

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 IPR2013-00150  
U.S. Patent No. 7,093,086

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**VEEAM SOFTWARE CORPORATION'S MOTION TO WITHDRAW ITS  
PENDING MOTION TO COMPEL THE DEPOSITION OF VMWARE  
ON THE PUBLIC AVAILABILITY OF EXHIBIT 1005**

***Mail Stop "PATENT BOARD"***  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Veeam respectfully submits this unopposed motion to withdraw its November 1, 2013 motion to compel third party Dan Scales, Principle Engineer at VMware, Inc., and member of the team that created VMware ESX Server, to testify by deposition regarding the public availability of VMware's ESX Server User's Manual Version 1.0 ("ESX Manual," submitted as Ex. 1005). (*See* paper 23, VEEAM SOFTWARE CORPORATION'S MOTION TO COMPEL THE DEPOSITION OF VMWARE ON THE PUBLIC AVAILABILITY OF EXHIBIT 1005). Veeam's reasons for this motion are set forth below.

1. After Veeam advised VMware that it had filed the instant motion to compel third-party testimony, Veeam and VMware discussed whether VMware could provide a declaration that would eliminate the need for a deposition of VMware or its employees.

2. Veeam and Symantec advised the Board of Veeam's discussions with VMware in their November 15, 2013 email reporting the parties' meet-and-confer efforts.

3. On December 2, 2013, VMware provided Veeam with a declaration by Regis Duchesne, Staff Engineer 2 at VMware (dated November 28, 2013), attesting to the authenticity and public availability of the ESX Manual ("the VMware

declaration”). As a courtesy, Veeam provided Symantec’s counsel with a copy of the VMware declaration.

4. On December 15, 2013, Veeam advised the Board of the VMware declaration and asked permission to serve the VMware declaration outside the deadline for service of supplemental evidence.

5. Subsequently, on December 16, 2013, the Board provided Veeam with leave to serve the VMware declaration.

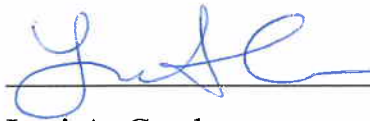
Veeam believes that the VMware declaration resolves Symantec’s evidentiary objections to the ESX Manual and moots Veeam’s pending motion to compel the deposition of VMware on the public availability of the ESX Manual (Exhibit 1005).

Veeam, therefore, requests withdrawal of its pending motion to compel third-party testimony. Veeam conferred with Symantec's lead counsel, Joseph Richetti, who confirmed that Symantec does not plan to oppose this motion for withdrawal.

The Patent Trial and Appeal Board is hereby authorized to charge any fees associated with *Inter Partes* Review 2013-00150 to Deposit Account 19-0036. Our Customer I.D. is 26111.

Respectfully Submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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Lori A. Gordon  
Lead Counsel for Petitioner  
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Date: January 6, 2014  
1100 New York Avenue, N.W.  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing MOTION TO WITHDRAW VEEAM'S MOTION TO COMPEL THE DEPOSITION OF VMWARE ON THE PUBLIC AVAILABILITY OF EXHIBIT 1005 was served electronically via e-mail on January 6, 2014, in its entirety on Attorneys for Patent Owner – Symantec Corporation.:

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