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UNITED STATES PATENT AND TRIAL APPEAL BOARD

VEEAM SOFTWARE CORPORATION, )  
Petitioner, )  
vs. ) Case No.  
SYMANTEC CORPORATION, ) IPR 2013-00150  
Patent Owner. )

— — — — —  
DEPOSITION OF PRASHANT SHENOY, Ph.D.  
WASHINGTON, D.C.  
MARCH 7, 2014

The Deposition of PRASHANT SHENOY, Ph.D. was  
convened on Friday, March 7, 2014, commencing at  
9:36 a.m., at the offices of Sterne Kessler  
Goldstein & Fox, 1100 New York Avenue,  
Northwest, Washington, D.C., Suite 800, before  
Ryan K. Black, Registered Professional Reporter  
and Notary Public.

— — — — —  
Symantec 2020  
Veeam v. Symantec  
IPR2013-00150



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1 APPEARANCES:  
2  
3 ON BEHALF OF THE PETITIONER:  
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25 ALSO PRESENT: PETER H. DYKSTRA, Ph.D.

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1 Whereupon --  
2 PRASHANT SHENOY, Ph.D.,  
3 called to testify, having been first duly sworn  
4 or affirmed, was examined and testified as  
5 follows:  
6 EXAMINATION BY COUNSEL FOR PATENT OWNER  
7 BY MR. RICHETTI:  
8 Q. Good morning, Dr. Shenoy.  
9 A. Good morning.  
10 Q. Can you please state your name and  
11 address for the record?  
12 A. Prashant Shenoy. Address is 6 Bixby  
13 Court, Northampton, Massachusetts 01060.  
14 Q. And, again, Dr. Shenoy, I know you've  
15 been deposed before, so we won't go through a  
16 lengthy list of ground rules, but I think it's  
17 always good just to establish some at the  
18 beginning of the depo.  
19 A. Sure.  
20 Q. First, it's your understanding  
21 that you're here to testify today about the  
22 declarations you submitted in the IPR petition  
23 for the 086 patent?  
24 A. Yes. That's correct.  
25 Q. And as we go throughout the day --

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1 MR. BLOCK: Objection. Just the  
2 declaration.  
3 MR. RICHETTI: I thought there was  
4 two.  
5 MR. BLOCK: Oh, sorry. I apologize.  
6 MS. GORDON: Just being clear,  
7 it's the declarations he submitted in response  
8 to -- in reply to your response. That's the  
9 scope of the deposition today.  
10 MR. RICHETTI: Sure. And that's fine.  
11 MS. GORDON: Yeah.  
12 BY MR. RICHETTI:  
13 Q. So, Dr. Shenoy, as we go throughout  
14 the day, I'll be asking questions. You'll be  
15 answering my questions that I ask.  
16 If at any time the question's unclear,  
17 please let me know, and I'll do my best to  
18 rephrase it.  
19 Is that okay?  
20 A. That sounds good. Thank you.  
21 Q. And, you know, we'll try to take  
22 breaks every so often, hopefully around an hour.  
23 But if at any point in time you need a break  
24 sooner, if you can, just let me know.  
25 A. Thank you. I will.

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1 Q. So, Dr. Shenoy, did you do anything to  
2 prepare for today's deposition?  
3 A. I read through my declaration and  
4 the patent again and reviewed some of the other  
5 materials that I reviewed when I prepared my  
6 declaration.  
7 Q. And how many declarations have you  
8 submitted in the IPR for the 086 patent?  
9 A. So in the second round I submitted two  
10 declarations.  
11 Q. Okay. And prior to that you submitted  
12 a single declaration?  
13 A. Prior to that I submitted one  
14 declaration, yes.  
15 Q. Just so that we have some type of  
16 terminology to use, so we know which declaration  
17 that we're both talking about, maybe we can use  
18 -- for the old one we can call it the initial  
19 declaration. Is that okay?  
20 A. Yes. That should be fine.  
21 Q. And for the declaration you submitted  
22 in support of Veeam's reply, we'll just call  
23 that the reply declaration.  
24 A. Okay.  
25 Q. And then for the declaration you

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1 submitted in support of Veeam's opposition to  
2 Symantec's motion to amend, you know, is it easy  
3 enough to just call that the motion to amend  
4 declaration?  
5 A. Okay.  
6 Q. Is that fair?  
7 A. That's fair.  
8 Q. I'm sure as we go on I'll forget these  
9 three and confuse things, but I'll try my best.  
10 A. Okay. That should be fine.  
11 Q. And did you meet with anyone to  
12 prepare for your deposition today?  
13 A. I met with my attorneys. We talked  
14 about my declaration. And I reviewed the  
15 materials.  
16 Q. And who are your attorneys?  
17 A. Dan Block, Dr. Peter Dykstra, Lori  
18 Gordon.  
19 Q. And, roughly, how much time did you  
20 spend preparing for your deposition today?  
21 A. I spent the weekend reviewing some  
22 materials, and then I was here on Tuesday to  
23 discuss aspects of my declaration. And then I  
24 reviewed some more materials yesterday evening  
25 after the previous deposition.

