

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CIRBA, INC., (D/B/A DENSIFY)
AND CIRBA IP, INC.,

Plaintiffs, CASE NO.

vs.

C.A. 19-742-LPS

VMWARE, INC.,

Defendant.

VIDEOTAPED DEPOSITION OF VIJAY MADISETTI, PH.D.

ATLANTA, GEORGIA

WEDNESDAY, JUNE 15, 2022

(Reported Remotely)

REPORTED BY: TANYA L. VERHOVEN-PAGE,
CCR-B-1790

JOB NO. 212866

1
2 June 15, 2022

3 9:00 a.m.
4

5 Videotaped deposition of
6 VIJAY MADISETTI, PH.D., held in Atlanta,
7 Georgia before Tanya L. Verhoven-Page,
8 Certified Court Reporter and Notary Public
9 of the State of Georgia.
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THE VIDEOGRAPHER: Adrienne Chemel

- - -

I N D E X

WITNESS: VIJAY MADISETTI, PH.D.

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EXHIBITS:

(None offered.)

1 V. MADISETTI

2 ATLANTA, GEORGIA; WEDNESDAY, JUNE 15, 2022

3 9:00 A.M.

4
5 P R O C E E D I N G S

6
7 THE VIDEOGRAPHER: Good morning,
8 Counselors. My name is Adrienne Chemel.
9 I am a legal videographer in association
10 with TSG Reporting, Inc.

11 I will not be in the same room with
12 the witness. Instead, I will record this
13 videotaped deposition remotely. The
14 reporter, Tanya Page, also will not be in
15 the same room and will swear the witness
16 remotely.

17 Do all parties stipulate to the
18 validity of this video recording and
19 remote swearing and that it will be
20 admissible in the courtroom as if it had
21 been taken following Rule 30 of the
22 Federal Rules of Civil Procedures and the
23 state's rules where this case is pending?

24 MR. VAN NORT: Yes, for petitioner.

25 MR. EKLEM: Patent Owner agrees, as

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2 well.

3 THE VIDEOGRAPHER: Thank you. This
4 is the start of taped labeled number one
5 of the video-taped deposition of
6 Dr. Vijay Madisetti, Ph.D., in the matter
7 Cirba, Inc. et al., v VMware, Inc., in
8 the United States District Court for the
9 District of Delaware, No. 19-742-LPS.

10 All parties have agreed to appear
11 remotely on June 15th, 2022 at
12 approximately 9:02 a.m.

13 Will counsel please introduce
14 yourselves.

15 MR. VAN NORT: Diek Van Nort from
16 Morrison & Foerster for VMware,
17 Petitioner VMware. And with also me from
18 Morrison & Foerster is Stephen Liu.

19 MR. EKLEM: Phil Eklem with
20 Reichman Jorgensen Lehman & Feldberg, on
21 behalf of Patent Owner and the witness,
22 Dr. Madisetti.

23 THE VIDEOGRAPHER: Will the court
24 reporter please swear in the witness.

25

1 V. MADISETTI

2 Thereupon --

3 VIJAY MADISETTI, PH.D.,
4 called as a witness, having been first duly sworn,
5 was examined and testified as follows:

6
7 EXAMINATION

8 BY MR. VAN NORT:

9 Q Good morning, Dr. Madiseti.

10 A Good morning, sir.

11 Q So you should have -- I think off the
12 record we were discussing, I think you have seven
13 files from the PGR in the ShareFile directory; is
14 that correct?

15 A Yes.

16 Q And these are, I believe, the files that
17 I'll be referring to today during the deposition.
18 These are all already in the record so I'm not going
19 to remark these exhibits for the deposition -- or
20 excuse me. These are already entered in the record
21 for the PGR. So I'm not planning on remarking these
22 as exhibits.

23 Just to make sure that we have the same
24 set of papers, though, it is Paper 2, the Petition
25 for Post Grant Review of U.S. Patent Number

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10,951,459; Paper 12, Institution Decision Granted; Paper 14, Patent Owner's Response; Exhibit 1, which is U.S. Patent Number 10,951459; Exhibit 1009, which is part of the file history for the -- the application that led to the '459 patent; Exhibit 2001 is your declaration you submitted in this matter; and Exhibit 2002 is a list of materials considered in this matter.

Is that consistent with what you're seeing?

A Yes.

Q Great. And are you using any paper copies of documents this morning?

A No.

Q So why don't you go ahead and open Exhibit 2001 to the PGR.

A Okay. I've opened Exhibit 2001.

Q And I'd like you to go to Paragraph 77.

A Yes.

Q And go ahead and read that paragraph to yourself and let me know when you're done.

A Yes, I've read the Paragraph 77.

Q Okay. So I'd like to ask you a question about the last part of that paragraph where, on page

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44, I think it's the last couple of sentences, regarding transfer sets.

Do you see those last couple of sentences.

A Yes.

Q Can you explain to me what a transfer set is?

A As I describe here, as used in the '459 patent, a transfer set is one or more transfers that involve a common target, where in the set it specifies one or more source entities, the target and the transfer type. And I refer to Column 642 to 45 for this description.

Q The reference to source entities, do you see that?

A Yes.

Q Is a source system an example of a source entity?

A A source entity could be an example. A nonlimiting example of a source entity could be a source system. It could also be something like an application. So all these are nonlimiting examples.

Q So let's talk about the specific example you have listed here. In the following sentence you

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have an example of a transfer set T1.

Do you see that?

A Yes.

Q And the transfer set is comprised of source systems S1, S2 and S3, correct?

A Yes. In this case, yes.

Q And it says that the source systems are stacked onto S4.

Do you see that?

A It describes here the transfer set T1 as S1, S2, S3 stacked onto S4. I'm citing from the specification 29 through 30.

Q What is S4 in this example?

A S4 is referred to here as an example of a target.

Q Is it a target system?

A It can be a target system.

Q What does it mean for a source system to be stacked onto a target system?

A As described in this transfer set, it means that an evaluation has been completed or this transfer set has been submitted for the evaluation.

Q So a source system that is stacked onto a target system means the source system -- strike that.

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So a source system that has been stacked onto a target system means that that's -- the valuation for that source system has been completed or that the transfer set has been submitted; is that correct?

A No. What I said is that the line, T1, representing transfer set T1, with the parenthesis S1, S2, S3 stacked onto S4, that parenthesis closed, means that's the transfer set that is either submitted for evaluation or it could be a transfer set that has been already evaluated.

So it's a description of a transfer set where the transfer set specifies source entities, a target and a transfer type, the transfer type is stacked.

Q Okay. So what does it mean for the transfer type to be stacked?

A That's all. It's the type of transfer set would be the type that's called stack.

Q Well, what is entailed in the type called stack?

A Stack is a stack. I mean, there are other types, transfer types, in the specification. It's one of those transfer types.

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Q And can you please explain to me what's entailed in a transfer that involves stacking a source system onto a target system?

A Again, we have to refer to the specification. So let me open the specification.

And so the specification, for example, in Column 2, Lines 20 through 30 in Column 2, describes an example, a nonlimiting example. OS level application stacking involves moving the applications and data from one or more systems to a -- to the consolidated system. So they give an example, e.g. System A running Application X and System B running Application Y are moved onto System C, running Application Z, such that System C runs Applications X, Y, and Z. So this is an example of the case where there is already, in this example, Application Z running on System C.

And, in this case, Z's an example again, an example of a source system that's already placed on Z -- on Z, and A that runs Application X, Y that's running on System B, and X and Y are moved to System C.

Q So I believe you said that stacking a source system onto a target system includes moving

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2 the applications in our data from the source system
3 to the target system; is that correct?

4 A As I said, it does not -- it's not
5 necessary to move. You can -- moving can be
6 included, but it does not -- it's not necessary.

7 The way I understand that in the context
8 of the discussion we were having with Paragraph 76 or
9 77, stacking is a type -- is a transfer type, and I
10 described what is -- what would be a nonlimiting
11 example of stacking.

12 Q So moving applications and/or data is an
13 example of stacking, but not the only way to carry
14 out stacking; is that correct?

15 MR. EKLEM: I think we lost your
16 video, Diek.

17 MR. VAN NORT: Sorry, my internet
18 is struggling here so it may have gone
19 blank for a moment, but I can still hear
20 you and hopefully you guys can still hear
21 me.

22 MR. EKLEM: Yes.

23 BY MR. VAN NORT:

24 Q If you're okay with if, we can just keep
25 going. Otherwise, we can go off the record until I

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can fix it.

A No, no, that's fine. I can hear you.

Q Okay. Great.

A So, as I said, we were discussing an example of a transfer set and you had asked for an example of stacking, and I provided a nonlimiting example of stacking from Column 2 of the '159 [sic] patent, specifically Column 2, Lines 20 through 30.

Q And in that example, stacking is carried out by moving applications and/or data from a source system to target system, correct?

