

Symantec 2027
Veeam v. Symantec
IPR2013-00150

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VEEAM SOFTWARE CORPORATION,

Petitioner,

v.

SYMANTEC CORPORATION,

Patent Owner.

-----X

Case No. IPR2013-00150 (Patent 7,093,086)

DEPOSITION OF

Matthew D. Green, Ph.D.

March 28, 2014

New York, New York

Lead: Ms. Gordon

Firm: Sterne Kessler

DIGITAL EVIDENCE GROUP

1726 M Street NW, Suite 1010

Washington, DC 20036

(202) 232-0646

<p>1 APPEARANCES</p> <p>2</p> <p>3 On behalf of Petitioner:</p> <p>4</p> <p>5 LORI A. GORDON, ESQ.</p> <p>6 DANIEL BLOCK, ESQ.</p> <p>7 BYRON L. PICKARD, ESQ.</p> <p>8 Sterne, Kessler, Goldstein & Fox</p> <p>9 1100 New York Avenue</p> <p>10 Washington, DC 20005</p> <p>11 202-371-2600</p> <p>12 lgordon@skgf.com</p> <p>13 dblock@skgf.com</p> <p>14 bpickard@skgf.com</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 2</p>	<p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3</p> <table border="0"> <tr> <td style="width: 100px;">4 WITNESS</td> <td style="width: 100px;">EXAMINED BY</td> <td style="width: 100px;">PAGE</td> </tr> <tr> <td>5 MATTHEW D. GREEN</td> <td>6 Ms. Gordon</td> <td>6</td> </tr> </table> <p>7</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10</p> <table border="0"> <tr> <td style="width: 100px;">11 NUMBER</td> <td style="width: 100px;">DESCRIPTION</td> <td style="width: 100px;">PAGE</td> </tr> <tr> <td>13 Green-1</td> <td>Declaration of Matthew D. Green</td> <td>8</td> </tr> <tr> <td>15 Green-2</td> <td>Reply to Petitioner's Opposition to Patent Owner's Motion to Amend</td> <td>17</td> </tr> <tr> <td>18 Green-3</td> <td>Document entitled Patent Owner's Motion to Amend</td> <td>33</td> </tr> </table> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 4</p>	4 WITNESS	EXAMINED BY	PAGE	5 MATTHEW D. GREEN	6 Ms. Gordon	6	11 NUMBER	DESCRIPTION	PAGE	13 Green-1	Declaration of Matthew D. Green	8	15 Green-2	Reply to Petitioner's Opposition to Patent Owner's Motion to Amend	17	18 Green-3	Document entitled Patent Owner's Motion to Amend	33															
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<p>1 On Behalf of Patent Owner:</p> <p>2</p> <p>3 JOSEPH J. RICHETTI, ESQ.</p> <p>4 HASSAN ALBAKRI, ESQ.</p> <p>5 Bryan Cave LLP</p> <p>6 1290 Avenue of the Americas</p> <p>7 New York, New York 10104-3300</p> <p>8 212-541-2000</p> <p>9 joe.richetti@bryancave.com</p> <p>10 hassan.albakri@bryancave.com</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 DIGITAL EVIDENCE GROUP</p> <p>19 Mark Iuzzolino, Court Reporter</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 3</p>	<table border="0"> <tr> <td style="width: 100px;">1 NUMBER</td> <td style="width: 100px;">DESCRIPTION</td> <td style="width: 100px;">PAGE</td> </tr> <tr> <td>3 Green-4</td> <td>Declaration in Support of Patent Owner's Motion to Amend</td> <td>35</td> </tr> <tr> <td>6 Green-5</td> <td>US Patent 7,093,086</td> <td>37</td> </tr> <tr> <td>7 Green-6</td> <td>US Patent 6,795,966</td> <td>68</td> </tr> <tr> <td>8 Green-7</td> <td>Deposition of Dr. Shenoy</td> <td>71</td> </tr> <tr> <td>9 Green-8</td> <td>VMware ESX Server Guide Version 1.2</td> <td>74</td> </tr> <tr> <td>11 Green-9</td> <td>US Patent No. 7,213,246</td> <td>96</td> </tr> <tr> <td>12 Green-10</td> <td>Patent assignment record from the USPTO</td> <td>96</td> </tr> <tr> <td>14 Green-11</td> <td>Document entitled Response to Office Action</td> <td>99</td> </tr> <tr> <td>16 Green-12</td> <td>Petitioner's Opposition to Patent Owner's First Motion to Amend</td> <td>140</td> </tr> <tr> <td>19 Green-13</td> <td>US Patent 6,931,558</td> <td>155</td> </tr> </table> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 5</p>	1 NUMBER	DESCRIPTION	PAGE	3 Green-4	Declaration in Support of Patent Owner's Motion to Amend	35	6 Green-5	US Patent 7,093,086	37	7 Green-6	US Patent 6,795,966	68	8 Green-7	Deposition of Dr. Shenoy	71	9 Green-8	VMware ESX Server Guide Version 1.2	74	11 Green-9	US Patent No. 7,213,246	96	12 Green-10	Patent assignment record from the USPTO	96	14 Green-11	Document entitled Response to Office Action	99	16 Green-12	Petitioner's Opposition to Patent Owner's First Motion to Amend	140	19 Green-13	US Patent 6,931,558	155
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1 MATTHEW D. GREEN
 2 having been first duly sworn, was examined and
 3 testified as follows:
 4
 5 EXAMINATION
 6 BY MS. GORDON:
 7 Q. Good morning, Dr. Green.
 8 Would you state your full name for the
 9 record, please?
 10 A. Matthew Daniel Green.
 11 Q. And like before, I just want to go through
 12 a few ground rules before we start this deposition,
 13 along the lines of what we talked about last time we
 14 were here in New York.
 15 Do you understand that you're going to
 16 be testifying under oath today?
 17 A. I do.
 18 Q. And as part of that oath, you understand
 19 that you're here to testify fully and accurately and
 20 to the best of your knowledge?
 21 A. Yes.
 22 Q. Okay. And at times during this deposition

