

Filed on behalf of Symantec Corporation

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VEEAM SOFTWARE CORPORATION
Petitioner

v.

SYMANTEC CORPORATION
Patent Owner

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

**DECLARATION OF MATTHEW D. GREEN IN SUPPORT OF
PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION**

Symantec 2028
Veeam v. Symantec
IPR2013-00150

I, Matthew D. Green, declare as follows:

I. Background and Qualifications

1. I am submitting this declaration on behalf of Symantec Corporation. I have been retained as a technical expert in connection with the above-captioned action to study and provide my opinions on certain issues related to U.S. Patent No. 7,093,086 (“the ‘086 Patent”). I understand that Petitioner has submitted an Opposition to Symantec’s Motion to Amend the claims of the ‘086 Patent , along with a Declaration by Dr. Shenoy (Veeam Exhibit 1031) in Support of its Opposition on February 24, 2014. I have been asked to provide my opinions regarding Petitioner’s Opposition and the corresponding Declaration by Dr. Shenoy, which are set forth in detail in this declaration.

2. My compensation as an expert is in no way dependent upon the results of any investigations I undertake, the substance of any opinion I express, or the ultimate outcome of this case. Barr Group bills Patent Owner for my time by the hour, plus reimbursement for travel and other out-of-pocket expenses incurred during my work on this matter. Barr Group and I are each compensated regardless of the facts I know or discover and/or the conclusions or opinions I reach. I have no personal or financial stake or interest in the outcome of this matter.

3. An updated version of my curriculum vitae is attached as Appendix A to this declaration.

4. I have used my education and my years of experience working in the field of software design, and my understanding of the knowledge, creativity, and experience of a person of ordinary skill in the art in forming the opinions expressed in this report.

5. In my Declaration in Support of Patent Owner's Motion to Amend, I have set forth my understanding of certain legal principles relating to patent claim construction and validity that I relied upon. I have also set forth what I believe to be a person of ordinary skill in the art of the subject matter of the '086 Patent, including the skillset, education, experience and knowledge such a person would have possessed. I have relied on these same principles and definitions in reaching my opinions in this declaration.

II. The Backup Program

6. I understand that it is Petitioner's position that Patent Owner's substitute claim 31 is unpatentable because Lim allegedly discloses the added feature of a "backup program" that "interfaces with a ... virtual machine kernel." Opp., pp. 8-9. To support its position, Petitioner relies on Lim's disclosure of a graphical user interface as corresponding to the backup program. Lim, col. 26:41-

49, Shenoy Opp. Dec. paras. 20-22. I will address these arguments in the following discussion.

7. First, in my reading of Lim, nowhere have I seen any reference to a backup program. This is unsurprising, given that Lim focuses on the creation, management and deployment of virtual machines as I explained in para. 142 of my Declaration in Support of Patent Owner's Motion to Amend.

8. As for the GUI referred to by Petitioner and Dr. Shenoy, it is merely used to send a checkpoint request to the virtual machine monitor. Lim, col. 26:43-49; Shenoy Opp. Dec., para. 21. The virtual machine monitor (which Dr. Shenoy argues is – or could be made – separate from the GUI), would then generate the checkpoint and extract the state information. Lim, col. 6:45-52; col. 18:2-8, Shenoy Opp. Dec. paras. 21-22. However, nowhere does Lim state that the GUI is used to transfer the state vector to a remote virtual machine, which Dr. Shenoy points to as meeting the copy step (ii) in the '086 Patent claims. Shenoy Pet. Dec. paras. 16-17. When asked specifically whether the GUI is used to transfer the state vector to another machine, Dr. Shenoy could not state that it does so during his deposition. Shenoy 2nd Dep., 51:11-19.

9. Moreover, as I have previously noted in paras. 134-36 of my Declaration in Support of Patent Owner's Motion to Amend, the Lim patent does not describe an invention that is capable of capturing the state of a first virtual

machine executing on a first computer system. This is because the Lim patent requires that the virtual machine execution be interrupted prior to capturing the state, and only when the state has been captured does the virtual machine resume. Lim, col. 11:12-20, col. 18:2-10. Dr. Shenoy acknowledges the existence of this interruption, and even discusses techniques to minimize the duration of the interruption (though not to eliminate it altogether). Shenoy Opp. Dec. para. 28. I discuss these techniques further below.

10. As a consequence of the above, Lim does not disclose a backup program, let alone any program that performs both the capture and copy steps (i) and (ii) as required by substitute claim 31. Indeed, Figure 6 of the patent clearly indicates that the virtual machine continues to execute during capture. Dr. Shenoy, when asked about these programs, confirmed that the program of Figure 6 describes an embodiment where the virtual machine continues executing. Shenoy 1st Dep., 68:22-69:6, Shenoy 2nd Dep. 18:24-19:6. This is the embodiment to which the substitutes claims, including claim 31, are directed.

11. I understand that Petitioner states that the added feature in substitute claim 31 is not supported by the '086 Patent. More specifically, Petitioner takes the position that the patent does not describe the backup program performing the capture step (i), and instead "the '086 Patent consistently describes that the capturing of the state is performed by the VM Kernel." Petitioner's Opposition, p.

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