A In this paragraph, in this paragraph, in Column 20 to 30, in this example, again, a nonlimiting example, stacking involves moving applications and data from one or more systems to the consolidated system.

I specifically describe that with examples shown here with A, B and C, three systems, A, B and C and three applications, X, Y and Z.

Q So going back then to the example of T1 at the end of your Paragraph 77, does that mean one way for this transfer set to be carried out is for applications and/or data to be moved from source system S1, S2 and S3 onto S4?

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A I mean, the question is not clear.

All I said here is that this is a transfer set and a transfer set is an example that is shown -- sorry. An example of transfer set from Column 29, Lines 59 through Column 30, Line 7 is shown with the example T1 that describes S1, S2, S3 as the source entities. S4 as the target and the term stack as a transfer type.

Q And the stack transfer type can entail moving applications and/or data from the source systems to the target system, correct?

MR. EKLEM: Object to the form.

THE WITNESS: Again, that's not my testimony. My testimony is we're just discussing a transfer set here and the stack is a specific example of a transfer type.

BY MR. VAN NORT:

Q And that transfer type involves moving applications and/or data from one or more systems to the target system; is that right?

MR. EKLEM: Objection. Form.

THE WITNESS: Again, counsel, I think we looked at some examples of how

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the term stacking is used in the specification and we provided a nonlimiting example from Column 2 with respect to Lines 20 to 30 where I described a nonlimiting example of a noise level application stacking where applications X, Y and Z were illustrating a nonlimiting example of application stacking.

BY MR. VAN NORT:

Q So using that example of application stacking and applying it to your example of your transfer set T1, would that involve -- strike that.

So the OS level application stacking that you described at Column 2, Line 20 to approximately Line 29, that is an example of what stacked can refer to in your example at the end of your Paragraph 77?

A Again, that's not my testimony. My testimony is I provided a transfer set example, and -- as I was referring to Columns 29 and 30, and as a part of it -- as a part of the description of a transfer set, there was an indication of what is a transfer type. And in that transfer set T1, the application of the transfer type was something called

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stack, stacked onto.

You asked me for an example of what stacked -- stacked means, or stacking means. I provided a nonlimiting example from Column 2, Lines 20 to 30.

Q And in that example of what stacked means, it includes moving applications and/or data from one or more source systems to a target system, correct?

A Again, that's not my testimony.

My testimony is that I provided an example of a transfer set and then that example stands by itself, and I provided an example of how the term stack is used in a nonlimiting manner in the specification and we referred to Column 2, Lines 20 to 30.

Q So your example of transfer set 1 at the end of Paragraph 77, when that example refers to stacked, is an example of what that's referring to the OS level application stacking that you've pointed to in Column 2?

A As I said here, in the transfer set it's called a transfer type. So stack is a type of transfer. And one of the examples, a nonlimiting

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example of stack used in the specification in a nonlimiting manner is the example from Column 2, Lines 20 to 30.

Q And that example includes moving applications and/or data, correct?

MR. EKLEM: Objection. Form.

THE WITNESS: No, the example, again, is a nonlimiting example, and the example is represented and described in Columns 2, 20 to 30. I will defer to the language of the specification itself to describe what it's disclosing. It is disclosing an example, a nonlimiting example of OS level -- OS level application stacking.

BY MR. VAN NORT:

Q And OS level application stacking involves moving applications and/or data, correct?

A Again, the specification describes what it covers in this particular nonlimiting example from Columns 20 to 30 -- sorry -- from Lines 20 to 30 in Column 2, where there is a nonlimiting example of -- shown with respect to systems A, B and C and applications X, Y and Z.

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Q So I understand it's a nonlimiting example, so maybe we'll put that language into the question to see if that helps.

In the nonlimiting example of OS level application stacking that you've just pointed to, it involves moving applications and/or data, correct?

A Again, I would defer to the language here in Column 20 -- in Column 2. The specification describes in this nonlimiting example OS level-application stacking involves moving the applications and data from one or more systems to the consolidated systems.

And it goes further and gives an example that a system A running application X, a system B running application Y, are moved onto system C running application C, such that system C runs applications X, Y and Z.

I'm reading from Column 2.

Q Okay. So I would like you to use this example of stacking in the context of your transfer set 1 at the end of your Paragraph 77. Can you do that?

A I'm not sure what you mean use.

I was giving an example of a transfer set

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in Column -- in Paragraph 77, where it says there's a transfer set T1, and that the transfer set has a certain way of how it's described and it includes one or more source entities, the target and a transfer type.

Q So using the example of OS level application stacking from Column 2, how would source system 1, S1, S2 and S3, in transfer set 1 be stacked onto S4?

A Again, I'm not sure what you mean by S1, S2, S3 stacked onto S4.

T1 is a transfer set that is either being evaluated or -- being evaluated or has been evaluated.

Q So I am asking, how would transfer set 1, that you list at the end of Paragraph 77, be accomplished via OS level application stacking that you described as an example of stacked and -- in Column 2?

MR. EKLEM: Objection. Form.

THE WITNESS: Again, I'm not sure what you mean by accomplished.

I mean the process of evaluation uses transfer sets and the transfer sets

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are shown using a certain format, and these transfer sets are evaluated as examples, as in the specification.

BY MR. VAN NORT:

Q Well, what is done with a transfer set after it's been defined?

A It's evaluated.

Q And then after it's been evaluated, what is done with it?

A That's all. It's evaluated. And after it completes evaluation, the specification goes into different options and describes, for example, providing a consolidation solution and other things.

Again, the specification speaks for itself as to how these transfer sets are used and what are produced as a result of that.

Q How is the transfer set used after it's been evaluated?

MR. EKLEM: Objection. Form.

THE WITNESS: As I said, I mean it could be part of a consolidation solution. It could be -- it could -- as I said, in the specification, there are many different nonlimiting embodiments

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that show how transfer sets can be used.

One example would be that it's provided as a part of consolidation solution.

BY MR. VAN NORT:

Q What's a consolidation solution?

A It's -- it's an example, again, of -- I believe it is -- it -- there's a description in Column 39 that -- in Column 39, that goes from Lines 15 through 25, that, accordingly, the compatibility and consolidation analysis can be performed on a collection of systems to evaluate 1-to-1 compatibility of every source target there, evaluate the multidimensional compatibility of specific transfer sets and, three, to be the best consolidated -- consolidation solution based on various constraints, including the compatibility scores of the transfer set.

So the consolidation solution that is provided in this example includes the scoring from the transfer sets.

Q And, I'm sorry. Could you point me again to where you were referring to in the specification there?

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A I'm referring to Column 39, Lines 15 through 25 -- through 24, for example.

Q After a transfer set -- so do you see in this paragraph that you just referred to where it says specific transfer sets?

A Yes, on line number -- Column 39, Lines 19 through 20.

Q Is the example of T1 at the end of Paragraph 77 of your declaration, is that an example of a specific transfer set?

A It's an example -- or it's a nonlimiting example of a transfer set.

Q Is it an example of a specific transfer set?

MR. EKLEM: Objection. Form.

THE WITNESS: Again, I'm not sure as to what you specifically mean by that. But all I said is that a transfer set as described in the '459, and I provide an example from Column 29 through 30.

BY MR. VAN NORT:

Q So going back to Column 39, Lines -- I think you said 15 through 24, that we were just talking about, do you see there where it says

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specific transfer sets?

A It's talking about evaluating the multidimensional compatibility of specific transfer sets.

Q So the reference there to specific transfer sets, is your example of transfer set T1 from Paragraph 77 of your declaration an example of the specific transfer set?

MR. EKLEM: Objection. Form.

THE WITNESS: Again, that's not my opinion. All I was saying here is that you asked me what a consolidation solution was and I provided an example of how the specification of the '459 describes one -- one nonlimiting description of a consolidation solution.

BY MR. VAN NORT:

Q So I am asking for your opinion of whether the example transfer set T1 in your declaration is an example of the specific transfer set that you just pointed me to in Paragraph -- in Column 39 at Lines 14 through 24?

MR. EKLEM: Objection. Form.

THE WITNESS: It is just another

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example, as I was saying. It is a generic example of a transfer set, no more, that is consistent with the disclosures of the '459. It's just a generic example.

BY MR. VAN NORT:

Q So in column 39, when it is referring to a specific transfer set, can you give me an example of a specific transfer set?

A Again, I would -- I have not thought about that issue. I don't have a specific opinion at this point.

Q Okay. So I'd like to go back to the end of your Paragraph 77, in your example, transfer set T1.

A Okay.

Q So OS level stacking is an example of how source systems S1, S2, S3 can be stacked onto target system S4; is that correct?

A Again, I think I answered that before.

I mean, all I was providing here is that generic example of a transfer set from Column 29 through 30 of the '459 that includes a source entity, one or more source entities, a target and a transfer

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type.