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1 there may be questions that you don't understand. If
 2 that's the case, please, let me know, and I'll try
 3 and rephrase the questions to ask you in a different
 4 manner.
 5 This deposition is going to be recorded
 6 by the court reporter at the end of the table. Do
 7 you understand that you need to speak up and answer
 8 verbally to my questions so the court reporter can
 9 hear you?
 10 A. I will absolutely do my best. I speak
 11 softly.
 12 Q. We had an issue last time where the court
 13 reporter couldn't hear either one of us. So we had a
 14 habit, I think, last time of taking a break about
 15 every hour. If you need a break before that, just
 16 let me know. We'll finish the question that's
 17 pending, and we'll take a break.
 18 A. Okay.
 19 Q. Does that sound fair?
 20 Is there any reason that you cannot
 21 give full or accurate testimony today?
 22 A. No.

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1 Q. Great.
 2 MS. GORDON: So could you, please, mark
 3 this as Exhibit 1 for this deposition?
 4 ---
 5 (Green Exhibit 1 is marked.)
 6 ---
 7 BY MS. GORDON:
 8 Q. Dr. Green, you've been handed what's been
 9 marked as Exhibit 1 for this deposition. It's the
 10 Declaration of Matthew D. Green in support of patent
 11 owner's reply to petitioner's opposition.
 12 Do you see that?
 13 A. Well, I see that on the front. It seems
 14 like this may be a bad copy. At the very end it cuts
 15 off parts of the image on page 41 and ends with
 16 "error undefined, offending command." I think it
 17 might be just a bad printout.
 18 MS. GORDON: Do you mind if we go off the
 19 record?
 20 (There is an off-the-record discussion.)
 21 BY MS. GORDON:
 22 Q. Dr. Green, you've been handed what's been

