

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

**PATENT OWNER REQUEST FOR
REHEARING PURSUANT TO 37 C.F.R. § 42.71(C) FOR PARTIAL
RECONSIDERATION OF ITS DECISION TO INSTITUTE TRIAL**

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Patent Owner Symantec Corporation (“Symantec”) respectfully requests a rehearing pursuant to 37 C.F.R. § 42.71(c) for partial reconsideration of the Board’s Decision to Institute Trial (Paper No. 10) with respect to claims 11 and 22 in view of Suzaki and Wang. The Board’s decision to institute trial in this proceeding with respect to claims 11 and 22 in view of Suzaki and Wang overlooked Patent Owner’s arguments in its Preliminary Response contesting this ground.

I. INTRODUCTION

On August 7, 2013, the Board authorized the institution of this *inter partes* review for U.S. Patent No. 7,093,086 (“the ‘086 patent”) on five (5) of the grounds presented in the petition. In particular, the Board authorized the Petitioner to raise the following five (5) grounds of invalidity during this *inter partes* review, IPR2013-00150:

The Petition is granted as to the following grounds proposed:

- A. Anticipation of Claims 1, 11, 12, and 22 by Lim.
- B. Anticipation of Claims 1, 11, 12, and 22 by VMware ESX.
- C. Anticipation of Claims 1, 11, 12, and 22 by VMware GSG.
- D. Anticipation of Claims 1 and 12 by Suzaki.

E. Obviousness [sic] of Claims 11 and 22 in view of
Suzaki and Wang.

The Petition is denied as to all other grounds proposed.

Decision to Institute (Paper No. 10) at 24.

Symantec respectfully requests rehearing because the Board overlooked Patent Owner's arguments in its Preliminary Response separately contesting Petitioner's challenge based on Suzaki (VEEAM Exs. 1007-1009) and Wang (VEEAM Ex. 1010). *See* Paper No. 9 at 46-48. It is respectfully submitted that the Board reconsider Veeam's Proposed Ground 5 in light of these arguments and deny the Petition with respect to obviousness of claims 11 and 22 in view of Suzaki and Wang. This Request for Rehearing on behalf of Symantec is filed within 14 days of the Decision (Paper No. 10) and is timely under 37 C.F.R. § 42.71.

II. LEGAL STANDARDS

A. The Standard Of Review For Rehearing

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” The Federal Circuit has held that “[a]n abuse of discretion occurs where the decision is based on an erroneous interpretation of the law, on factual findings that are not supported by substantial evidence, or represents an unreasonable judgment in weighing relevant

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