And the transfer type in this case is called stacking and I provided -- in response to your question was to what stacking -- an example of -- a nonlimiting example of stacking is, I provided and pointed you to a nonlimiting example of stacking in Column 20 -- in Column 2, Lines 20 to 30.

Q And using that example in the context of transfer set T1, stacking source systems S1, S2 and S3 onto S4 involves moving applications and/or data from the source systems to the target system; is that correct?

MR. EKLEM: Object to the form.

THE WITNESS: Again, I answered that before. That's not my opinion. My opinion is already clear. I provided an example of a transfer set and that's it.

No more.

BY MR. VAN NORT:

Q And I'm asking you, in your example of a transfer set, if you applied the example of stacking as OS level stacking, does that involve moving applications and/or data from S1, S2 and S3 onto S4?

A As I said, counsel, this is just an

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example of a transfer set. The Column 2 refers to, again, a nonlimiting example of a particular type of stacking. That's separate, and it's described separately in the '459 patent. It's a nonlimiting example.

It may only not involve moving, but in that particular nonlimiting example it describes what that nonlimiting example means in Column 2, 20 to 30, and I defer to the language in the spec with respect to this nonlimiting example. But, there could be other examples and all I'm pointing to is one nonlimiting example.

Q Can you apply the example of OS level application stacking that you identified in Column 2 to your example of a Transfer Set T1 at the end of Paragraph 77?

A I'm not sure as to your question, counsel. The transfer sets, as used in the specification, are used in particular ways, specifically in the evaluations, and I defer to the specification to disclose what it discloses.

Q For transfer set -- a transfer set in general, how can a transfer set be implemented?

A I'm not sure as to your question,

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counselor. Transfer set is created and evaluated as described in the specification.

Q And what is -- what is involved in the evaluation process of a transfer set?

A Again, the specification describes various types of evaluation. The claim describes examples of evaluations, which include, in a nonlimiting manner, use of transfer set.

So it's just certain embodiments in the specification that illustrate how the claims would be carried out with respect to some of the evaluations.

Q Does the evaluation of a transfer set involve moving applications and/or data?

MR. EKLEM: Objection. Form.

THE WITNESS: As I said, they involve evaluations as required in the claim. No more, no less.

BY MR. VAN NORT:

Q I'd like you to move to Paragraph -- actually, can you open Exhibit 109 [sic].

MR. EKLEM: That's Exhibit 109 to the proceedings?

MR. VAN NORT: Yes. All -- all exhibits and paper numbers that I'll be

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2 talking about today are to the
3 already-submitted record in the PGR.

4 MR. EKLEM: Got it.

5 THE WITNESS: Okay. I opened
6 Exhibit 109.

7 BY MR. VAN NORT:

8 Q And if you can go to Paragraph -- so just
9 so it's clear for the record, this is the application
10 for the four -- for -- sorry.

11 This is one of the applications in the
12 priority chain to the '459 patent as filed. I'd like
13 you to go to Paragraph 316.

14 A 316?

15 Q Yes. Let me know when you're there.

16 A Okay. I'm at Paragraph 316 of Exhibit
17 1009.

18 Q And in that paragraph, there is a
19 transfer set T1, which says: T1, parenthesis, S1
20 comma, S2, comma, S3 stacked onto S4, closed
21 parenthesis.

22 Do you see that?

23 A Yes, that's, I think, transfer -- example
24 of the transfer set that I referred to earlier.

25 Q And so each one of those, the following

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four transfer sets, are those also examples that are consistent with your previous description?

MR. EKLEM: Objection. Form.

THE WITNESS: I mean, all I can say is that these are examples of transfer sets. That's all.

BY MR. VAN NORT:

Q And these all have the same -- these all -- strike that.

Each of these five example transfer sets listed here all have the same type of transfer identified, correct?

A Each of these has a transfer type that's identified. It has one or more source entities, a target and a transfer type and they all indicate the same type of transfer type.

Q And what is the transfer type in this case -- in each of these cases?

A The transfer type for each of these examples appears to be, as disclosed here in Paragraph 316, is called stacked onto.

Q And an example of stacked onto is the OS level application stacking in Column 2 of the '459 patent; is that correct?

V. MADISETTI

A That's not what I said. All I said is that the transfer type is stacked onto. Nothing more.

Q Is OS level application stacking as described in Column 2 of the '459 patent an example of the stacked onto transfer type?

A Again, all I said is -- you asked me a question, what are the -- what is stacking or an example of stacking as used in the '459, and I provided you an example -- a nonlimiting example of stacking with respect to OS level stacking in Column 2, Lines 20 to 30. Nothing more.

Q In your opinion, is OS level application stacking as described in Column 2 of the '459 patent an example of the transfer type of stacked onto that you've identified in Paragraph 316?

A In my opinion, the type of stacking that is in Column 2, Lines 20 to 30 is a nonlimiting example of stacking and it is -- so, in other words, it can be an example, a nonlimiting example.

Q So it is a nonlimiting example of the transfer type stacked onto; is that correct?

A I said it's a nonlimiting example of stacking.

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Q Can you provide me a nonlimiting example of the transfer type stacked onto that you've identified with respect to transfer sets T1 through T5 in Paragraph 316?

A Again, I will defer to the specification to disclose what it's doing and -- so it describes this example in Column 29 through 30, and it refers to them as some sort of consolidation solution in Columns 29 and 30.

Q I just want to make sure the record is clear on this and you've had a chance to answer.

So looking at Paragraph 316 of Exhibit 109 -- 1009, the transfer sets T1 through T5 each identify stacked onto as the transfer type, correct?

A Yes.

Q Can you provide me an example of what the transfer type stacked onto entails?

A Yeah, again, as I said, a nonlimiting example of stacking could be the example from Column 2, Lines 20 to 30. It's a nonlimiting example. There can be other examples.

Q And applying that nonlimiting example to the transfer sets in Paragraph 316, how would the source systems be stacked onto the target system?

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A Okay. So as shown in this nonlimiting example, we have three source systems, A -- sorry. X, Y and Z. We have three -- we have -- sorry. We have a target system C, C as in cat.

Q Dr. Madisetti, I'm sorry to interrupt you, but I just want to make sure the question is clear because I think you're describing the example of Column 2 and I was actually asking you about the transfer sets in Paragraph 316.

A Yes.

Q So maybe I can -- maybe I should re-ask my question and then I'll let you answer and I won't interrupt you again. Okay?

A Okay.

Q So let me -- strike the last question to the extent it was confusing. Let me re-ask the question.

So using the -- the example of OS level application stacking in Column 2, how would the source systems identified in the example transfer sets in Paragraph 316 of Exhibit 1009 be stacked onto the target systems?

A No, again, I mean, I gave you an example of a transfer set in Paragraph -- that we discussed

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earlier, and in that particular example of a transfer set there was a transfer type called stacking, stacked onto, and you asked me what stacking -- an example of stacking is.

And in the context of the '459 and what a person of ordinary skill in the art would understand, I provided a nonlimiting example in Column 2, Lines 20 to 30. And in this nonlimiting example of OS level application stacking, what is disclosed is three source systems, A -- sorry -- X, Y and Z. So the three source systems are X, Y and Z, and the target system in this case, an example of a target system, would be C, system C.

And what is happening here is that one of these -- in this example, one of the source systems, which is Z, is already running on system C. The other two source systems, X and Y, are evaluated and then moved onto system C for this consolidated solution for stacking, again, in a nonlimiting manner.

Q Is that it?

A Yeah.

Q Going back to Paragraph 316 of Exhibit

1009 --

V. MADISETTI

A Okay.

Q -- I'd like to focus on Transfer Set
Number 5 for a moment.

Do you see transfer set Number 5?

A Yes.

Q It's referred to as T5?

A Yes.

Q Can you describe to me what Transfer Set
5 includes?

A It includes a source system as 17; a
target, S18; and a transfer type stacked onto.

Q Can you describe for me the steps that
would be required in order for S17 to be stacked onto
S18?

A Again, I wouldn't use the word required
or anything else, it's just a transfer set. A
transfer set is just a transfer set, for evaluation.
There's nothing required other than the specification
where you specify one or more source systems, a
target and a transfer type. That's all that is sent
to the evaluation.

Q How are the transfer sets created in the
'459 patent?

MR. EKLEM: Objection. Form.

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2 THE WITNESS: Again, I'm not sure
3 as to your question.

4 The specification, again, provides
5 examples and we have to go through the
6 specification.

7 BY MR. VAN NORT:

8 Q Can you give me any examples of how the
9 '459 patent describes -- strike that.

10 Can you give me any examples of how
11 transfer sets are created in the '459 patent?

12 A I'm not sure what you mean as -- I mean,
13 I'm not -- I'm unclear as to what you mean by
14 created, but transfer sets are disclosed. Examples
15 are provided.

16 For example, in some of the examples
17 provided, one example, again, a nonlimiting example,
18 is Column 6, which describes an example from Figure
19 3. It talks about an Example 424 of five systems,
20 S1, S2, S3, S4, and S5 that can be consolidated
21 through two transfer sets. It talks about two
22 different transfer sets and so on.

