

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

Before THOMAS L. GIANNETTI, SCOTT E. KAMHOLZ, and
TRENTON A. WARD, *Administrative Patent Judges*.

WARD, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On September 9, 2013, the following individuals participated in the initial conference call in this trial proceeding:

- (1) Lori Gordon, Michael Lee, Byron Pickard, counsel for Petitioner Veeam Software Corporation;
- (2) Joseph Richetti and Lawrence Kurland, counsel for Patent Owner Symantec Corporation; and
- (3) Thomas Giannetti, Scott Kamholz, and Trenton Ward, Administrative Patent Judges.

The purpose of the call was to discuss any proposed changes to the Scheduling Order and the motions that the parties intend to file.

Scheduling Order

Counsel for the respective parties indicated that they have no concerns with the Scheduling Order (Paper 11) entered on August 7, 2013.

Motions

Patent Owner filed a list of proposed motions (Paper 13) on September 5, 2013. First, the Patent Owner stated that it may file a motion to amend. The Patent Owner should note the guidance regarding motions to amend provided in the Board's Trial Practice Guide and recent decisions, including Case IPR2012-00005, Paper 27, dated June 3, 2013, and Case IPR2012-00027, Paper 26, dated June 11, 2013 ("*Idle Free*"). In particular, Patent Owner should note that, "in the absence of special circumstance, a challenged claim can be replaced by only one claim, and a motion to amend should, for each proposed substitute claim, specifically identify the challenged claim which it is intended to replace." *Idle Free* at 5. A motion to amend claims also must clearly identify the written

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description support for the proposed substitute claims. 37 C.F.R. § 42.121(b). Patent Owner is reminded to confer with the Board before filing a motion to amend.

Second, Patent Owner included in its list of proposed motions a motion to exclude evidence pursuant to 37 C.F.R. § 42.64(c) based on the grounds set forth in evidentiary objections Patent Owner has reportedly served on Petitioner pursuant to 37 C.F.R. § 42.64(b)(1). Authorization for such a motion has already been given in the Scheduling Order. The Board, however, encourages the parties not to delay in attempting to resolve these issues, to confer on this matter promptly, and to reach an agreement with respect to the issues raised in Patent Owner's objections. In the event that an agreement is not reached, the parties are encouraged to request a conference call with the Board to discuss the specific evidentiary issues in dispute.

Third, Patent Owner included in its list of proposed motions a motion for observations on cross-examination pursuant to 37 C.F.R. § 42.20(a) if warranted based on testimony. The Board directed Patent Owner to confer with the Board if and when the Patent Owner believes such a motion is warranted.

Petitioner filed a list of proposed motions (Paper 14) on September 5, 2013. First, Petitioner listed a motion to submit supplemental information. Counsel for Petitioner states that Petitioner served supplemental evidence on Patent Owner in response to Patent Owner's objections. Counsel for Petitioner inquired as to whether Petitioner should file this supplemental evidence with the Board. The Board directed the Petitioner not to file this supplemental evidence, as the relevant materials would most likely be included as exhibits to an opposition, should Patent Owner file a motion to exclude. The Board encouraged the parties not to delay in attempting to resolve these evidentiary issues, to confer on this matter promptly,

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and to reach an agreement with respect to Patent Owner's objections.

Second, Petitioner listed a motion seeking leave to serve additional supplemental evidence in response to objections reportedly served by the Patent Owner on August 21, 2013. After discussion, this request was denied as premature.

Protective Order

The parties indicated that they do not expect to rely upon confidential information; thus, counsel for the parties indicated that they do not believe that a protective order will be required in this proceeding.

Settlement

Counsel for the parties indicated that they have spoken, but had not reached any accord on settlement.

Accordingly, it is

ORDERED that Patent Owner must request a conference call with the Board before filing a motion to amend.

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