Trials@uspto.gov
Tel: 571-272-7822

Paper 54
Entered: July 29, 2014

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 B1

Before FRANCISCO C. PRATS, THOMAS L. GIANNETTI, and TRENTON A. WARD, Administrative Patent Judges.

WARD, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a); 37 C.F.R. § 42.73

I. INTRODUCTION

A. *Background*

Veeam Software Corporation ("Petitioner") filed a petition for *inter partes* review of claims 1, 11, 12, and 22 of U.S. Patent 7,093,086 B1 ("the '086 patent"). Paper 2 ("Pet."). Symantec Corporation ("Patent Owner") filed a Preliminary Response. Paper 9 ("Prelim. Resp."). Pursuant to 35 U.S.C. § 314, we instituted *inter partes* review, on August 7, 2013, as to claims 1, 11, 12, and 22 of the '086 patent. Paper 10 ("Dec.).

After institution of trial, Patent Owner filed a Response (Paper 28, "PO Resp.") and Petitioner filed a Reply (Paper 33, "Pet. Reply"). Patent Owner also filed a Motion to Amend Claims (Paper 27, "Mot. to Amend"), which Petitioner opposed (Paper 32, "Opp.") and Patent Owner filed a Reply (Paper 43, "Reply to Mot. to Amend"). Oral hearing was held on May 5, 2014. The hearing transcript has been entered in the record as Paper 53 ("Tr.").

The Board has jurisdiction under 35 U.S.C. § 6(c). This final written decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims 1, 11, 12, and 22 of the '086 patent are unpatentable. Furthermore, for reasons discussed below, Patent Owner's motion to amend original claims 1, 11, 12, and 22 with proposed substitute claims 31-34 is denied.

B. *Related Proceedings*

In addition to this petition, we instituted *inter partes* review on August 7, 2013 based on Petitioner's challenges to the patentability of certain claims of

Patent Owner's U.S. Patents 6,931,558 (IPR2013-00141, IPR2013-00142) and 7,191,299 (IPR2013-00143). Our final decisions in those proceedings are being entered concurrently with this decision.

C. The '086 Patent

The '086 patent is titled "Disaster Recovery and Backup Using Virtual Machines" and generally relates to computer systems and methods for backing up virtual machines. Ex. 1001, col. 2, ll. 3-4. The patent describes a computer system that executes one or more virtual machines, having multiple applications. To create a backup, the computer system may capture a state of each virtual machine and backup the state. *Id.* at col. 2, ll. 53-56. The state may include the information in a virtual image created in response to a suspension of the virtual machine. *Id.* at col. 2, ll. 60-62. Figure 1 of the '086 patent is reproduced below:

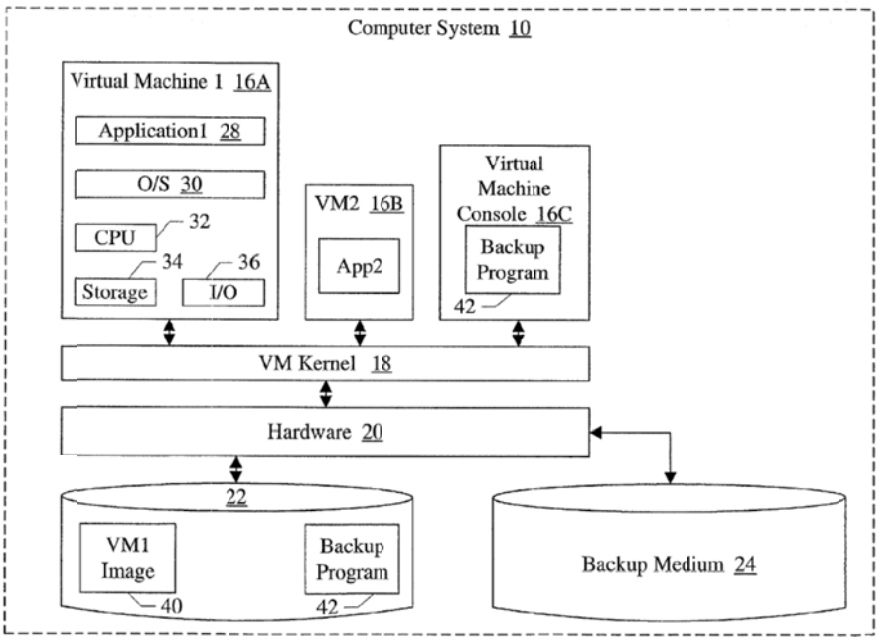

Fig. 1

'086 patent, Figure 1

As illustrated above in Figure 1, the ’086 patent discloses that multiple virtual machines, 16A-C, can be controlled by Virtual Machine (“VM”) Kernel 18, all of which may comprise software and/or data structures executed on the underlying hardware 20 of computer system 10. Ex. 1001, col. 3, ll. 30-37. Figure 1 further illustrates that computer system 10 can include storage device 22 and backup medium 24. Ex. 1001, col. 3, ll. 40-42. Claim 1 illustrates the claimed subject matter and is reproduced below:

> 1. A computer readable medium storing a plurality of instructions comprising instructions which, when executed:
> (i) capture a state of a first virtual machine executing on a first computer system, the state of the first virtual machine corresponding to a point in time in the execution of the first virtual machine, wherein the first virtual machine comprises at least one virtual disk storing at least one file used by at least one application executing in the first virtual machine, and wherein the state of the first virtual machine comprises the at least one file; and
> (ii) copy at least a portion of the state to a destination separate from a storage device to which the first virtual machine is suspendable, wherein suspending the first virtual machine is performed responsive to a suspend command.

D. Claim Construction

Consistent with the statute and the legislative history of the AIA,[1] the Board will interpret claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012); 37 C.F.R. § 42.100(b). Under the broadest reasonable construction standard, claim terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

1. "state of a virtual machine"

Claims 1 and 12 require capturing the "state of a first virtual machine." In the Decision to Institute, we adopted the prior construction of the District Court for the Northern District of California as the broadest reasonable construction, which construed "'a state of [first] virtual machine' as 'information regarding the [first] virtual machine to permit the virtual machine to resume execution of the application at the point in time the state was captured." Dec. 5-6 (citing *Symantec Corp. v. Veeam Software Corp.*, Case No. 12-cv-00700-SI, Mar. 8, 2013 Claim Construction Order, 9 (Ex. 2005) ("Claim Construction Order") (brackets in original)).

Patent Owner argues that this construction is unreasonably narrow and inconsistent with the specification because the Board's construction does not require capturing all of the state information needed to resume execution of the

[1] Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA").

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.