23 So the specification describes several
24 examples as to how transfer sets can be used as a
25 part of the evaluation.

V. MADISETTI

Q So my question was not how transfer sets are used but how they are created.

Are there examples -- can you provide me any examples of how transfer sets are created in the '459 patent?

A So referring to, for example, in Column 2, the example we were discussing, Lines 20 to 30, one transfer -- example of transfer set that could be created would be where the source systems are Y and X and the target could be C, and so that's how you could create an exemplary transfer set that would be used in the evaluation that could lead to OS level application stacking in a nonlimiting manner.

Q Do you have any other explanation of how transfer sets can be created in the '459 patent?

A We would have to go through the specification. You asked me for one, I gave you one from Column 2, Lines 20 to 30. That's one example. There could be other examples in the specification.

Q Other than relying on examples in the specification, using your own words, can you describe for me how transfer sets are created in the '459 patent?

MR. EKLEM: Objection. Form.

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THE WITNESS: As I said, counsel, I prefer to use the specification because that's the best guide and the applicant and the patentee knows how best to describe what they are describing. So I provided you an example in response to your question, that, for example, in Column 2, Lines 20 to 30, we have source systems X, Y and Z and we have an example of target system Z.

Z is an example of a source system that's been already -- again in a nonlimiting manner, already placed. And X and Y are source systems that are being evaluated as a part of this analysis. And the transfer type, again, here, in a nonlimiting manner, is an example of a stacking transfer type.

BY MR. VAN NORT:

Q So I'd like to go back to the example that we were talking about at the end of Paragraph 318 of Exhibit 1009, the T5 transfer set. Can you go back there, please?

A Okay.

V. MADISETTI

Q How is the stacked onto transfer set type determined for this transfer set?

A Again --

MR. EKLEM: Objection. Form.

THE WITNESS: -- I would defer to the specification itself, and I have to review that. And it describes here as some sort of -- using some sort of multidimensional compatibility analysis.

So I would, again, defer to the language in the specification.

BY MR. VAN NORT:

Q So the multidimensional compatibility analysis determines the transfer type; is that correct?

MR. EKLEM: Objection to form.

THE WITNESS: Again, that's not my opinion. I would have to refer -- I just deferred to the language in the specification I said.

BY MR. VAN NORT:

Q So for T5, the transfer type is stacked onto; is that correct?

A Yes. T5 is a transfer set that has a

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source entity S17, a transfer type stacked onto and a target S18.

Q What does the transfer type specify?

A The transfer type describes -- as described, for example, in Column 6 of the '459, it describes in Lines 35 through 40 -- 42, as an example, the transfer type in this case, in this example, are consolidation strategy. It describes how a source entity is transferred onto a target, e.g., virtualization, OS stacking, et cetera.

So these are some examples and some descriptions of how one would understand what the transfer type to describe as, again, nonlimiting examples.

Q And in the example of T5, S17 is the source entity; is that right?

A Are we jumping back to 1009?

Q Yes. I'm trying to understand, mapping this definition or this description of transfer type from Column 6 onto the example of transfer set T5, does the source entity correspond to S17?

A I'm not sure as to what you mean. I mean, it's just a transfer set that's sent for evaluation. Based on evaluation, based on

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compatibility evaluations, based on scoring. This is part of an analysis that provides an example of how the claims could operate to perform their compatibility analysis, and nothing more.

Q So Column 6, line 39 through 41, states that: The transfer type or consolidation strategy describes how a source entity is transferred onto a target.

Correct?

A It's an example, it's a nonlimiting description that describes in this -- in the context of consolidation, as an example, it describes that the transfer type of consolidation strategy describes how a source entity is transferred.

Q And so referring back to our example of T5 in Exhibit 1009, stacked onto describes how S17 is transferred onto S18; is that correct?

A That's not my testimony. It just describes a transfer type that could be used at some point after evaluation, if needed, but all it describes here is a transfer set that is a candidate for evaluation.

Q What do you mean that it's a transfer type that could be used?

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A That's all. It could be. It is not required to be used. It's just an evaluation that is a candidate that is used in the compatibility analysis. One way of using the compatibility analysis.

Q So I'd like to move -- maybe --

MR. VAN NORT: We've been going a little over an hour. It's probably a good time for a break, if that works four?

THE WITNESS: Yes, sounds good.

MR. VAN NORT: Phil, does that work for you, too?

MR. EKLEM: Sure.

MR. VAN NORT: Okay. Why don't we go off the record.

THE VIDEOGRAPHER: We are going off the record at 10:06 a.m.

(Brief pause.)

THE VIDEOGRAPHER: We are back on the record at 10:17 a.m.

BY MR. VAN NORT:

Q Welcome back, Dr. Madisetti.

A Thank you. Welcome back.

V. MADISETTI

Q Thank you. I'd like you to turn --
actually, let me ask you a question before -- and
we'll figure out where we need to go.

Are you familiar with the concept of a
one-to-one compatibility analysis in the '459 patent?

A Again, you have to point me to the spec.
I mean, that's not something that I've reviewed
recently, but it is part of the claims in the spec.

Q Sure. Let me find a spot for you in the
spec.

So why don't we start Column 7, Line 14,
under the header Analysis Notes. Are you there?

A Yes.

Q Why don't you read those next two
paragraphs to yourself and let me know when you're
done.

A Yes, I've reviewed them. In Column 7,
I've reviewed the two paragraphs from Lines 14
through 25.

Q And are these two paragraphs describing
one-to-one compatibility analyses?

A There's an example here of some --
there's some description here of what one-to-one
compatibility analysis evaluates, for example.

V. MADISETTI

Q And is there any description here that one-to-one compatibility analysis evaluates source systems against other source systems?

MR. EKLEM: Objection. Form.

THE WITNESS: Again, I don't have -- I can't offer an opinion on that issue. I mean, I refer and defer to the specification itself. I would have to review the entire specification. All I can see is certain examples and certain description.

BY MR. VAN NORT:

Q Are you aware of anyplace in the '459 patent where one-to-one compatibility analysis is described as including evaluations of source systems against other source systems?

A Again, I will defer to the specification itself. I cannot offer a summary.

Q But sitting here right now, you're not aware of any part of the specification that provides that type of description, correct?

MR. EKLEM: Objection. Form.

THE WITNESS: My opinion is that I have not re -- I have not reviewed the

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specification in detail to answer that question yet. I mean, I've not recently reviewed the specification to be able to offer an answer as to that particular question.

BY MR. VAN NORT:

Q Are you familiar with the concept of an N-to-1 compatibility analysis in the '459 patent?

A Yes, again, I've reviewed that in the past and I've -- I understand the specification provides description of certain exemplary ways it is done. So, again, I would defer to the specification itself.

Q So let me point you to Column 31, Line 24.

A Column 31, Line 24.

Q And it's a header N-to-1 Intercompatibility Score Calculation.

Do you see that?

A It describes -- there's a title called N-to-1 Intercompatibility Score Calculation.

Q Can you go ahead and read the following paragraph to yourself and let me know when you're done.

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2 A Okay. Okay. I've read the following
3 paragraph, Lines 25 through 40.

4 Q Is that paragraph describing N-to-1
5 compatibility analysis?

6 MR. EKLEM: Objection. Form.

7 THE WITNESS: Counsel, the
8 specification speaks for itself. It
9 calls the title as N-to-1
10 Intercompatibility Score Calculation. I
11 mean, and I will defer to the language in
12 the spec itself as to what these
13 exemplary disclosures describe. I won't
14 summarize it with anything else.

15 BY MR. VAN NORT:

16 Q I'm asking for your opinion, as a -- as
17 Cirba's technical expert in this case, whether this
18 paragraph is describing N-to-1 compatibility
19 analysis?

20 A I mean, as I described earlier, this is
21 not part of my -- this analysis is not part of my
22 current declaration, I believe.

23 But to the extent that I've reviewed the
24 specification in the past, I will call this as an
25 example of an N-to-1 intercompatibility score

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calculation.

Q Is an N-to-1 intercompatibility score calculation different than an N-to-1 compatibility analysis?

MR. EKLEM: Objection to form.

THE WITNESS: As I said, again, the specification speaks for itself. In response to your question as to this paragraph, I responded to that as this paragraph provides an example of an N-to-1 intercompatibility score calculation.

BY MR. VAN NORT:

Q In your opinion, as Cirba's expert in this case, does N-to-1 intercompatibility score calculation refer to something different than an N-to-1 compatibility analysis?

MR. EKLEM: Objection to form.

Scope.

THE WITNESS: Again, counsel, the specification speaks for itself. This is not part of my current declaration. All I can say is that it is referring here to this section as being an example of an

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N-to-1 intercompatibility score
calculation. That's all I can say at
this point.

