

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'S OBJECTIONS TO PETITIONER'S
SUPPLEMENTAL EVIDENCE PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Patent Owner Symantec Corporation hereby objects to the admissibility of the following documents included with the Service of Supplemental Evidence that was received from Petitioner Veeam Software Corporation on September 5, 2013. Patent Owner requests that the Patent Trial and Appeal Board deny admission and consideration of the following documents on the following bases.

Symantec 2008

1. Declaration of Daniel S. Block

Patent Owner objects to the admissibility of the Declaration of Daniel Block, dated September 5, 2013, including the exhibits attached thereto, on the grounds that:

a. the declaration is irrelevant under Federal Rule of Evidence (“FRE”) 401 as it fails to support Petitioner’s assertions that either VEEAM 1005 (VMWare ESX) or VEEAM 1006 (VMWare GSG) qualify as prior art printed publications, and, therefore, is inadmissible under FRE 402. For example, the declaration fails to provide anything to establish that the VEEAM 1005 and VEEAM 1006 documents themselves were publicly accessible, or even that they were included with any of the products identified and discussed in the declaration, prior to the date of invention for U.S. Patent No. 7,093,086 (“the ‘086 patent”);

b. at least paragraphs 3 and 5 of the declaration include statements that lack the necessary foundation under FRE 602 and/or constitute inadmissible hearsay under FRE 801 and are, therefore, inadmissible under FRE 802. For example, the declaration provides nothing to suggest or establish that the declarant has any first-hand knowledge regarding the manner or circumstances in which the referenced “Media Kits” may have been distributed, the contents of any such distributed Media Kits, or when any of the products and/or documentation

discussed in the declaration may have been offered for sale or evaluation or made accessible to anyone;

c. Exhibits C, D, and E to the declaration, which appear to be identical copies of the July 15, 2013, August 26, 2013, and August 29, 2013 affidavits of Christopher Butler, included separately in Petitioner's service of supplemental evidence, are also objected to for at least the reasons discussed below (*infra* at 4-6);

d. Exhibits F, G, and H to the declaration, which are purportedly copies of certain VMware, Inc. software products, have not been authenticated as required by FRE 901; and

e. to the extent that Petitioner seeks to use this declaration or the attached exhibits for any purpose other than to establish the alleged admissibility of VEEAM 1005 or VEEAM 1006, it is untimely; *see, e.g.*, 37 C.F.R. § 42.123.

2. June 7, 2013 Affidavit of Christopher Butler

Patent Owner objects to the admissibility of the Affidavit of Christopher Butler, dated June 7, 2013, including the exhibits attached thereto, on the grounds that:

a. at least certain of the webpages and documents included in Exhibits A, B, and C of the affidavit are irrelevant under FRE 401 as they fail to

support Petitioner's assertions that any of VEEAM 1005, VEEAM 1006, VEEAM 1007-1009 (Suzaki), or VEEAM 1010 (Wang) qualify as prior art printed publications, and, therefore, are inadmissible under FRE 402. For example, at least pages 3-7 of Exhibit A, pages 17-53 of Exhibit B, and the entirety of Exhibit C (pages 2-1584) appear to have no relevance whatsoever, and Petitioner has not referenced or established their alleged relevance, with respect to the admissibility of any of these asserted references or any of the objections set forth in Patent Owner's Objections to Evidence served on August 21, 2013; and

b. to the extent that Petitioner seeks to use this affidavit or the attached exhibits for any purpose other than to establish the alleged admissibility of VEEAM 1005, VEEAM 1006, VEEAM 1007-1009, VEEAM 1010, or VEEAM 1012 (June 23, 2001 Internet Archive pages captured through the WayBackMachine), it is untimely; *see, e.g.*, 37 C.F.R. § 42.123.

3. July 15, 2013 Affidavit of Christopher Butler

Patent Owner objects to the admissibility of the Affidavit of Christopher Butler, dated July 15, 2013, including the exhibit attached thereto, on the grounds that:

a. at least certain of the webpages and documents included in Exhibit A of the affidavit are irrelevant under FRE 401 as they fail to support

Petitioner's assertions that any of VEEAM 1005, VEEAM 1006, VEEAM 1007-1009, or VEEAM 1010 qualify as prior art printed publications, and, therefore, are inadmissible under FRE 402. For example, at least pages 6 and 8-11 of Exhibit A appear to have no relevance whatsoever, and Petitioner has not referenced or established their alleged relevance, with respect to the admissibility of any of these asserted references or any of the objections set forth in Patent Owner's Objections to Evidence served on August 21, 2013; and

b. to the extent that Petitioner seeks to use this affidavit or the attached exhibit for any purpose other than to establish the alleged admissibility of VEEAM 1005, VEEAM 1006, VEEAM 1007-1009, VEEAM 1010, or VEEAM 1012, it is untimely; *see, e.g.*, 37 C.F.R. § 42.123.

4. August 26, 2013 Affidavit of Christopher Butler

Patent Owner objects to the admissibility of the Affidavit of Christopher Butler, dated August 26, 2013, including the exhibit attached thereto, on the ground that: to the extent Petitioner seeks to use this affidavit or attached exhibit for any purpose other than to establish the alleged admissibility of VEEAM 1005, VEEAM 1006, VEEAM 1007-1009, VEEAM 1010, or VEEAM 1012, it is untimely; *see, e.g.*, 37 C.F.R. § 42.123.

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