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1 marked as Exhibit 1 for this deposition. It's a
 2 document that's titled, "Declaration of Matthew D.
 3 Green in Support of Patent Owner's Reply to
 4 Petitioner's Opposition."
 5 Do you see that?
 6 A. I do.
 7 Q. So for purposes of this deposition, can we
 8 refer to this as the "second motion to amend
 9 declaration," because I think we're going to get into
 10 some terminology issues late between your first and
 11 your second. So we'll refer to this as your second
 12 motion to amend declaration.
 13 A. That's fine.
 14 Q. Before -- you understand that you're here
 15 to testify today related to the testimony you
 16 provided in this reply document. Is that correct?
 17 A. Yes.
 18 Q. Okay. So how did you prepare for this
 19 deposition today?
 20 A. Well, of course, I reread this document. I
 21 reread previous declarations, motions, reviewed a lot
 22 of material that was listed in this document, really

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1 read a lot of material.
 2 Q. Did you talk to anyone other than the
 3 attorneys from Bryan Cave in preparation for this
 4 deposition?
 5 A. No.
 6 Q. Okay. Returning to your second motion to
 7 amend declaration, how many hours did you spend
 8 preparing this declaration?
 9 A. A lot. I don't know, maybe 50 to 100. I
 10 worked into part of the vacation on it.
 11 Q. When did you start preparing this
 12 declaration?
 13 A. I don't remember the date. It was several
 14 weeks ago.
 15 Q. And when you said 50 to 100 hours, what did
 16 that involve?
 17 A. That involved reviewing literature, reading
 18 previous motions and declarations that I had received
 19 from Veeam. Involved drafting, editing.
 20 Q. Did you draft the entire declaration
 21 yourself?
 22 A. So I drafted the declaration, and then some

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1 edits were suggested, proposed by the attorneys. I
 2 reviewed them, and then I essentially produced a
 3 final declaration myself.
 4 Q. When you said you drafted the declaration,
 5 did you draft Exhibit B to this declaration?
 6 A. No, I did not draft this chart.
 7 Q. Who drafted Exhibit B?
 8 A. So Exhibit B was drafted by the attorneys
 9 for the patent owner. I reviewed it. I made some
 10 suggestions, and then I included it in my report
 11 having reviewed it.
 12 Q. When were you first provided with
 13 Exhibit B?
 14 A. Some weeks ago, I don't know when.
 15 Q. But it wasn't before your first
 16 declaration -- your first -- were you provided B
 17 prior to your first motion to amend declaration?
 18 A. No, I was not. It was my opinion that
 19 there was -- really, there was support in my first
 20 declaration and it wasn't necessary in that
 21 declaration.
 22 Q. So you felt that your first declaration

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1 provided adequate support for your opinion?
 2 A. Yes.
 3 Q. Did you provide any edits to Appendix B?
 4 A. I think I might have made a suggestion or
 5 two. I don't think I provided written evidence.
 6 Q. Do you remember what those suggestions
 7 were?
 8 A. No.
 9 Q. Do you remember what claims those related
 10 to?
 11 A. No, not really.
 12 Q. And I think you testified those were --
 13 were those minor edits?
 14 A. Yes.
 15 Q. Now, Exhibit C that's attached here, did
 16 you draft Exhibit C?
 17 A. Appendix C?
 18 Q. I'm sorry, appendix C.
 19 A. So I, in discussions with the lawyers, gave
 20 a list of materials, and then they produced this list
 21 based on that.
 22 Q. Did the lawyers provide any additional

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1 materials on the list that you had not provided to
 2 them?
 3 A. I don't think so.
 4 Q. So everything on this list were documents
 5 that you had provided to the attorneys to include?
 6 A. Just to be clear, they were documents that
 7 I had reviewed, that some of the documents were given
 8 to me by the attorneys, so they knew about them.
 9 Q. But you instructed the attorneys what to
 10 include on Appendix C?
 11 A. No, I simply discussed with them what
 12 materials I had reviewed, and they knew that, and
 13 then they produced Appendix C, which was consistent
 14 with the materials I reviewed.
 15 Q. Did you review Appendix C after you
 16 received it from the lawyers?
 17 A. I believe so, yes, as part of my report.
 18 Q. And each and every document listed in
 19 Appendix C you have reviewed?
 20 A. I believe so. I've looked at these
 21 documents. It's possible one might have slipped
 22 through but I believe I reviewed them all.

