

## **Declaration of Daniel Block**

I, Daniel Steven Block, declare as follows:

1. I am currently employed as an Associate Attorney at Sterne, Kessler, Goldstein & Fox P.L.L.C. I am more than twenty-one years of age, and I make this declaration based on my personal knowledge, experience, and belief. If called upon, I can testify competently to the facts stated in this declaration.

2. On September 4th, 2013, I traveled to VMware, Inc. headquarters located at 3401 Hillview Avenue, Palo Alto, CA 94304.

3. At VMware, I was provided access to two different versions of VMware software referred to as "Media Kits." These kits were provided to the media as part of the marketing efforts by VMware of each of the respective versions of software. Specifically, each of these kits included VMware packaging, CD-ROMs having VMware software and documentation, and hard copies of VMware documentation. I photographed all of the packaging, documentation and CD-ROMs. Further, I imaged the CD-ROMs using conventional CD imaging software into the ISO format.

4. Attached as Ex. A are my photographs of the VMware ESX Server 1.0 kit contents, including photographs of the packaging and the two included CD-ROMs labeled VMware ESX Server 1.0 and VMware ESX Server 1.0.1d. The VMware ESX Server 1.0 kit further included two user guides titled VMware ESX Server User's Manual Version 1.0 and VMware ESX Server User's Manual Version 1.5. The VMware ESX User's Manual 1.5 further included a registration card, which I also photographed.

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5. I note that VMware ESX version 1.0.1 was apparently available for purchase and evaluation from the VMware website at least as of June 23, 2001. (*See* Affidavit of Christopher Butler, August 26th, 2013, at p. 5 (provided as Ex. C).) The documentation was also apparently available for download for ESX 1.0.1 as of at least June 15, 2001. (*See* Affidavit of Christopher Butler, July 15th, 2013, at p. 5 (provided as Ex. D).) Further, I note that VMware ESX version 1.0 was apparently available for purchase and evaluation from the VMware website at least as of June 8th, 2001. (*See* Affidavit of Christopher Butler, August 29th, 2013, at p. 6 (provided as Ex. E).) The documentation for VMware ESX version 1.0 was also appears to have been available for download as of at least June 6th, 2001. *See* Ex. D, at p. 13.

6. Attached as Ex. B are my photographs of the VMware Workstation for Linux kit contents, including the packaging and two CD-ROMs labeled VMware Workstation for Linux Systems Version 1.0 and VMware computers with sampled Linux distributions. The Workstation CD-ROM was enclosed in an envelope having an End User License Agreement printed on the envelope, and also bearing serial number 1F31E-Y5EMN-V3ZY3-134VZ. Also, included in the media kit was documentation titled “Getting Started Guide VMware 2.0 for Linux,” a “Quick Reference Card,” and a “Registration” card bearing the same serial number as the “End User License Agreement” envelope.

7. Attached as Ex. F is the ISO image I created of the CD-ROM titled VMware ESX Server 1.0 (photographed in Ex. A).

8. Attached as Ex. G is the ISO image I created of the CD-ROM titled VMware ESX Server 1.0.1d (photographed in Ex. A).

9. Attached as Ex. H is the ISO image I created of the CD-ROM titled VMware Workstation for Linux Systems Version 1.0 (photographed in Ex. B).

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 5th day of September, 2013, in Washington, D.C.



Daniel Steven Block  
Reg. No. 68,395