BY MR. VAN NORT:

Q So let's go to Column 30, Line 49. Let
me know when you're there.

A Column 30, Lines 39?

Q Forty-nine.

A Forty-nine.

Q At the end of the line there's a sentence
that says -- starts with N to -- N-to-1, and then it
stops.

A Okay. I see that. You're referring to
Column 49 on -- sorry -- Line 49 on Column 30, with
the sentence that refers to: An N-to-1
intercompatibility analysis assesses each source
system against the target.

Is that right?

Q That's correct.

A Okay. So that's the system -- that's the
sentence between Lines 49 and 51 of Column 39 -- 30.
Sorry.

Q Correct. Is this sentence describing the
analysis included in an N-to-1 compatibility

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analysis?

A Again, counsel, I cannot precisely answer that. All I can say is that this describes an example of an N-to-1 intercompatibility analysis within the broad header of a multidimensional, rule-based compatibility analysis.

So this is one example, a nonlimiting embodiment, I believe, within the larger section.

Q And what is --

A Dimensional --

Q Go ahead.

A Within the larger section starting on paragraph -- on Line 45 of Column 30.

Q And in this sentence, what does it mean to assess each source system against the target?

A I would -- I would -- in my opinion, this is an example where it's describing some sort of evaluation. So assess would mean to evaluate according to some analysis. As an example.

Q And that analysis includes assessing each source system against the target; is that correct?

A Again, I mean, the specification speaks for itself as to what this is doing. It describes here as N-to-1 intercompatibility analysis assesses

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2 each source system against the target.

3 Q Are you aware of anyplace in the '459
4 patent that describes an N-to-1 intercompatibility
5 analysis that assesses a source system against other
6 source systems?

7 THE WITNESS: Again, the
8 specification speaks for itself, counsel.
9 I don't remember the entire specification
10 and -- so I cannot offer an answer. All
11 I would refer to is -- and defer to, is
12 the specification.

13 MR. EKLEM: I'm going to reflect
14 for the record that I injected an
15 objection to form after the question.

16 I didn't see it in the realtime.

17 MR. VAN NORT: Sure.

18 BY MR. VAN NORT:

19 Q Are you familiar with the '492 patent?

20 A Again, from -- in the past, when I
21 reviewed it a few months ago, not right now.

22 Q Are you aware of the relationship between
23 the '459 patent and the '492 patent?

24 MR. EKLEM: Objection. Scope.

25 THE WITNESS: Again, counsel, the

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specifications are, I believe, similar or -- and again, I don't have a specific opinion on that issue.

I believe that there is some similarity in the specifications. Again, the two patents speak for themselves. I don't wish to summarize the relationship in a manner that -- in a manner other than how the specifications describe themselves.

BY MR. VAN NORT:

Q And when you say -- but you understand that there is a relationship between the two patents, correct?

A Again, I don't want to summarize a legal relationship and I'm just looking at it from a technical point of view. I don't wish to characterize it in any legal manner.

All I can see is that, based on my recollection from over year ago, there were some similarities, from a different point of view.

Q And to be clear, I'm asking for your technical opinion on this.

A From a technical --

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Q Are you aware --

A -- opinion there are some similar terms or similar descriptions, but that's all I can remember. I don't remember much.

Q Do you know of whether the specifications are the same between the '492 and the '459?

MR. EKLEM: Objection to form.

THE WITNESS: As I said, I would look at the '492. I remember some similar terms at a very high level, but I don't want to describe them as being the same or different or otherwise. Each of them speak for themselves.

BY MR. VAN NORT:

Q Do you have an opinion on whether a person of ordinary skill in the art would interpret the claim terms of the '492 and the '459 patents consistent with each other?

MR. EKLEM: Objection to scope.

THE WITNESS: As I said, I don't wish to offer a legal opinion, counsel. The claims describe the inventions, and my technical understanding is that they are different patents, different claims

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so they are different inventions.

BY MR. VAN NORT:

Q And I'm not asking for your legal opinion. I'm asking for your technical opinion about how a person of ordinary skill in the art would interpret the patents.

So, in your expert technical opinion as representing Cirba in this case, would a person of ordinary skill in the art understand the claim terms in the '492 and the '459 consistent with each other?

MR. EKLEM: Objection to form and scope, and to the extent it calls for a legal conclusion.

THE WITNESS: As I said, counsel, I don't offer a specific opinion on that issue. I've reviewed the Court's claim constructions, and -- but that's all I can say.

BY MR. VAN NORT:

Q So I'd like you to go to Claim 1 of the '459 patent.

A Okay.

Q And why don't you go ahead and read Claim 1 to yourself, just to familiarize yourself with it,

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although I'm sure you've read it many times before.

But go ahead and read it once to yourself and let me know when you're done and we'll ask -- I'll ask a few questions.

A Yes, I've reviewed it.

Q So this -- the preamble describes determining placement. What does placement refer to?

A It's referring to a system for determining placement of source computer systems on target computer system. So the Claim 1 is a system for determining placement of source computer systems on target computer system. So that's what the placement in this context refers to.

Q Can you give me an example of a placement?

MR. EKLEM: Objection to form.

THE WITNESS: Again, if you look at nonlimiting examples from the specification, we can look at -- one second.

So a nonlimiting example could be, for example, in Column 5, Lines 55 through 65, where it describes: In the following examples a source system refers

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to a system from which applications and/or data are to be moved, and a target server or a system is the system to which such applications and/or data are to be moved.

For example, an underutilized environment having two systems, 16, can be consolidated to a target system, one other system, by moving applications and/or data from the source system, which is the other of the systems, to the target system.

So this is a case where there are two systems. And here again, it is a nonlimiting example of what a placement, for example, could be.

BY MR. VAN NORT:

Q So, in this example, one system, the source system, is placed onto the target system; is that correct?

A This is a nonlimiting example. Again, this is one example, a nonlimiting example, where there's an underutilized environment. So you have two systems and one of them is underutilized, both of

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them are underutilized.

So one option is to move applications and data from one of the underutilized systems, call it the source system, and move these applications and/or data to the target system, to provide an example -- a nonlimiting example of consolidation.

Q So my question was what's an example of placement. And you're saying this paragraph is an example of placement; is that correct?

A It's a nonlimiting example of how you move applications and/or data from a source system to a target system. That's an example, a nonlimiting example, of how, in an underutilized environment with two systems, you can consolidate to a target system, which is one the systems, by moving applications and/or data from the source system, which is the other of the systems -- other of the two systems, to the target system, which is, again, one of the two systems.

Q What --

A It's a nonlimiting example.

Q What in this nonlimiting example is the placement?

A Moving, for example, the applications

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and/or data from the source system to the target system is a nonlimiting example.

Q So in this example, in order to place the source system on the target system, this example is using the technique of moving applications and/or data; is that correct?

A My opinion is that this provides a nonlimiting example of a placement where you are moving applications and data -- and/or data from a source system to a target system.

So this is a nonlimiting example, in an underutilized environment, where you are moving applications and/or data from a source system to the target system. It's a nonlimiting example.

Q And I just want to be clear what I'm going after here, because I'm trying to understand what you're including specifically in the acts of placement. And so I just want to make sure that I understand correctly.

In the example here, the actual placement occurs by the movement of applications and/or data from the source system to the target system; is that correct?

MR. EKLEM: Objection to form.

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2 THE WITNESS: Again, the question
3 is completely different. You are saying
4 what is required and what is included.
5 So this is a nonlimiting example of
6 placement, a nonlimiting example. That
7 means it's not required in all cases.

8 BY MR. VAN NORT:

9 Q I'm asking in this particular nonlimiting
10 example, placement is occurring via movement of
11 applications and/or data; is that correct?

12 A So what is happening is that there is --
13 in this particular nonlimiting example of placement
14 in Column 5, there are -- there's a target system
15 that is one of the two systems. And the
16 underutilized environment has two systems and you are
17 consolidating it by moving applications or data from
18 the source system to the target system. So this is
19 one nonlimiting way or example of placement.

20 Q So why don't you look at the last
21 limitation of Claim 1. It says: Issue instructions
22 to place the at-least-one source system on the
23 at-least-one target system in accordance with the
24 determined placement.

25 Do you see that?

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A Yes.

Q Using your example in Column 5, what is -- what would to place refer to here?

A Place refer to here. We are referring to issuing instructions, right?

Q Uh-huh.

A So in this claim there is the specific limitation called issue instructions to place the at-least-one source system on the at-least-one target system.

An example of -- again, a nonlimiting example of how the '459 specification issues such instructions could be that -- again, one nonlimiting way could be to -- Column 3, for example, Lines 34 through 35, it could be to initiate a transfer. That could be one nonlimiting way that could be an example of issuing instructions.

Under the nonlimiting manner could be, for example, the example of Figure 52, where the transfers that are part of the consolidation solution, for example, are described. That could also be the directive or the description in a nonlimiting manner of the instructions, where you are specifically having an instruction that Source 9898

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stacks onto Target 7309.