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1 Q. And did you review them all in preparation
 2 of your second motion to amend?
 3 A. There are a lot of documents in here. I
 4 reviewed documents throughout this whole process.
 5 Q. So you don't recall whether these were
 6 reviewed specifically in preparation of your second
 7 motion to amend?
 8 A. It's a mixture, I think.
 9 Q. Now, turning back to the declaration, did
 10 you draft each and every paragraph in this
 11 declaration?
 12 A. I drafted and I edited every single
 13 paragraph and I submitted it as my report.
 14 Q. So you typed -- physically typed in every
 15 paragraph in this declaration?
 16 A. Do you mean were there some suggestions in
 17 here that there proposed by other people?
 18 Q. No, I meant the actual putting the words
 19 into the document, did you actually type each and
 20 every one of these words into the document yourself?
 21 A. So I drafted them, and in some cases there
 22 were suggestions made and I incorporated those

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1 suggestions.
 2 Q. So every paragraph originated with you on
 3 your word processor?
 4 A. No.
 5 MR. RICETTI: Objection.
 6 A. I'm a little confused about this question.
 7 As I said, I worked with the attorneys --
 8 Q. Right.
 9 A. -- and I drafted a response, and then they
 10 offered some suggestions, and that included some
 11 material that they felt was relevant and so --
 12 Q. And did the attorneys provide any
 13 paragraphs to insert into the document?
 14 A. They provided some text that they felt was
 15 relevant.
 16 Q. Okay. Do you recall which text was
 17 provided to you from the attorneys?
 18 A. No, not specifically. I mean, there were a
 19 lot of corrections and changes throughout.
 20 Q. Did you -- as part of the drafting process,
 21 did you prepare an initial draft?
 22 A. So I think that I wrote some material and

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1 then there was an exchange where we physically looked
 2 at it together.
 3 Q. Do you recall how long your initial draft
 4 was?
 5 A. I don't recall.
 6 Q. Okay. And --
 7 A. To be clear, there were periods where I had
 8 a page, then there were periods where I had two
 9 pages, and so on. It wasn't as though there was a
 10 draft and then suddenly there was a final draft.
 11 Q. But during the process you maintained the
 12 control of the document locally on your system?
 13 A. I did. I did.
 14 Q. And do you recall roughly how many drafts
 15 that you exchanged of this declaration?
 16 A. I don't even know that that is meaningful.
 17 There were periods where we were
 18 verbally exchanging comments. So, I mean, I'm not
 19 sure that there is this concept of these isolated
 20 point-in-time drafts.
 21 Q. And outside of the attorneys for Bryan
 22 Cave, did you share your drafts in any form with

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1 anyone else?
 2 A. No, I don't think so.
 3 Q. Okay. And as the process -- during the
 4 process of preparing the second motion to amend
 5 declaration, did you speak to anyone outside of the
 6 attorneys from Bryan Cave?
 7 A. No.
 8 Q. Okay.
 9 ---
 10 (Green Exhibit 2 is marked.)
 11 ---
 12 BY MS. GORDON:
 13 Q. You're being handed what's been marked as
 14 Green Deposition Exhibit No. 2. It's titled the
 15 "Reply to Petitioner's Opposition to Patent Owner's
 16 Motion to Amend."
 17 Do you see that?
 18 A. I do.
 19 Q. Have you seen this document before?
 20 A. I just want to make sure I understand this
 21 is the right document.
 22 Q. Take your time.

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