

Filed on behalf of Veeam Software Corporation

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL
AND APPEAL BOARD

PETITION FOR *INTER PARTES* REVIEW
OF U.S. PATENT NO. 7,093,086

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Veeam Software Corporation petitions the United States Patent Office to institute an *inter partes* review of claims 1, 11, 12, and 22 (collectively, the “challenged claims” or “claims under review”) of United States Patent No. 7,093,086 to van Rietschote, et al. (“the ’086 patent”). According to PTO records, the ’086 patent is assigned to Symantec Corporation (“Symantec” or “Patent Owner”). A copy of the ’086 patent is provided as VEEAM 1001.

Symantec is asserting claims 11 and 22 against Veeam in a concurrent litigation, styled *Symantec Corporation v. Veeam Software Corporation*, No. 3:14-cv-00700-SI (consolidated with 3:2012-cv-01035) (N.D.C.A.) (the “Concurrent Litigation”).

I. Grounds for Standing (37 C.F.R. § 42.104(a))

The undersigned and Veeam certify that the ’086 patent is available for review. The ’086 patent has an effective filing date of March 28, 2002, meaning the timing requirements set forth in 35 U.S.C. § 311(c) do not apply. *See* AIA Technical Corrections Bill, H.R. 6621, 112th Cong. § 1(d)(1) (2013) (enacted). The Petitioner further certifies that it is not estopped from requesting an *inter partes* review challenging claims 1, 11, 12, and 22 on the grounds identified in the petition.

II. Identification of Challenge (37 C.F.R. § 42.104(b))

The challenged claims of the '086 patent combine two well-known computing concepts: (i) copying data to a separate destination and (ii) virtual machines. ('086 patent, claim 1.) Copying data to a separate destination was a standard feature of virtual machines before the '086 filing date. For this reason, this petition presents a reasonable likelihood of prevailing and should be granted on all grounds.

Veeam presents seven grounds for rejections—five anticipating grounds and two obviousness grounds—that show that claims 1, 11, 12, and 22 are unpatentable.

A. Technical Background

In general, a virtual machine is a software implementation of a physical machine, which includes virtual hardware capable of running operating systems and other applications. ('086 patent, 4:8-10.) These virtual machines include virtual disks, which are mapped to physical disks. ('086 patent, 3:56-63.) Because virtual machines are software, a computer can execute several different virtual machines concurrently, thereby utilizing resources of the computer more efficiently. (Shenoy Declaration, ¶ 13.) Virtual machines have a long history. As early as the 1970s, IBM sold virtual-machine products. (Shenoy Declaration, ¶ 13 (provided as Exhibit 1002, hereinafter “Shenoy Declaration”).)

Like computers, a virtual machine's data can be copied to a separate destination. (Shenoy Declaration, ¶ 14.) For example, the state of a virtual machine can be copied to permit replication of aspects of the virtual machine. (Shenoy Declaration, ¶ 14.) In another example, the state of a virtual machine can be copied to back up the virtual machine, thereby mitigating the impact of an unexpected crash of the virtual machine or related physical computer. ('086 patent, 1:46-67; Shenoy Declaration, ¶ 14.)

Below, Veeam first sets forth the broadest reasonable construction of certain terms in the challenged claim. Second, Veeam shows the challenged claims are unpatentable.

B. The Claims of the '086 Patent and their Construction

The terms recited in claims 1, 11, 12, and 22 should be given their *broadest* reasonable interpretation, consistent with the patent disclosure, as understood by one of ordinary skill in the art. *See In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Each challenged claim is described below.

1. Claim 1

Claim 1 recites a computer-readable medium storing a plurality of instructions that perform two steps. First, a state of a "first" virtual machine is captured, and, second, at least a portion of the state is copied to a destination

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