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1 Q. And, sir, did you mention that you  
2 were here in Washington, D.C., on Tuesday?  
3 A. That's correct. Yes.  
4 Q. And so you met in person with your  
5 attorneys?  
6 A. Yes.  
7 Q. And, Dr. Shenoy, did you provide an  
8 updated CV attached to your declaration?  
9 A. I did, yes.  
10 Q. And by declaration I meant, first, for  
11 the reply declaration, was there an updated CV?  
12 A. I did provide an updated CV, yes.  
13 Q. And did you also provide an updated CV  
14 for the motion to amend declaration?  
15 A. I provided one CV that was updated.  
16 I'm assuming the same CV was filed with both of  
17 those declarations.  
18 Q. And why did you update your CV?  
19 A. I update my CV from time to time as I  
20 write more research papers, so that section of  
21 publication keeps growing. And my attorneys  
22 asked me if I had an updated copy, and I  
23 provided them with one.  
24 Q. Did you make any other changes, other  
25 than adding publications?

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1 A. I updated the section listing awards  
2 and honors, and I updated the publications  
3 sections.  
4 Those are the ones that come to mind.  
5 Q. And did you recently receive an award  
6 or honor?  
7 A. I did give some keynote talks at  
8 conferences, which are considered to be a form  
9 of an honor, being invited to do a keynote at a  
10 conference. So those are the kinds of awards I  
11 listed on my CV.  
12 Q. And do you have other biographies  
13 or bios, Dr. Shenoy, other than the CV you've  
14 attached?  
15 A. There are biographies that you are  
16 to provide when, for instance, you write a  
17 journal paper. At the end of the journal  
18 paper, you provide a short biography, sometimes  
19 you provide a photograph. So those are forms  
20 of -- considered to be forms of biographies.  
21 I do maintain a web page for my  
22 research, which lists some of my credentials.  
23 Those are the ones that come to mind that I  
24 would have biographies of my background.  
25 Q. What about your LinkedIn page? Would

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1 that also have some information about your  
2 professional background?  
3 A. I do have a LinkedIn page, yes.  
4 Q. And would it shock you if there was  
5 some differences between the various biographies  
6 that are on the website verse your CV?  
7 A. I don't know what you mean by  
8 differences. The caption in my background have  
9 different levels of detail. I don't update my  
10 LinkedIn page frequently, so I'm assuming it is  
11 often out of date. My CV is up to date. My web  
12 page I update from time to time. So there may  
13 be some publications that may not be captured on  
14 my web page, for instance, that may be in my CV.  
15 So I'm assuming there will be differences  
16 because I don't update them all at once.  
17 Q. So it wouldn't be uncommon that  
18 the different biographies of your professional  
19 activities may be reflecting different aspects  
20 of your career at different points in times. Is  
21 that fair?  
22 A. I think that would be a reasonable way  
23 to phrase that.  
24 Q. And so you might be capturing the  
25 state of your career, pun intended, at different

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1 times?  
2 A. Yes.  
3 Q. I couldn't resist. I apologize.  
4 So, Dr. Shenoy, in preparing your  
5 reply declaration, how did you go about doing  
6 that?  
7 A. I reviewed the materials. There  
8 were drafts of the declaration that went  
9 through various revisions. I made many of those  
10 revisions. I discussed my thoughts, opinions  
11 with my attorneys. They helped capture some of  
12 my opinions, as well.  
13 So it went through many different  
14 iterations. In the end, I read everything. I  
15 made sure that they reflected my opinion, as I  
16 had wanted to provide in my declaration, and I  
17 signed it.  
18 Q. Did you write the first draft of the  
19 reply declaration?  
20 MR. BLOCK: Objection. Relevance.  
21 THE WITNESS: Not all of it, no.  
22 BY MR. RICHETTI:  
23 Q. And, Dr. Shenoy, while we're pulling  
24 the declaration, do you know what materials you  
25 reviewed in preparing the reply declaration?

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1 A. I looked at the patent owner's  
2 response. I looked at the deposition provided  
3 by Symantec's expert. I also read through the  
4 transcript of my deposition. I read the 086  
5 patent, the Lim patent, the references related  
6 to the ESX Suzaki paper.  
7 MR. BLOCK: It might help if you put  
8 the declaration in front of Dr. Shenoy. I think  
9 it has the documents in there.  
10 MR. RICHETTI: Okay. I was just  
11 asking.  
12 THE WITNESS: No other that come to  
13 mind.  
14 BY MR. RICHETTI:  
15 Q. And I believe when I deposed you the  
16 first time, Dr. Shenoy, and please feel free to  
17 correct me if I'm wrong, in doing your analysis  
18 associated with this IPR proceeding, I believe  
19 you mentioned that there was some prior art  
20 references that were provided to you from  
21 Veeam's counsel, and you also did your own  
22 searching; is that correct?  
23 A. I do remember doing searching at that  
24 point, yes.  
25 Q. Did you do any additional searching in

