

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VEEAM SOFTWARE CORPORATION,
Petitioner,

v.

SYMANTEC CORPORATION,
Patent Owner.

Case IPR2013-00141
Patent 6,931,558 B1

Before MEREDITH C. PETRAVICK, THOMAS L. GIANNETTI, and
TRENTON A. WARD, *Administrative Patent Judges*.

PETRAVICK, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. BACKGROUND

Veeam Software Corporation (“Petitioner”) filed a Petition for *inter partes* review of claims 1–15 of U.S. Patent 6,931, 558 B1 (“the ’558 patent”) pursuant to 35 U.S.C. §§ 311–319 and 37 C.F.R. §§ 42.1–42.123. (Paper 5, “Pet.”). Symantec Corporation (“Patent Owner”) filed a Patent Owner Preliminary Response. Paper 9 (“Prelim. Resp.”). Taking into account Patent Owner’s Preliminary Response, we determined that there is a

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reasonable likelihood that the challenged claims are unpatentable. Pursuant to 35 U.S.C. § 314, we instituted *inter partes* review, on August 7, 2013, as to claims 1–15 of the ’558 patent. Paper 11 (“Dec.”).

After institution, Patent Owner filed a Patent Owner Response (Paper 22, “PO Resp.”) and a contingent Motion to Amend (Paper 23, “Mot. to Amend”). Petitioner filed a Reply to the Patent Owner Response. Paper 27 (“Pet. Reply”). A hearing was held on May 5, 2014, a transcript of which appears in the record. Record of Oral Hearing, Paper 49 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). This decision is a final written decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73 as to the patentability of the challenged claims. For the reasons discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims 1–15 are unpatentable.

A. Related Proceedings

In addition to this proceeding, Petitioner filed a Petition for *inter partes* review challenging the patentability of claims 16–23 of the ’558 patent. See IPR2013-00142, Paper 6. In that proceeding, we instituted *inter partes* review as to claims 17–23 of the ’558 patent. IPR2013-00142, Paper 11. Further, we instituted *inter partes* review based on Petitioner’s challenges to the patentability of certain claims of Patent Owner’s U.S. Patents 7,093,086 (IPR2013-00150) and 7,191,299 (IPR2013-00143). Our final decisions in these proceedings are being entered concurrently with this decision.

The parties indicate that the '558 patent is involved in a case in the U.S. District Court for the Northern District of California, *Symantec Corp. v. Veeam Software Corp.* (No. 3:12-cv-00700). Pet. 1; Paper 8, 2.

B. The '558 Patent (Ex. 1001)

The '558 patent is titled “Computer Restoration Systems and Methods” and generally relates to local and wide area interconnected computers and data communications networks. More particularly, the patent relates to restoration of computer systems backed up on storage managers, such as in a network, upon a “crash” or other similar event that prohibits normal “boot[-]up” operation. Ex. 1001, col. 1, ll. 10–15.

The '558 patent explains that the client computer has access to a storage manager application, such as a server computer of the network operating a storage management software program. *Id.* at Abstract. All client files, including configuration files, as well as application and data files, of the client device are saved on the network by the storage manager application. *Id.*

The client device is booted over the network, rather than locally to the client device by a boot disk or otherwise. *Id.* The boot program is loaded to the client device, and the client device retrieves configuration and file information over the network from the storage manager application. *Id.* The client device configures its disk according to the configuration information. *Id.* All other files and data of the client device at the time a failure of the client device are saved on the disk substantially in condition and state just prior to the failure and as most recently backed up to the storage manager application. *Id.*

Figure 3 of the '558 patent is reproduced below:

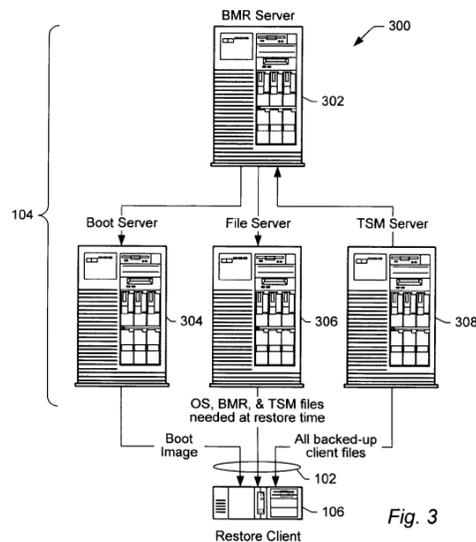


Figure 3 illustrates server computer 104 having server components 300, including restore server 302, boot server 304, file server 306, and storage manager 308. *Id.* at col. 3, ll. 32–35; col. 5, ll. 10–15. The restore server shown in the Figure above, and described in the text of the patent, is known as a bare metal restore (“BMR”) server. *Id.* at col. 5, ll. 11–12.

C. Illustrative Claims

Independent claims 1, 2, and 11 of the '558 patent are illustrative of the claims at issue:

1. A device restoration system, for restoring a client device to a state prior to a major failure, comprising:
 - a server device;
 - a network communicatively interconnecting the client device and the server device;
 - a storage manager accessible to the server device for saving the state, wherein the state includes client disk configuration information; and

a network boot in which the server device causes the client device to boot.

2. A method of restoring a client device of a network on failure of the client device, wherein the network includes a server computer, comprising the steps of:

booting the client device via a network boot;

creating a boot program for operation on the client device;

configuring the client device according to the boot program and a saved configuration state including client disk configuration information;

copying a file to the client device in accordance with a configuration from the step of configuring.

11. A method of restoring a client device of a network, the network including a server device having a storage manager application, comprising the steps of:

backing up configuration data including client disk configuration information, as well as application and data files, by the storage manager application; and

restoring the backed up configuration data, as well as application and data files, from the step of backing up, to the client device over the network.

D. Grounds of Unpatentability

We instituted *inter partes* review of the '558 patent based upon the following asserted grounds of unpatentability:

1. Claims 1–15 are anticipated under 35 U.S.C. § 102 by BMR User Guide¹;

¹ THE KERNEL GROUP, *Bare Metal Restore User Guide For Tivoli Store Manager: Version 1.4.3* 1–142 (2001) (Ex. 1003).

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