UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

TOUTVIRTUAL, INC.,
Patent Owner.

Case IPR2026-00297
U.S. Patent No. 12079,667

DECLARATION OF VIPUL PABARI IN SUPPORT OF PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL

REDACTED VERSION

I, Vipul Pabari, hereby declare under penalty of perjury, that the following statements are true and correct:

1. I submit this Declaration in support of ToutVirtual, Inc.'s ("ToutVirtual") request for discretionary denial. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I am the cofounder of ToutVirtual and the sole inventor of U.S. Patent No. 12,079,667 (the "'667 Patent"), which is part of a continuation chain of patents including U.S. Patent Nos. 8,799,431, 9,444,762, 10,810,050, and 11,656,915, and the VirtualIQ technology which is built upon the '915 Patent family portfolio. The '915 Patent and each patent in the continuation chain claim priority to a provisional application filed in 2005, and all are directed to the same unified virtualization management architecture. ToutVirtual was founded in 2005 to address the industry need for virtualization management and quickly became the leader in this technology space.

3. In virtualization systems, physical resources are used to deploy virtual assets, which provide the functional equivalent of desktops, applications, operating systems, servers, and the like. The then-conventional management of these virtual assets was extremely complex, unwieldy, and outdated. For example, the management was through outdated IT management tools, which were labor-

intensive and required manual selection and implementation of virtual configurations. These tools were performed on an element-by-element basis, using separate tools for asset management, monitoring, performance, and capacity planning. This fragmented approach was difficult to scale in a virtualized environment, where multiple virtual assets reside on a single physical resource, creating a level of complexity that manual IT intervention could not effectively manage in network systems with virtualization infrastructure consisting of a plurality of such physical resources. Additionally, the management tools worked only within certain virtualization environments, e.g., specific CPUs or operating systems of the host machine, and provided limited management capabilities. As the industry commented, "the information technology industry [was] in a strange situation. We have enormously sophisticated engines we're running in the form of CPUs and communications equipment and so forth, but the way we keep them running is through an outdated vision." '667 Patent at 3:3-11.

4. The need the industry faced was for a unified management tool that could provide a single view of visibility and control across different environments. As identified in an article entitled "Virtualization management takes center stage," organizations have increasingly been using different hypervisors, which are what enables virtualization, for different types of applications, and these organizations will need a single view for management. Ex. 2011 at 2. Likewise, Tim Grieser, VP

system management software at IDC, expressed that "[m]ulti-function tools that can manage across a variety of environments" are "increasingly needed by IT to monitor and control their virtualized resources." Ex. 2013 at 2.

5. ToutVirtual's VirtualIQ technology, which is built on the '667 Patent, answered that need by delivering a unified management console that automatically manages virtualization across different environments. Specifically, ToutVirtual's VirtualIQ technology includes a unified management console that enables automatic provisioning, server virtualization assessment, asset management, performance management, and capacity management across different environments. Ex. 2012 at 1; *see also* Ex. 2014 at 1-2 ("VirtualIQ provides a 'single pane of glass' across physical and virtual infrastructure," including hypervisors from VMware, Microsoft, etc.).

Visualize. Analyze. Optimize.

One Integrated Web Console

Provides timely intelligence at every stage of virtualization maturity - Design, Deploy and Deliver.

Unique Visibility

Provides virtualization-aware dashboards, contextual drill-downs and just-in-time virtualization analytics.

Built-in Policy Engine

Enables policy-based virtualization platform automation based on a "Crawl-Walk-Run" methodology.

Easy-to-deploy, Simple-to-Use

Transforms raw data into actionable virtual intelliigence in less than 30 minutes.

Multiple Virtualization Platform Support

VirtualIQ Pro works with all the major hypervisors (Type I & Type II) including Citrix XenServer, Microsoft Windows Server 2008 Hyper-V, Xen on Novell SUSE Enteprise 10, Oracle Oracle VM and VMware ESX / ESXi.

Multiple Management Functions. Multiple Hypervisors. One Console.

Continuous Capacity Planning for both Physical and Virtual Servers
"Crawl-Walk-Run" Policy-based Automation Methodology
Virtualization-aware Dashboard Views enable Faster Root Cause Analysis
Secure Role-based Virtual Infrastructure Access with AD and LDAP Integration

Ex. 2010 . Accordingly, ToutVirtual's VirtualIQ technology provided environment-level virtualization management through a unified management console.

6. The features of VirtualIQ are exemplified in the claims of the '667 Patent, which describes and claims a unified management architecture. As exemplified in Claim 9 is a "control computer running a control center application" and in Claims 1 and 18 is the "control center application" that over a network manages virtual assets through virtualization layer instances running on each physical resource. '667 Patent at Claims 1, 9, 18; *see also id.* at 10:7-54. VirtualIQ's

unified management console is captured in the independent claims' recitation of "a control center computer" and "a control center application."

