for Containerization of Application Sets" and lists on its face an issuance date of April 14, 2009. IBM admits that an uncertified copy of the '814 Patent is attached to the SAC as Exhibit 1. IBM is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13 of the SAC and, therefore, denies them.

14. IBM admits that its website refers to IBM's Cloud Kubernetes Service. IBM denies the remaining allegations in Paragraph 14 of the SAC.

15. Denied.

16. IBM admits that on or about November 26, 2012, in connection with the prosecution of U.S. Patent No. 8,893,306, the examiner cited the '814 Patent. IBM admits that on or about June 2015, in connection with the prosecution of U.S. Patent No. 9,166,865, the examiner cited U.S. Pub. No. 2005/0060722. IBM denies the remaining allegations in Paragraph 16 of the SAC.

17. Denied.

18. Denied.

19. IBM denies all allegations of infringement contained in this paragraph. IBM admits that Exhibit 2 attached to the SAC purports to be a claim chart, but denies any contention of infringement included in Exhibit 2. IBM denies the remaining allegations in Paragraph 19 of the SAC.

20. Denied.

21. Denied.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 7,784,058

22. IBM incorporates by reference as though fully set forth herein each of its prior admissions, denials, and other statements regarding VirtaMove's incorporated allegations from each of the above paragraphs.

23. IBM admits that '058 Patent is titled "Computing System Having User Mode Critical System Elements as Shared Libraries" and lists on its face an issuance date of August 24, 2010. IBM admits that an uncertified copy of the '058 Patent is attached to the SAC as Exhibit 3. IBM is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 of the SAC and, therefore, denies them.

24. IBM admits that its website refers to IBM's Cloud Kubernetes Service. IBM denies the remaining allegations in Paragraph 24 of the SAC.

25. Denied.

26. IBM admits that U.S. Patent No. 9,176,713 issued on November 3, 2015 and that U.S. Patent No. 7,784,058 and several other U.S. Patents, U.S. Patent Applications, and Other Publications are listed under the "References Cited" section. IBM admits that U.S. Patent No. 9,934,055 issued on April 3, 2018 and that U.S. Patent No. 7,784,058 and several other U.S.

Patents, U.S. Patent Applications, and Other Publications are listed under the "References Cited" section. IBM denies all allegations of infringement contained in this paragraph. IBM denies the remaining allegations in Paragraph 26 of the SAC.

27. Denied.

28. Denied.

29. IBM denies all allegations of infringement contained in this paragraph. IBM admits that Exhibit 4 attached to the SAC purports to be a claim chart, but denies any contention of infringement included in Exhibit 4. IBM denies the remaining allegations in Paragraph 29 of the SAC.

30. Denied.

31. Denied.

RESPONSE TO PRAYER FOR RELIEF

WHEREFORE, IBM denies Plaintiff is entitled to any relief that it seeks, and requests that judgment be entered in its favor and prays that the Court grant the following relief:

A. An order enjoining VirtaMove and its officers, agents, servants, employees, attorneys, and those in active concert or participation with them from asserting infringement or instituting or continuing any action for infringement of the Asserted Patents against IBM or its subsidiaries, affiliates, customers (direct or indirect), distributors (direct or indirect), agents (direct or indirect), or contractors (direct or indirect);

B. A declaration that IBM has not infringed and does not infringe, either directly or indirectly, any valid or enforceable claim of United States Patent Nos. 7,519,814 and 7,784,058, either literally or under the Doctrine of Equivalents;

C. A declaration that United States Patent Nos. 7,519,814 and 7,784,058 are invalid

for failure to comply with the requirements of Title 35, United States Code, including at least §§ 101, 102, 103, and/or 112;

D. An order declaring that this is an exceptional case, and awarding IBM its costs and reasonable attorney fees under 35 USC ¶ 285; and

E. Such other and further relief as this Court may deem just and proper.

RESPONSE TO DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. Rule 38(b), IBM hereby demands a trial by jury on all issues and claims so triable.

AFFIRMATIVE DEFENSES

IBM alleges and asserts the following defenses in response to the allegations of the SAC, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. IBM further reserves the right to amend this Answer to add Affirmative Defenses and/or any other defenses currently unknown to IBM, as they become known throughout the course of discovery in this action.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The SAC fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(No Infringement)

IBM does not infringe any valid and enforceable claim of the Asserted Patents in any manner under 35 U.S.C. § 271 either literally or under the doctrine of equivalents, directly or indirectly, willfully or otherwise. IBM has not performed any act and is not proposing to perform any act in violation of any rights validly belonging to Plaintiff.

THIRD AFFIRMATIVE DEFENSE

(Invalidity)

The asserted claims of the Asserted Patents are invalid for failure to satisfy the requirements of 35 U.S.C. § 100, *et seq.*, including, but not limited to, one or more of the following: 35 U.S.C. §§ 101, 102, 103, 112, and/or 116.

FOURTH AFFIRMATIVE DEFENSE

(Prosecution History Estoppel and/or Disclaimer)

Plaintiff's claims are barred in whole or in part by the doctrines of prosecution history estoppel and/or prosecution disclaimer.

During the prosecution of the Asserted Patents, the patent application to which the Asserted Patents claim priority (U.S. Patent Application Nos. 10/939,03 (the "'903 Application") and 10/946,536 (the "'536 Application")), and the other patent applications related to the Asserted Patents, the United States Patent and Trademark Office ("USPTO") Examiners made multiple rejections in view of the prior art. The Patentees made arguments, amendments, admissions, representations, and statements during those prosecutions to overcome those rejections and/or gain allowance of the claims.

Plaintiff is estopped from construing the claims of the Asserted Patents to cover or include, either literally or under the doctrine of equivalents, products or methods that were surrendered because of arguments, amendments, admissions, representations, and/or statements made before the USPTO.

FIFTH AFFIRMATIVE DEFENSE

(Ensnarement and/or Claim Vitiation)

Plaintiff's claims are barred or limited in whole or in part by the doctrine of ensnarement

concert or participation with them, from directly or indirectly charging infringement, or instituting further action for infringement, of the ’814 Patent against IBM or any of its customers;

G. Declaring that IBM’s products, including IBM Cloud Kubernetes Service, do not infringe directly or indirectly infringe any claim of the ’058 Patent and enjoining VirtaMove, its officers, agents, employees, attorneys, and all persons in active concert or participation with them, from directly or indirectly charging infringement, or instituting further action for infringement, of the ’058 Patent against IBM or any of its customers;

H. Declaring that the ’814 Patent is unenforceable;

I. Awarding IBM its costs and expenses; and

J. Granting such other relief as the Court deems just and proper.

JURY DEMAND

IBM, by and through its undersigned counsel, hereby demands, pursuant to Fed. R. Civ. P. 38, a trial by jury on all claims so triable in this action.

Dated: June 5, 2024

Respectfully submitted,

/s/ Todd M. Friedman

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