So these are different embodiments, nonlimiting embodiments, that illustrate what a person of ordinary skill in the art would understand the claim limitations issue -- starting with issue instructions could satisfy. Again, these are nonlimiting embodiments.

Q So I'd like to focus on Column 5 at the example that we were talking about before, at Lines 57 through 64.

A Column 5, one second. Okay. I'm going to Column 5, Lines 55 through 64. Okay. And what is your question, sir?

Q And do you recall a few moments ago talking about this example?

A Yes.

Q What would issuing instructions to place the source system on a target system, in this example, look like?

A Again, one nonlimiting example could be that you have decided on the -- you have decided on a consolidation solution that is a -- is the transfer set that would move the applications and data, that indicates that the transfer type is moving these

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applications or data from a particular source system to a target system.

So completing the evaluation and deciding on or determining such a placement would satisfy, in a nonlimiting manner, the claim for this particular example.

Q In the answer you just provided, what was the instruction that was issued?

A The instruction could be something like, if there are two systems, one and two, and you were moving -- you were -- you determine that applications and data -- and/or data can be moved as a part of the decision or the determination, you decide that that would be a choice that you made, based on the evaluation.

You would create or you would provide something like Figure 52 that would say Transfer Source. You'd have a figure like 52 that would indicate a determination that was made that provides the instructions, such as Figure 52, that says Source 1, Transfer Target 2. That would be a nonlimiting example of --

Q So let's --

A -- the instruction.

V. MADISETTI

Q So let's focus on Figure 52 for a moment then. Do you have that in front of you?

A Yes.

Q First of all, can you describe Figure 52 for me?

A Figure 52 describes the consolidation solution and certain exemplary. It provides an example of a consolidation solution and some examples of how you would create instructions for certain -- certain -- certain placements of where you are placing at-least-one source system on at-least-one target system, in accordance with a determined placement as required in the claim.

So it's, again, a nonlimiting example.

Q Are the instructions that you are pointing to in Figure 52, are they displayed?

MR. EKLEM: Objection to form.

THE WITNESS: The instructions are the -- in this, again, nonlimiting example, it is the -- it is the table that is called Transfers. They comprise a nonlimiting example of the instructions.

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BY MR. VAN NORT:

Q So the table in Figure 52, each of the rows of the table is an instruction; is that a reasonable way to look at this?

A Again, it's a nonlimiting example. It means it's not required to be this way, but this is an example that it provides -- each-or-all, for example, would be a nonlimiting example of an instruction.

Q How are the instructions intended to be used?

MR. EKLEM: Form.

THE WITNESS: Again, I mean, I would defer to the claim language itself, that these instructions are used to place the at-least-one source system on the at-least-one target system in accordance with the determined placement.

BY MR. VAN NORT:

Q Who is the intended recipient of the instructions in Figure 52?

MR. EKLEM: Objection to form.

THE WITNESS: I mean, the claim is -- the claim does not provide -- I

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mean, the claim speaks for itself. I don't -- I don't limit the claim to any particular target of the instructions and --

BY MR. VAN NORT:

Q And to be clear, I'm not asking about the claim. Let's stick with the example that's in Figure 52.

For the instructions that are displayed in Figure 52, who or what is the intended recipient of the instructions?

MR. EKLEM: Objection to scope and form.

THE WITNESS: As I said, I don't have a specific -- I believe that the reference -- we have to look through the specification. I don't have it.

All I can identify in Figure 52 is a nonlimiting example of an instruction, which could be a row.

BY MR. VAN NORT:

Q Could these instructions be for a human user?

A It could. I mean, again, that's not --

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it could be in a nonlimiting manner. I don't --

Q Are you -- sorry. Please finish.

A These are all nonlimiting embodiments.

Q In your opinion, could these instructions be for a human administrator?

A Again, I think they can, in a nonlimiting manner.

Q And, in your opinion, could these instructions be for a computer program that performs the transfers?

A Again, whether it's direct or indirect, whether it's direct instructions, indirect instructions, I mean, all these are possible and I have to look at the context of the exact system, exact analysis and the exact scenario and how particular implementations are there.

But the correct answer is it could, in a nonlimiting manner. Again, it depends on the system and the context.

Q So going back to the last limitation, the issue instructions limitation of the '459 patent.

A Okay.

Q In order to satisfy issue instructions to place the at-least-one source system on the

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at-least-one target system in accordance with the determined placement, that requires actually applying the determined placement, correct?

A Again, the claim speaks for what it means. I don't see where you require a determined placement. It just says that issue instructions to place the at-least-one source system on at-least-one target system in accordance with the determined placement. So it's just issuing instructions.

So as long as you are issuing instruction and it requires -- the claim language says in accordance. So as long as the limitation is satisfied, it's satisfied. I don't want to summarize the limitations in any other way.

Q It requires applying the determined placement, correct?

A Again, that's not in the claim language. It just says issue instructions. It doesn't say anything about applying. It does not say any requirement, other than what's in the claim, just issue an instruction in accordance with the determined placement. That's it.

Q The instructions that are issued would have to apply to determine placement, correct?

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A I don't see that in the claim. The claim language is different.

MR. EKLEM: I want to note the objection to form after the question.

MR. VAN NORT: Sure.

THE WITNESS: Yes, the claim is different. The claim doesn't use language you are using, counsel. The claim is what it reads.

BY MR. VAN NORT:

Q What is the referred -- the determined placement referring to in this limitation?

A I believe it's an antecedent determination, where you look to Limitation 2, which is determining a placement, and the placement is employed -- placement is determined by employing the following operations.

So the claim is about determining a placement and issuing instructions.

Q So the second limitation is the long one, correct, that starts with, determine of placements, and then there's three sub steps?

A Again, I would not call them as sub steps. All I would say is that they're determining a

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placement and employing the following operations.

There are three operations, evaluate, evaluate and evaluate, and issue instructions. That's all it requires, issuing instructions. Nothing more.

Q And the determined placement in the issue instructions element refers back to the placement that was determined in the second element; is that correct?

A Again, it's an antecedent basis, so you are determining a placement, so it would refer back to the determination of a placement.

MR. VAN NORT: All right. Why don't we take another break here, if that's okay with you?

THE WITNESS: Yes, sounds good.

MR. VAN NORT: Okay.

THE VIDEOGRAPHER: We are going off the record at 11:03 a.m.

(Brief pause.)

THE VIDEOGRAPHER: We are back on the record at 11:20 a.m.

BY MR. VAN NORT:

Welcome back, Dr. Madisetti.

A Welcome back.

V. MADISETTI

Q Can you please go back to Claim 1 of the '459 patent?

A Yes, sir. I'm on Claim 1 of the '459 patent.

Q So I'd like to talk about the second evaluate compatibility operation, which I think starts at Line 17.

Do you see that?

A Yes.

Q And it says: Evaluate compatibility between the specific source system from the plurality of source systems, and one or more other source systems either already placed on the specific target system or being evaluated for placement onto the specific target system.

Do you see that?

A I do.

Q What is the difference between a source system that is already placed on the specific target system and a source system that is being evaluated for placement onto the specific target system?

A Again, I mean, the claim language speaks for itself. And, in my opinion, the meaning of being evaluated for placement onto the specific target

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system means that it is being evaluated for placement.

So a source system is being evaluated for placement onto a specific target system, and already placed on a specific target system would be those -- those systems, again, would be examples of source systems that are already placed on a specific target system, again, nonlimiting examples could be systems -- source systems that have completed evaluation for placement.

Again, nonlimiting examples could be source systems that are -- completed evaluation and are -- are -- completed evaluation and not yet running on the target system. The, again, nonlimiting examples of already-placed on the specific target system could be those that are running on the target system without evaluation. Again, these are nonlimiting examples of the already-placed limitation phrase.

Q Can you go back to Exhibit 1009, please.

A Okay.

Q And this is the specification as filed for the '936 application.

A Yes.

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Q And go back to Paragraph 316.

A Okay.

Q In the example transfer sets T1 through T5, which of the source systems are already placed?

MR. EKLEM: Objection to form.

THE WITNESS: These are -- I don't think that this shows the results of the evaluations. This is part of the evaluation, still being evaluated, for example. And again, I would have to review this in detail, but it looks like these are transfer sets that are being analyzed.

But if you look at the '459 patent itself, which is, again, very similar to this Exhibit 1009, and you can see that -- one second. Where am I on this?

So if you look at -- so if you look at Paragraph 9, so -- of Exhibit 1009 that we are looking at, that refers to the same example that I think we discussed earlier. Again, it's a nonlimiting example. Here, application Z, running on system C, is an example of

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a source system that was already -- it's
a nonlimiting example of a source system
that was already placed.

BY MR. VAN NORT:

Q Okay.

A And the results of the consolidation
analysis, for example, 52. Figure 52, if -- where if
that's the result of the consolidation analysis, then
those would also be source systems that were already
placed because they have completed the process of
evaluation.