7. The industry's recognition of VirtualIQ's ability to solve these specific challenges of complexity and scalability is evidenced by the following observations by industry professionals:

> **Tim Grieser, VP system management at IDC:** "Multi-function tools that can ***manage across a variety of environments***, such as VirtualIQ from ToutVirtual, are increasingly needed by IT to monitor and control their virtualized resources. This type of software provides leverage so that IT can efficiently manage the increasing complexity of virtualized infrastructures and virtual machines." Ex. 2013 at 2 (emphasis added).

> **Andi Mann, research director at Enterprise Management Associates**: "ToutVirtual's VirtualIQ Pro console addresses a very important need in the ***support of heterogeneous virtualization environments*** . . . In an easy-to-use, functional and affordable interface, VirtualIQ Pro helps users get greater value from virtualization deployments by ***integrating, in a single console, several core disciplines like capacity planning, load balancing and automated VM management***." Ex. 2012 at 1 (emphasis added).

> **Rakesh Shah, VP of IT operations at eGain, Inc**: "ToutVirtual's VirtualIQ Pro has provided us with a ***unified console*** to control server capacity, manage incidents, create and execute policies and ultimately optimize our virtualization environment." Ex. 2012 at 1 (emphasis added).

> **Andy Nabbs, business manager for virtualization and end-user computing at BT Engage IT:** "The key challenges faced by customers are around ***management processes for virtualization and cloud***. ToutVirtual's VirtualIQ products help by offering a '***single pane of glass' to give holistic visibility and control of their infrastructure***." Ex. 2014 at 2 (emphasis added).

8. ToutVirtual also received innovation recognition for VirtualIQ from several leading computer technology publications. In 2006, ToutVirtual was named to *ComputerWorld*'s companies to watch because of its VirtualIQ technology that "manages virtual computing infrastructures—cross-platform and multitiered—allowing organizations to obtain a holistic view of their virtual infrastructure . . . and control it." Ex. 2015 at 15-16. In 2007, ToutVirtual was named to *NetworkWorld*'s companies to watch because of its virtualization management. Ex. 2016 at 1.

9. The recognition of ToutVirtual by the *Computerworld*'s Horizon Awards and *NetworkWorld*'s "10 virtualization companies to watch" represents external validation of the company's role in the virtualization management sector. Unlike standard product reviews, these honors are the result of a vetting process conducted by a committee of industry scouts, venture capitalists, and sitting CIOs from global enterprises. These panels evaluated ToutVirtual on architectural significance and its capacity to solve the manual IT management bottleneck that existing virtualization incumbents had failed to address. By winning these

recognitions, ToutVirtual was identified as a leader in virtualization management, providing the essential interoperability that allowed the industry to transition from experimental server silos to governed, enterprise-scale cloud infrastructure.

10. ToutVirtual's recognition was not limited to industry analysts and publications, as Microsoft recognized ToutVirtual's VirtualIQ's significance in the virtualization management space and began conversations. In 2006, I provided Microsoft with a slide deck presentation on VirtualIQ's technology. The presentation indicated that it is [redacted] i.e., the '667 Patent family portfolio.

[redacted]

[redacted]

Ex. 2019 at 6 (emphasis added); Ex. 2020 at 1 (emphases added).

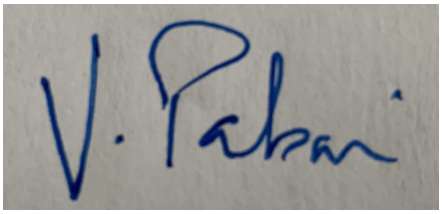
11. Microsoft was interested in a partnership with ToutVirtual to integrate VirtualIQ technology with Microsoft's hypervisor (Windows Server 2008, Hyper-V). Microsoft's interest was specifically focused on utilizing ToutVirtual's established virtualization management and self-service capabilities to enhance the utility of Microsoft's virtualization platform. Our discussions focused specifically on the deployment of VirtualIQ's self-service management capabilities onto Microsoft's architecture.

12. In 2007, ToutVirtual partnered with Microsoft and became the inaugural partner for Microsoft's VHD program, enabling the deployment of pre-packaged, governed virtual machine environments directly on Microsoft's virtualization platform. This partnership resulted in Microsoft indicating its appreciation for ToutVirtual's VirtualIQ technology:

> "We are pleased that ToutVirtual is offering a virtualization solution for managing heterogeneous environments," said Tony Bailey, senior product manager, Windows Server Division at Microsoft Corp. "ToutVirtual's VirtualIQ Pro for Microsoft software appliance allows customers to confidently evaluate enterprise software from Microsoft and its software partners in a fraction of the time." Ex. 2017 at 2.

> "We are pleased that ToutVirtual is delivering support for Windows Server 2008 Hyper-V," said Jim Schwartz, Director for Virtualization Solutions at Microsoft Corp. "ToutVirtual's VirtualIQ products help our customers running Hyper-V assess and optimize applications for their environments, assisting them in making the right planning decisions." Ex. 2018 at 1.

13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the patent and any post grant review decision issuing thereon. Executed on May 18, 2026, in Carlsbad, CA.



Vipul Pabari