

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

TOUTVIRTUAL, INC.,

Plaintiff,

v.

Case No. 2:25-cv-00943-RWS-RSP

MICROSOFT CORPORATION,

Defendants.

DEFENDANT'S PRELIMINARY INVALIDITY CONTENTIONS

Defendant Microsoft Corporation (“Microsoft”) hereby provides the following Preliminary Invalidity Contentions (“Contentions”) to Plaintiff ToutVirtual, Inc. (“Plaintiff” or “ToutVirtual”) for U.S. Patent Nos. 8,799,431 (the “’431 patent”); 9,444,762 (the “’762 patent”); 10,810,050 (the “’050 patent”); 11,656,915 (the “’915 patent”); and 12,079,667 (the “’667 patent”) (collectively, the “Asserted Patents”).

I. PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS

In its Infringement Contentions dated January 15, 2026, ToutVirtual asserted the following 63 claims (the “Asserted Claims”):

- Claims 1-2, 4-7, 9-13, 17-18, 20, and 22-23 of the ’431 patent;
- Claims 1-3, 6-11, 14, 16, and 20 of the ’762 patent;
- Claims 1-3, 5-6, 9-11, and 13-14 of the ’050 patent;
- Claims 1-3 and 9-14 of the ’915 patent; and
- Claims 1-3, 5, 7-12, and 14-19 of the ’667 patent.

Microsoft does not provide any Contentions directed to claims that ToutVirtual has not asserted for purposes of infringement. To the extent ToutVirtual may be permitted to assert additional claims in the future, Microsoft reserves all rights to disclose new or supplemental contentions regarding such claims.

Because the same claim scope must apply for both infringement and invalidity, these Contentions are based on ToutVirtual’s assertions in its Infringement Contentions. Microsoft does not thereby implicitly or explicitly agree with ToutVirtual’s construction of the claims. Microsoft reserves all rights to disclose new or supplemental invalidity contentions, including to address any construction of the claims rendered by the Court, changed theories of infringement, and any evidence obtained during the course of discovery.

Subject to the rights reserved in these Contentions, all Asserted Claims are invalid under at least one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112. The Asserted Claims are invalid at least because they are anticipated and/or rendered obvious under 35 U.S.C. §§ 102 and 103. If ToutVirtual contends, or a factfinder finds, that one or more limitations of the Asserted Claims are not disclosed in the identified prior art as anticipatory, Microsoft reserves the right to assert obviousness based on the identified references and/or to identify other references that would have rendered obvious the allegedly missing limitation. Furthermore, the obviousness combinations of references provided below and in the accompanying claim charts under 35 U.S.C. § 103 are exemplary only and are not intended to be exhaustive. If or when ToutVirtual challenges the disclosure of any of these references with respect to particular limitations of the Asserted Claims, Microsoft reserves the right to supplement these Contentions to assert additional or different bases for obviousness. Microsoft reserves the right to use any combination of the references set forth in these Contentions to demonstrate the obviousness of the Asserted Claims. Additionally, certain claims of the Asserted Patents are invalid for failure to comply with the written description, enablement, and definiteness requirements of 35 U.S.C. § 112.

Microsoft expressly reserves the right to amend, correct, and/or supplement these Contentions in accordance with the Docket Control Order and Local Patent Rules governing this case.

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These Contentions reflect Microsoft's knowledge, investigation, and discovery as of the date of service. Microsoft reserves the right to supplement these Contentions as appropriate and for any permissible reason. For example, pursuant to the Docket Control Order and the Local Patent Rules, Microsoft reserves the right to supplement these Contentions after subsequent case events,

- Vinberg '218 alone or in combination with one or more of the references identified in Exhibits B-01–B-26;
- XenoServer/Xen System alone or in combination with one or more of the references identified in Exhibits B-01–B-26;
- VMWare ESX alone or in combination with one or more of the references identified in Exhibits B-01–B-26;
- IBM Virtualization Engine alone or in combination with one or more of the references identified in Exhibits B-01–B-26;
- Microsoft Virtual Server alone or in combination with one or more of the references identified in Exhibits B-01–B-26;
- Smith alone or in combination with one or more of the references identified in Exhibits B-01–B-26; and
- Any combination of one or more of the references and/or systems identified in Exhibits B-01–B-26 and the referenced identified in Sections III and IV.D.

3. '050 Patent

The Asserted Claims of the '050 patent is rendered obvious by:

- Khandekar '722 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Brown '183 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Arakawa '522 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Abrams '117 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Knauerhase '303 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Tremain '220 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Plouffe '160 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;

- Hashimoto '087 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Hashimoto '040 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Trossman '685 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Luoffo '033 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Fujino '925 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Trossman '731 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Markson '889 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Nahum '670 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Goud '349 alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- VMWare alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- XenoServer/Xen System alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- IBM Virtualization Engine System alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Microsoft Virtual Server alone or in combination with one or more of the references identified in Exhibits C-01–C-21;
- Smith alone or in combination with one or more of the references identified in Exhibits C-01–C-21; and
- Any combination of one or more of the references and/or systems identified in Exhibits C-01–C-21 and the referenced identified in Sections III and IV.D.

4. '915 Patent

The Asserted Claims of the '915 patent are rendered obvious by:

- Bandhole '803 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Brown '183 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Fujino '925 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Hirschfeld '002 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Khandekar '722 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Knauerhase '303 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Luoffo '033 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Mandal '369 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Markson '889 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Nahum '670 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Naik '238 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Plouffe '160 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Reuter '908 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Salomon '310 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Tremain '220 alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- VMWare alone or in combination with one or more of the references identified in Exhibits D-01–D-20;

- XenoServer/Xen System alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- IBM Virtualization Engine System alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Microsoft Virtual Server alone or in combination with one or more of the references identified in Exhibits D-01–D-20;
- Smith alone or in combination with one or more of the references identified in Exhibits D-01–D-20; and
- Any combination of one or more of the references and/or systems identified in Exhibits D-01–D-20 and the referenced identified in Sections III and IV.D.

5. '667 Patent

The Asserted Claims of the '667 patent are rendered obvious by:

- Aschoff '596 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Fujino '925 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Hashimoto '040 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Hashimoto '087 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Herington '715 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Hirschfeld '002 alone or in combination with one or more of the references identified in Exhibits E-01–E-22
- Lamb '753 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Mandal '369 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Markson '889 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;

- Marsland '173 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Nahum '670 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Naik '238 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Plouffe '160 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Prust '968 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Reuter '908 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Vasilevsky '301 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- VMWare alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- XenoServer/Xen System alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- IBM Virtualization Engine System alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Microsoft Virtual Server alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- VERITAS Volume Manager 4.0 alone or in combination with one or more of the references identified in Exhibits E-01–E-22;
- Smith alone or in combination with one or more of the references identified in Exhibits E-01–E-22; and
- Any combination of one or more of the references and/or systems identified in Exhibits E-01–E-22 and the referenced identified in Sections III and IV.D.

D. Motivations to Combine

To the extent a finder of fact finds that any primary prior art reference does not disclose one or more limitations of an asserted claim, the asserted claim is nevertheless obvious because

Date: March 12, 2026

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on March 12, 2026, to all counsel of record via e-mail.

/s/ Excylyn Hardin-Smith