So there are many examples of -- again,
nonlimiting examples, of source systems that are
already placed, as I described from Paragraph 9, as
an example.

Also there are -- there's another example
from, I believe, from Paragraph 6, where -- of the
Exhibit 1009, where it specifically describes: When
cost is considered on a server-by-server basis, the
additional cost of having underutilized servers is
often not deemed to be troubling. When multiple
servers in a large computing environment are
underutilized, having too many servers can become a
burden.

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And then it goes -- that says that: Even considering only the cost of having redundant licenses, removing even a modest number of servers from a large computing environment can save significant amount of cost.

So this, again, discloses to a person of ordinary skill that using the word remove means you are removing from an existing operating set. And when you talk about redundant licenses, it means that you are considering those licenses that are already being used or already -- as in the claim, already placed.

So there are many examples in the 1009 that provide nonlimiting examples of how already placed is satisfied through the use of examples that cover -- such as Figure 52, that cover cases that determine placement that have already completed evaluation or, such as those in Column 2 and Column 5, that talk about underutilization, application levels, stacking, OS level stacking, that contemplate, in a nonlimiting manner, source systems that are already running or have already been placed before additional evaluations have been done.

Q So I'd like to focus back on Figure 52

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for a moment.

A Okay.

Q So in the Transfers table displayed in Figure 52, the first column shows source systems; is that correct?

A I'm getting to 52. Okay, I'm looking at 52.

Q So the first column of the table in Figure 52 shows source systems, correct?

A It's labeled Source.

Q And do you understand those to correspond to source systems?

A That corresponds to a specific result of the evaluation that says that 9898 has been determined to -- that -- that's an instruction that determines -- that instruction that instructs that 9898 be selected for placement in a particular way on 7309, for example, in the first row.

Q And what is 9898? Or, for example, I'm trying to understand, is 9898 the source system for this particular transfer?

A It is the already-placed source system for -- in the nonlimiting example of an already-placed source system.

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Q And so each of the source systems identified in the Source column are already placed; is that correct?

A If this is an example of the instructions. These would be instructions that would describe an already-placed, as an example. Again, this is a nonlimiting example.

I provide other examples in the spec for -- in the other cases of already-placed source systems. Which, for example, in Column 2, refer to an application Z already running on the system, target system Z, as in zebra. So there are many nonlimiting examples.

Q I'd like you to move to Exhibit 201, which is your declaration.

A Yes.

Q And go to Paragraph 88.

A Okay.

Q What is the common use of the terms place and placement within the virtualization and information technology industry?

A These are commonly used and as I describe in this entire section.

Q Well, I'm interested in specifically the

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common use that you're referring to here within virtualization and information technology industry?

A These are -- I provide many examples here. Again, these are nonlimiting examples. And it could be -- it could mean things like consolidating. It could mean things like forward consolidating or transferring or migrating. All these are nonlimiting examples.

Q And all of those are common use within the virtualization industry?

A All these are nonlimiting examples. These are not definitional. They are as I describe in Paragraph 19. It's not limited to the action of moving. It is not limited to it. These are nonlimiting examples.

You don't require moving, in my opinion. Placement can have these nonlimiting descriptions and it's not limited to require movement.

Q Can you go to Column 2 of the '459 specification.

A Okay.

Q And at Line -- let's see -- Line 17, there's a sentence that starts, Examples of virtualization technology include.

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2 Do you see that sentence?

3 A I'm getting to Column 2. Okay. I'm in
4 Column 2.

5 Q Do you see the reference to IBM LPAR?

6 A Line Number 17?

7 Q It's in the sentence that starts on Line
8 17. So if you could go ahead and read the sentence
9 that starts on Line 17 that begins with, Examples of?

10 A Yes. I'm seeing that, it says: Examples
11 of virtualization technologies include VMware,
12 Microsoft Virtual Server, IBM LPAR, Solaris
13 Containers, Zones, et cetera.

14 Q So I'm referring here -- I'd like you to
15 focus on IBM LPAR, L-P-A-R?

16 A Okay.

17 Q Do you know what IBM LPAR is?

18 MR. EKLEM: Objection to form and
19 scope.

20 THE WITNESS: It refers to an
21 example of virtualization technologies.
22 So I don't specifically -- I don't
23 specifically -- I don't specifically have
24 a more specific description than that it
25 an example of a form of virtualization as

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disclosed by the '459.

BY MR. VAN NORT:

Q Have you ever used an IBM LPAR?

A I don't remember. I don't remember using one. Again, I -- it says it's a trademark. So maybe it's a technology framework that I'm familiar with but I don't recall remembering something with LPAR, but this may be old stuff.

Q Okay. So next I'd like you to focus on Solaris Containers.

Do you see that one?

A Yes.

Q What is Solaris?

A That's a name.

MR. EKLEM: Objection. Form.

THE WITNESS: Again, I would assume that it's some sort of virtualization technologies, and I don't remember specifically what Solaris Containers trademark contains. I understand it's -- it's some derivation of the Unix platform, but again, I don't remember specifics.

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BY MR. VAN NORT:

Q How about without the word Containers,
just Solaris. Do you know what Solaris is?

MR. EKLEM: Objection to form and
scope.

THE WITNESS: Again, this is
something from a long -- long time ago.
It is, as I said, derived from some form
of Unix and it's some form of Unix
operating systems and, again, this is a
from a long time ago.

BY MR. VAN NORT:

Q And then finally, how about Zones? Do
you know what Zones is?

A Again, I don't remember specifics, other
than that these are some form of OS-related
technologies. I don't have a specific recollection.

Q Do you recall having used either Solaris
Containers or Zones in the past?

MR. EKLEM: Objection to form and
scope.

THE WITNESS: And as I said, these
are -- these were from a long time ago.
I don't recall specifics.

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I know I've used Solaris, but I don't remember much. I don't remember when, if I used Zones at all and in what form. These are from a long time ago.

BY MR. VAN NORT:

Q I'd like you to go to Column 39 of the '459 patent.

A Okay.

Q And go to Line 43.

A Okay.

Q And go ahead and read that paragraph to yourself and let me know when you're done.

A Okay. I'm ready.

Q So this paragraph states that: The analysis -- each analysis and associated map discussed above may instead be used for purposes other than consolidation, such as capacity planning, regulatory compliance, change, inventory optimization, administration, et cetera.

Do you see that?

A I do.

Q How would the analyses presented above be used for capacity planning?

MR. EKLEM: Objection to form.

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2 THE WITNESS: Again, capacity
3 planning could be where you are trying to
4 estimate how many servers you may be
5 needing or how many software licenses you
6 may be needing, as an example. Again,
7 these are nonlimiting examples.

8 BY MR. VAN NORT:

9 Q How could -- how could the analyses that
10 is being referenced here be used for regulatory
11 compliance?

12 MR. EKLEM: Objection to form.

13 THE WITNESS: Again, this is
14 something that, again, you have asked is
15 not part of my declaration. And all I
16 can say is that there may be certain
17 regulations, for example, with respect to
18 export control or other types of issues.

19 Again, I don't know the specifics,
20 but given the context of -- in the
21 context of '459, given the specific
22 disclosures of '459, I would understand
23 that this could include making sure that
24 you were running on authorized targets
25 that allowed you to ensure certain

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2 regulations for security or privacy, for
3 example -- for medical data, for example,
4 that could be subject to regulations.

5 BY MR. VAN NORT:

6 Q How could the analyses that are
7 referenced here be used for change?

8 MR. EKLEM: Objection to form.

9 THE WITNESS: Again, with respect
10 to the specific disclosures of '459, I
11 mean, again, this is not part of my
12 declaration, but I would assume that -- I
13 would, again, briefly suggest that in the
14 context of the disclosures of the '459,
15 this could be trying to choose a better
16 or a different type of software or
17 hardware features.

18 BY MR. VAN NORT:

19 Q How could the analysis referenced here be
20 used for inventory?

21 MR. EKLEM: Objection to form.

22 THE WITNESS: Again, this is not
23 part of my declaration and, again, given
24 the context of disclosures of '459,
25 again, I would say that change would --

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2 would include -- in again, a nonlimiting
3 manner, such as choosing the number of
4 servers or number of licenses.

5 Others could also include
6 inventory. And these are, again,
7 nonlimiting examples. We could include,
8 for example, choosing the type of
9 systems, whether it's Cloud or local or
10 server. All these could be part of an
11 inventory type of analysis. Again, these
12 are -- yeah.

13 BY MR. VAN NORT:

14 Q How could -- how could the analyses
15 referenced here be used for optimization?

16 MR. EKLEM: Objection to form.

17 THE WITNESS: Again, the same
18 answer again, in the context of the
19 disclosure of the '459, this is not a
20 topic that I discussed in my declaration.

