Filed on behalf of Veeam Software Corporation
By: Lori A. Gordon
Michael Q. Lee
Sterne, Kessler, Goldstein & Fox PLLC
1100 New York Avenue, NW
Washington, D.C.
Tel: (202) 371-2600
Fax: (202) 371-2540

IN THE 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
Patent 7,093,086

VEEAM'S RESPONSE TO SYMANTEC'S MOTION FOR OBSERVATIONS ON CROSS-EXAMINATION

Symantec, in its Motion for Observations for Cross-Examination, lists eight observations, many of which mischaracterize Dr. Shenoy's testimony, as well as the positions advanced by Veeam in this proceeding. Further, regardless of the mischaracterizations, much of the testimony cited by Symantec is entirely irrelevant to the conclusions advanced by Symantec.

I. The '086 Patent Claims

1. In paragraph 1, Symantec argues that Dr. Shenoy's testimony contradicts Veeam's assertion that "to capture the state of the virtual machine effectively, the virtual machine must be suspended at least for a short period of time" because Dr. Shenoy testified on cross-examination that "the capturing step may not require you to interrupt the processor always." (Paper No. 44, p. 1.) Symantec, however, overlooks that Dr. Shenoy's testimony on cross-examination was limited to: "[i]f you believe state only is required to be one file in the claims of the 086 patent." (Ex. 2020, 54:10-14.) Yet, in the very same paragraphs in Dr. Shenoy's declaration that Symantec cites to as contradictory, Dr. Shenoy explains that his opinion that "the virtual machine [] must be suspended to capture state, at least temporarily" is for a different case: "if the Board were to adopt" Symantec's position that "state must include both contents of memory, hardware state . . . and configuration settings" (Ex. 1030, ¶ 10.)

2. In paragraph 2, Symantec argues that Dr. Shenoy's testimony that the

"log of uncommitted updates" of claim 9 and the "new log of uncommitted updates" of claims 11 and 22 could "cover" either "COW file 74A" or "COW file 74" is contradictory because of supposed differences between a "new log" and a "log". (Paper No. 44, p. 1.) But, Symantec is wrong. Dr. Shenoy in the cited testimony by Symantec explains that "new" refers to when the COW file is first created, and either COW file can be considered "new" at different times: "[w]hen the virtual disk was, perhaps, created for the first time, that could also be a new log of uncommitted updates. What Claim 11 hasn't said is when the new log of uncommitted updates was created. It simply says it's new." (Ex. 2020, 85:25-86:6.).

II. LIM

3. In paragraph 3, Symantec argues that Dr. Shenoy testified that Lim discloses "two embodiments. In both cases, you need to interrupt the virtual processor," and that this testimony supports Patent Owner's argument that Lim does not allow the virtual machine to continue executing during capture. (Paper No. 44, p. 3.) Symantec again mischaracterizes Dr. Shenoy's testimony because Dr. Shenoy did not testify that those "two embodiments" are the only two embodiments disclosed in Lim. (Ex. 2020: 39:19-21.) Further, Mr. Richetti's questions were under the guise of Dr. Shenoy's "recollection" and "just sitting here right now" despite Dr. Shenoy's insistence that he "would have to read" Lim to

fully answer Mr. Richetti's questions. (Ex. 2020: 39:4-25.)

4. In paragraph 4, Symantec incorrectly argues that Dr. Shenoy's testimony that Lim "doesn't say what happens after your store the state vector" supports its arguments that "Lim does not anticipate." (Paper No. 44, pp. 2-3.) In reality, Symantec's short excerpts from Dr. Shenoy's deposition conveniently leave out the rest of Dr. Shenoy's answer where he states that Lim does disclose to a PHOSITA the transfer of the state vector while the virtual machine is executing:

> So it doesn't say what happens after you store the state vector. It does say that you can store the state vector to disk, where they can be stored indefinitely. So this opinion is, basically, saying that, for someone skilled in the art, it would be understood that if that state vector was stored on disk, where it persisted for an indefinite period of time, you could have resumed the execution of the virtual machine and then you can make the copy while that's happening because they're two independent things. (Ex. 2020, 59:8-19.)

5. In paragraph 5, Symantec incorrectly argues that Dr. Shenoy's testimony, which incidentally relates to a different portion of Lim then referenced in his Declaration, supports Symantec's position that "Lim does not disclose the claimed memory area." (Paper No. 44, p. 3) First, in paragraph 22 of his declaration, Dr. Shenoy cites to column 19:51-55 of Lim as support for Lim's disclosure of storing

state vectors in "a dedicated memory partition," But, Dr. Shenoy's testimony on cross-examination relates to a different embodiment that begins on line 55 with the phrase "the invention also provides a method for reducing the amount of storage." (*See* Ex. 2020, 48:4-7; *see also* Lim, 19:55-62.) In other words, while column 19 may discuss "reducing the amount of storage" it also discusses in a different embodiment storing state vectors in a "dedicated memory partition." Second, whether or not Lim also discloses "a more efficient way of capturing the state vectors" does not support, and is not even relevant to Symantec's position that "Lim . . . discloses, at best, conventional COW files and memories."

III. ESX

6. In paragraph 6, Symantec incorrectly implies that Dr. Shenoy's opinions regarding the claimed "new log of uncommitted updates" term relies on his use of the ESX *product* instead of how a person of ordinary skill in the art would understand the ESX *manual*. (Paper No. 44, pp.3- 4.) This is simply not true. In response to being asked what the ESX *document* describes, Dr. Shenoy testified:

> It certainly has a log of uncommitted updates as the new log. There's no question about it. I've explained scenarios in my analysis where the log is refreshed and becomes new, such as when you power up a virtual machine or set a disk to append mode. So, in my opinion, it still discloses, not only a log of uncommitted updates, but creating new logs of uncommitted updates when a new

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