

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VMware, Inc.
Petitioner,

v.

Cirba IP Inc.
Patent Owner.

Patent No. 10,951,459

Post-Grant Review No. PGR2021-00098

**PETITIONER'S OBJECTIONS TO EVIDENCE SUBMITTED WITH
PATENT OWNER'S RESPONSE**

VMware, Inc., (“VMware” or “Petitioner”) hereby objects to the following evidence that was submitted by Cirba IP Inc. (“Cirba” or “Patent Owner”) with the Patent Owner’s Response (“POR,” Paper 14) in the above-captioned proceeding. In accordance with 37 C.F.R. § 42.64(b)(1), these objections are being timely filed and served within five (5) business days of service of evidence to which these objections are directed.

Exhibit #	Patent Owner’s Description	Petitioner’s Objections
2001	Declaration of Dr. Vijay Madisetti in Support of Patent Owner’s Response	<p>VMware objects to Exhibit 2001 as irrelevant, lacking foundation, assuming facts not in evidence, calling for legal conclusion, and mischaracterizing evidence. VMware further objects to Exhibit 2001 to the extent that it includes expert opinions for which the factual bases have not been disclosed, for which Dr. Madisetti does not have personal knowledge (FRE 602), and to the extent that Dr. Madisetti’s opinions constitute unreliable expert testimony under FRE 702 and/or 703.</p> <p>VMware objects to the portions of Exhibit 2001 not discussed or cited in the Patent Owner’s Response as not being relevant to any issue on which trial has been instituted. In particular, at</p>

		<p>least paragraphs 1-47, 49-74, 91-99, 107-108 of Exhibit 2001 were not cited or discussed in the Patent Owner's Response. VMware has had no fair opportunity to respond to Patent Owner's unstated contentions. Their consideration would be unfairly prejudicial to VMware.</p>
2002	<p>List of Materials Considered by Dr. Vijay Madisetti</p>	<p>VMware objects to Exhibit 2002 as irrelevant to the extent that it includes materials that do not form the expressly-stated basis for any of Dr. Madisetti's opinions, as disclosed in Exhibit 2001. VMware further objects to Exhibit 2002 to the extent that it includes materials that form the basis for expert opinions for which the full factual bases have not been disclosed, for which Dr. Madisetti does not have personal knowledge (FRE 602), and to the extent that Dr. Madisetti's opinions constitute unreliable expert testimony under FRE 702 and/or 703. VMware also objects to the extent any materials listed in Exhibit 2002 are not clearly and uniquely identifiable from the information provided.</p> <p>VMware objects to Exhibit 2002 for violating at least 28 U.S.C. § 1746(2). Dr. Madisetti fails to declare under penalty of perjury that his statements in Exhibit 2002 were true and correct. Accordingly, VMware also objects to</p>

		Exhibit 2002 as irrelevant and lacking foundation on this basis.
2003	<i>Curriculum Vitae</i> of Dr. Vijay Madiseti	<p>VMware objects to Exhibit 2003 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware objects to Exhibit 2003 as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801 and FRE 802.</p> <p>VMware objects to Exhibit 2003 for violating at least 28 U.S.C. § 1746(2). Dr. Madiseti fails to declare under penalty of perjury that his statements in Exhibit 2003 were true and correct. Accordingly, VMware also objects to Exhibit 2003 as irrelevant and lacking foundation on this basis.</p>
2007	Dictionary by Merriam-Webster	<p>VMware objects to Exhibit 2007 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2007 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example,</p>

		<p>Patent Owner fails to offer sufficient evidence that Exhibit 2007 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2008	The Merriam-Webster Dictionary (2004)	<p>VMware objects to Exhibit 2008 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2008 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2008 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>

2009	Roget's II The New Thesaurus (3 rd ed. 2003)	<p>VMware objects to Exhibit 2009 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2009 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2009 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2010	Newman, Morris et al., IBM, Server Consolidation with VMware ESX Server (January 2005)	<p>VMware objects to Exhibit 2010 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p>
2011	Brodkin, Jon, Virtual Server Sprawl Highlights	<p>VMware objects to Exhibit 2011 to the extent that it is not relevant to any issue in the</p>

	Security Concerns, April 30, 2008	<p>present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2011 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2011 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2012	Provazza, Alyssa, FAQ: Devising a Server Consolidation Plan, November 24, 2010	<p>VMware objects to Exhibit 2012 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2012 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2012 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be.</p>

		VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.
2013	VMware, Inc., Virtualization	VMware objects to Exhibit 2013 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.
2014	The Computer Language Company Inc., Virtual Environment	<p>VMware objects to Exhibit 2014 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2014 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2014 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be.</p> <p>VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>

2015	Hammersley, Eric, Professional VMware Server 1-9 (2007)	<p>VMware objects to Exhibit 2015 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2015 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2015 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2016	VMware, Inc., Introduction to VMware Infrastructure, Update 2 and later for ESX Server 3.5, ESX Server 3i version 3.5, VirtualCenter 2.5 (2008, 2009)	<p>VMware objects to Exhibit 2016 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p>

2017	Defense Industry Daily, The Virtual Armed Forces: US Military Turns to Virtualization, August 15, 2011	<p>VMware objects to Exhibit 2017 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2017 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2017 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2018	Steele, Colin, Face-Off: VMware vs. Microsoft in the Hypervisor Wars, May 1, 2009	<p>VMware objects to Exhibit 2018 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2018 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2018 was publicly accessible in its</p>

		<p>presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2019	<p>Kerner, Sean Michael, KVM vs. Xen vs. VMware. Is it a Hypervisor War?, September 6, 2008</p>	<p>VMware objects to Exhibit 2019 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2019 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2019 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2020	<p>Venezia, Paul, Ramming Microsoft Down</p>	<p>VMware objects to Exhibit 2020 to the extent that it is not relevant to any issue in the</p>

	IT's Throat, September 21, 2009	<p>present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2020 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2020 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be. VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.</p>
2021	Dubie, Denise, VMware, MS Battle Over Virtualization Management, June 27, 2008	<p>VMware objects to Exhibit 2021 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.</p> <p>VMware also objects to Exhibit 2021 as lacking foundation and lacking authentication under FRE 602 and FRE 901-903. For example, Patent Owner fails to offer sufficient evidence that Exhibit 2021 was publicly accessible in its presented form as of the alleged publication date. Patent Owner also fails to offer evidence that the exhibit is what Patent Owner claims it to be.</p>

		VMware objects to this exhibit as containing hearsay to the extent that Patent Owner attempts to rely on it to prove the truth of any matter described therein under FRE 801-803.
2022	Rosenblum, Mendel & Garfinkel, Tal, Virtual Machine Monitors: Current Technology and Future Trends, Computer, Vol. 38, No. 5, 39-47	VMware objects to Exhibit 2022 to the extent that it is not relevant to any issue in the present proceeding and/or unduly prejudicial. <i>See</i> FRE 401-403.

Dated: March 11, 2022

Respectfully submitted,

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Certificate of Service (37 C.F.R. § 42.6(e)(4))

I hereby certify that the attached Petitioner's Objections to Evidence Submitted with Patent Owner's Response was served as of the below date via email on the Patent Owner at the following correspondence address:

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