21 But optimization could be including
22 optimization for costs, optimization for
23 speed, optimization for utilization,
24 optimization for availability,
25 optimization for costs. All these other

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2 features, I think, would be visible to a
3 person of ordinary skill as benefits of
4 using the disclosed technologies.

5 BY MR. VAN NORT:

6 Q And how could the analyses referenced
7 here be used for administration?

8 MR. EKLEM: Objection to form.

9 THE WITNESS: Again, in the context
10 of the specific disclosures of the '459,
11 the use of the system is not something I
12 discussed, but again, one would -- a
13 person of ordinary skill would understand
14 this would be related to management and
15 administration of a large set of
16 computing resources, in a data center for
17 example, and making sure that they are
18 optimized, available and so on.

19 BY MR. VAN NORT:

20 Q And are there any other purposes for the
21 analyses described in the specification that you can
22 think they'd be used for?

23 MR. EKLEM: Objection to scope and
24 form.

25 THE WITNESS: As I said, counsel,

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2 it's a very general question. I think
3 that they could be used in a wide variety
4 of ways as described in the
5 specification. I will rely upon whatever
6 is disclosed here. And I cannot recite
7 offhand all possible ways, but these are
8 some of the ways that I can describe
9 sitting here, but I would rely on the
10 entire specification and the claims and
11 the context in which these terms may be
12 used.

13 MR. VAN NORT: Okay. No more
14 questions for me.

15 THE WITNESS: Thank you, counsel.

16 MR. EKLEM: All right. Diek, do
17 you mind if we take a quick break? I
18 have to look through a few notes, but I
19 think I have a few questions for
20 Dr. Madisetti.

21 MR. VAN NORT: Okay.

22 MR. EKLEM: All right. We can
23 probably just do ten minutes.

24 MR. VAN NORT: Okay.

25 THE VIDEOGRAPHER: We are going off

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2 the record at 11:49 a.m.

3 (Brief pause.)

4 THE VIDEOGRAPHER: We are back on
5 the record at 11:59 a.m.

6
7 EXAMINATION

8 BY MR. EKLEM:

9 Q Dr. Madisetti, did you review the '459
10 specification and the '936 application in forming the
11 opinions in your declaration, which is referred to as
12 Exhibit 2001?

13 A Yes.

14 Q And do you recall being asked today about
15 the meaning of source system in the '459 patent
16 claims?

17 A Yes.

18 Q Can you turn to Paragraph 76 of your
19 declaration.

20 A Yes.

21 Q Does Paragraph 76 contain your opinions
22 about the term source system?

23 A Seventy-six describes the guidance from
24 the '459 that the source system and target systems
25 may be physical, virtual and even hypothetical

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computer systems that do not yet exist for future planning activities and performing what-if consolidation analysis.

In addition, the computer systems, the '459 patent indicates that systems may also encompass any entity that is capable for being analyzed for compatibility, such as applications, database instances, servers and computers, Columns 6, 17 to 33.

Q And with respect to the last sentence of Paragraph 76, as you mentioned, you cited Column 6, Lines 17 to 33, can you explain how that portion of the specification informed your opinion?

A Column 6 of the '459?

Q That's correct.

A Column 6, for example, Lines 29 to 35 describe that the system or computer system, hereinafter referred, can encompass any entity which is capable of being analyzed for any type of compatibility and should not be considered limited to existing or hypothetical physical or virtual systems, et cetera.

And paragraphs starting in Line Number 16 through 28 describe that entities beyond physical,

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virtual or hypothetical systems and, for example, entities can be components that comprise systems such as applications and database instances, and so on.

Q So if I understand you correctly, a system can be a component of a system or the system itself?

A Yes.

MR. VAN NORT: Objection. Leading.

BY MR. EKLEM:

Q Dr. Madisetti, do you recall being asked about the meaning of the word placement in the claims, and already placed, in the claims of the '459 patent?

A Yes.

Q And you described some examples of the specification that informed your opinion. Other than those that you've already mentioned, are there any other examples that support your opinion?

A I think the specification has many examples and it talks about, for example, in addition to those in Column 2, it -- I believe I talked about an example from Column 5, Line 60 through 65.

There could be additional examples, but I believe I covered most of them. But as I said, the

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2 specification speaks for itself.

3 Q Dr. Madisetti, did you consider Figure 49
4 when you were reviewing the application and patent in
5 forming your opinion?

6 MR. VAN NORT: Objection. Outside
7 the scope, leading.

8 THE WITNESS: Yes. Figure 49 is an
9 example that I also considered, and it's
10 part of the series of Figures 49, 50, 51,
11 52. I think I pointed to 52, as well, so
12 yes, I did consider Figure 49.

13 BY MR. EKLEM:

14 Q How did Figure 49 impact your opinion?

15 MR. VAN NORT: Objection. Scope.

16 THE WITNESS: For example, Figure
17 49 describes different options in these
18 transfers. It discusses in the context
19 of transfer type stacking. It also
20 discusses things like minimum source
21 systems for target, maximum systems for
22 target.

23 So this means that you are
24 considering -- a person of ordinary skill
25 in the art would understand you're

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considering already-placed systems.

And you also have a box there called Clear Existing Transfers that also provides some insight to a person of ordinary skill as to an existings transfer, which could -- which could be under the nonlimiting example of an already-placed system.

BY MR. VAN NORT:

Q Did you complete your answer?

A Yes.

Q Dr. Madisetti, do you recall being asked questions about what a consolidation solution is?

A Yes.

Q Is consolidation --

MR. VAN NORT: Sorry, Philip. I think our realtime isn't working, which is fine, but I just want to make sure the court reporter is on and getting this.

MR. EKLEM: Yeah, let's take a moment to confirm that.

(Brief pause.)

MR. VAN NORT: My apologies.

Please condition.

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2 MR. EKLEM: Yeah, no problem.

3 BY MR. VAN NORT:

4 Q Dr. Madisetti, let me just re-ask the
5 question.

6 Do you recall being asked during your
7 deposition today about what a consolidation solution
8 is?

9 A Yes.

10 Q Is consolidation solution something that
11 is discussed in the '459 patent?

12 MR. VAN NORT: Objection. Leading.

13 THE WITNESS: There are some
14 examples provided as to some descriptions
15 and examples of what consolidation
16 solution could be.

17 BY MR. VAN NORT:

18 Q I'll direct you to Column 38 of the '459
19 patent at Line 63.

20 A Column 38. Okay.

21 Q And the sentence at the beginning of this
22 paragraph says: Again, continuing from the above
23 example, a consolidation analysis may be performed to
24 search for a consolidation solution by automating the
25 analysis of the multidimensional scenarios.

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Do you see that?

A I see that.

Q And that refers to the consolidation analysis that you were questioned about earlier today?

MR. VAN NORT: Objection. Scope, leading.

THE WITNESS: Yes, it relates to that.

BY MR. VAN NORT:

Q Do you see in the next sentence the reference to Figure 49?

A Yes. That's where -- that's what we discussed earlier.

Q So does this Figure 49 then relate to the consolidation solution that you were asked about today?

A Yes.

Q Dr. Madisetti, do you recall being asked about virtualization products like Solaris during your deposition today?

A I was asked about certain products discussed in, I believe, Column 2, which included Solaris Containers.

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Q Did -- does Column 2 of the '459 patent also refer to other products, including VMware?

A Yes.

Q Do you know what VMware is, Dr. Madisetti?

A Yes.

Q Can you explain what it is?

A VMware is a -- VMware is -- VMware is a virtualization solution.

MR. EKLEM: Okay. Dr. Madisetti, thanks for your time. I don't have any other questions.

THE WITNESS: Thank you.

MR. VAN NORT: No more questions for me.

THE WITNESS: Thank you. Thank you, counsel. Thank you, counsel.

THE VIDEOGRAPHER: This marks the end of the deposition.

THE WITNESS: I would like to review and sign, when I can.

THE VIDEOGRAPHER: We are going off the record at 12:09 p.m.

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(Thereupon, the deposition was
concluded at approximately 12:09 p.m.)

VIJAY MADISETTI, PH.D.

Subscribed and sworn to before me
this_____ day of_____, 2022.

D I S C L O S U R E

STATE OF GEORGIA) DEPOSITION OF:

FULTON COUNTY) VIJAY MADISETTI, PH.D.

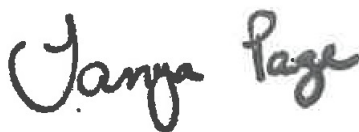
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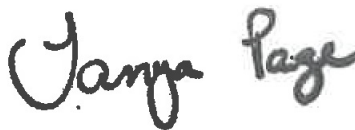
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I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to written page under my direction, that the preceding pages represent a true and correct transcript of the evidence given by said witness.

I further certify that I am not of kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in any way financially interested in the result of said case.

Dated this 16th day of June, 2022.



Tanya L. Verhoven-Page,
Certified Court Reporter,
B-1790.

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25 (Notary Public) MY COMMISSION EXPIRES: _____