UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VEEAM SOFTWARE CORPORATION,
Petitioner,

v.

SYMANTEC CORPORATION,
Patent Owner.

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Case IPR2013-00142
Patent 6,931,558 B1

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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 16–23 of U.S. Patent No. 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 6, "Pet."). Symantec Corporation ("Patent Owner") filed a Patent Owner Preliminary Response. Paper 10 ("Prelim. Resp."). Taking into

account Patent Owner's Preliminary Response, we determined that there is a reasonable likelihood that challenged claims 17–23 are unpatentable. Pursuant to 35 U.S.C. § 314, we instituted *inter partes* review, on August 7, 2013, as to claims 17–23 of the '558 patent. Paper 11 ("Dec."). Patent Owner filed a request for rehearing on August 21, 2013 seeking reconsideration of our decision on the ground of anticipation of claims 18–20 and 22 under 35 U.S.C. § 102 by Goshey. Paper 13. We denied, subsequently, *inter partes* review of claims 18–20 and 22 on that ground. Paper 17.

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 28 ("Pet. Reply"). A hearing was held on May 5, 2014, a transcript of which appears in the record. Record of Oral Hearing, Paper 50 ("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 17–23 are unpatentable.

A. Related Proceedings

In addition to this proceeding, Petitioner filed a petition for *inter partes* review challenging the patentability of claims 1–15 of the '558 patent. *See Veeam Software Corp. v. Symantec Corp.*, Case IPR2013-00141, Paper 5. In that proceeding, we instituted *inter partes* review as to claims 1–15 of the '558 patent. *Veeam Software Corp. v. Symantec Corp.*, Case

2

IPR2013-00141 (PTAB Aug. 7, 2013) (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 9, 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 of a failure of the
client device are saved on the disk substantially in the condition and state
just prior to the failure, and as most recently backed up to the storage
manager application. *Id.*

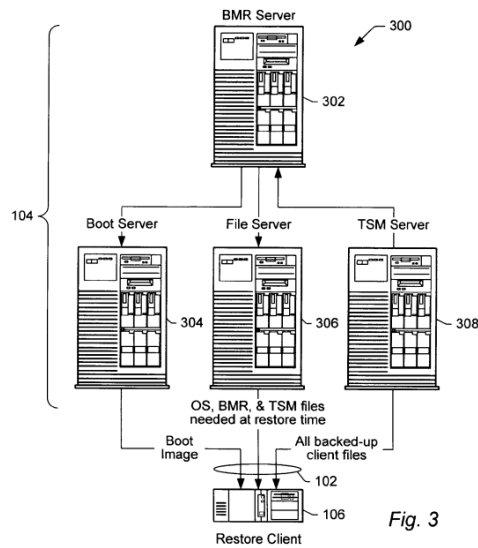Figure 3 of the '558 patent is reproduced below:

Fig. 3

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 Figure 3 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 17 and 18 of the '558 patent are illustrative of the
claims at issue:

> 17. A method of restoring a client device on failure of the
> client device, comprising the steps of:

4

saving a state of the client device, including client disk configuration information, prior to the failure;

resetting the client device;

booting the client device; and

configuring the client device according to the state from the step of saving.

18. A system comprising:

backup software; and

a restoration server;

wherein the backup software is configured to create one or more backups of a client device, wherein at least one backup of the one or more backups comprises client disk configuration information; and

wherein, following a failure of the client device, the restoration server is configured to:

perform a network boot of the client device; and

restore a client disk configuration using the client disk configuration information.

D. Grounds of Unpatentability

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

1. Claims 17–23 are anticipated under 35 U.S.C. § 102 by BMR User Guide[1];
2. Claims 18–23 are anticipated under 35 U.S.C. § 102 by BMR Webpages[2]; and

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

[2] THE KERNEL GROUP, *Bare Metal Restore User's Guide: Version 1.1 for AIX* (Aug. 31, 2000), www.web.archive.org/web/20000831083617/http:/www.tkg.com/bmr/docs/

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