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1 preparation of your reply declaration?  
2 A. I did, yes.  
3 Q. And what did you find?  
4 A. Nothing of substance. For instance,  
5 I -- there is a vmkfs tool document that I  
6 analyzed. I looked at whether there were  
7 similar documents pertaining to earlier versions  
8 of ESX, for instance. I didn't find anything  
9 substantial there. I mean, I didn't actually  
10 find anything at all.  
11 Q. And did you do any other searching?  
12 MR. BLOCK: Objection. Relevance.  
13 THE WITNESS: I looked for documents  
14 related to ESX Version 1.0.  
15 BY MR. RICHETTI:  
16 Q. And did you find any?  
17 A. And I found web pages that referred to  
18 it in some shape or form, but nothing that I  
19 eventually considered for my declaration.  
20 Q. And did you do any other searches --  
21 MR. BLOCK: Objection.  
22 BY MR. RICHETTI:  
23 Q. -- in preparation of your reply  
24 declaration?  
25 MR. BLOCK: Objection. Relevance.

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1 THE WITNESS: I can't think of  
2 anything else at the moment. I looked around  
3 on the internet, as I was mentioning, for a few  
4 different things, and I believe I listed the  
5 ones that come to mind.  
6 BY MR. RICHETTI:  
7 Q. And what did you do to prepare your  
8 motion to amend declaration? Was it a similar  
9 process, or, if it's different, you can go  
10 through it.  
11 A. It was a very similar process, yes.  
12 I did review some additional documents there,  
13 which was the patent owner's motion to amend, as  
14 well. I did some similar searches. In fact,  
15 I did -- I did not distinguish. I was just  
16 searching for anything that was relevant as part  
17 of my searches.  
18 Q. Dr. Shenoy, I would like to hand you  
19 what's been marked as Veeam Exhibit 1030 and  
20 just ask if you recognize that.  
21 A. Yes. This is the copy of my reply  
22 declaration.  
23 Q. And I believe you testified before  
24 that you believe you drafted portions of the  
25 first draft of the reply declaration?

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1 A. Yes.  
2 Q. Can you identify them by looking at  
3 the reply declaration?  
4 MR. BLOCK: Objection. Relevance.  
5 THE WITNESS: The document has gone  
6 through several different iterations. There are  
7 many words here that I have written, some that  
8 are directly from the references, for instance.  
9 But I'm not able to give an exhaustive list of  
10 every single word that I wrote in here.  
11 BY MR. RICHETTI:  
12 Q. Right. I thought you mentioned  
13 sections. Is there a way to break it down by  
14 sections, if you can?  
15 A. I said portions. I mean, I didn't  
16 write this section and ask someone else to draft  
17 this section for me. It was more of a  
18 collaborative process.  
19 Q. Understood.  
20 And would have you followed that same  
21 type of collaborative process in creating your  
22 declaration for the motion to amend?  
23 MR. BLOCK: Objection. Relevance.  
24 THE WITNESS: Yes.  
25 BY MR. RICHETTI:

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1 Q. I guess, just as a housekeeping, I'm  
2 going to follow Dan's advice and hand you the  
3 other declaration, as well.  
4 So, Dr. Shenoy, I'd like to hand  
5 to you Veeam Exhibit 1031, which is the  
6 declaration of Dr. Shenoy in support of  
7 petitioner's opposition to the motion. And all  
8 I'll ask is if you recognize the document.  
9 A. Yes. So this is my motion to amend  
10 declaration.  
11 Q. And in looking through that exhibit,  
12 does anything jump out at you as something you  
13 would have drafted in the first draft, or is it  
14 similar to your response before that, you know,  
15 the work -- the draft had gone through so many  
16 iterations that it may not be possible to do  
17 that?  
18 MR. BLOCK: Objection to form -- I  
19 mean relevance.  
20 THE WITNESS: I would say the same  
21 thing, going through many different iterations.  
22 And I have -- lots of my words that are in  
23 there, but I can't identify even at what points  
24 some of the words were written and in what  
25 declaration they were written.

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1 MR. BLOCK: Also attorney-client  
2 privilege -- attorney work product. Sorry.  
3 MR. RICHETTI: Mr. Block, are you  
4 instructing him not to answer?  
5 MR. BLOCK: No. He can go ahead and  
6 answer.  
7 MR. RICHETTI: Okay. I just want to  
8 make sure.  
9 BY MR. RICHETTI:  
10 Q. Dr. Shenoy, I'd like to hand you Veeam  
11 Exhibit 1001. I'm sure you've read this  
12 document a few times.  
13 A. Several times, yes. This is the 086  
14 patent.  
15 Q. And I believe in our first deposition,  
16 we went through this in some detail, so I will  
17 do my best not to go over old ground.  
18 With that in mind, Dr. Shenoy, is it  
19 your recollection that the 086 patent describes  
20 multiple embodiments, some embodiments that deal  
21 with issuing a suspend command to the VM kernel,  
22 and some embodiments that perform the backup  
23 process without suspending and allowing the  
24 virtual machine to continue to execute?  
25 MR. BLOCK: Objection. Form.

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