

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

VEEAM SOFTWARE CORPORATION,  
Petitioner,

v.

VERITAS TECHNOLOGIES LLC,  
Patent Owner.

---

Case IPR2014-00090  
Patent 7,024,527 B1

---

Before WILLIAM V. SAINDON, THOMAS L. GIANNETTI, and  
TRENTON A. WARD, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

ORDER

AUTHORIZING SUPPLEMENT TO MOTION TO AMEND  
*37 C.F.R. § 42.5*

On April 23, 2015, the Board issued a Final Written Decision (Paper 37) in this case, determining that all challenged claims of U.S. Patent 7,024,527 were unpatentable and denying Patent Owner's Motion to Amend (Paper 19). Upon appeal, the Federal Circuit affirmed-in-part, vacated-in-part, and remanded to address the patentability of substitute claims 26 and 27 proposed by the Motion to Amend. *Veritas Techs. LLC v. Veeam Software Corp.*, 835 F.3d 1406, 1415 (Fed. Cir. 2016).

The Board initiated a conference call with counsel for the parties on January 24, 2017 to discuss Patent Owner's Motion to Amend. Specifically, we noted the threshold issue of whether the statutory subject matter requirements of 35 U.S.C. § 101 were met by claim 27. We further discussed the Board's precedential decision in *Ex parte Mewherter*, 107 USPQ2d 1857 (PTAB 2013), addressing claims directed to computer-readable media, and the effect of that case on claim 27 proposed by the Motion to Amend.<sup>1</sup> In accordance with the Board's precedent in *Mewherter*, proposed substitute claim 27 is likely unpatentable as directed to non-statutory subject matter unless modified to explicitly exclude transitory subject matter. *See Mewherter*, 107 USPQ2d at 1862. During the conference call, the panel and the parties discussed a proposed Supplement to the Motion to Amend, in which the words "non-transitory" would be added to proposed substitute claim 27 to conform that claim to the format approved by *Mewherter*. Upon further consideration of the matter, the panel determines that it is in the interests of justice to grant authorization for Patent Owner to file such a supplement.

---

<sup>1</sup> Proposed substitute claim 27 is directed to: "A computer-accessible medium comprising program instructions."

It is, therefore,

ORDERED that Patent Owner is authorized to file a Supplement to its Motion to Amend of no more than ten pages, due no later than two weeks from the entry of this Order;

FURTHER ORDERED that the Supplement will modify proposed substitute claim 27 to read, “A non-transitory computer-accessible medium comprising . . .” and that no other modifications to proposed claim 27 are authorized;

FURTHER ORDERED that Patent Owner may include any arguments in support of its position that claim 27 should be entered and is patentable;

FURTHER ORDERED that Petitioner is authorized to file an Opposition to Patent Owner’s Supplement of no more than ten pages, due no later than two weeks from entry of Patent Owner’s Supplement, and that Petitioner may include any arguments in support of its position that claim 27 is not patentable and should not be entered; and

FURTHER ORDERED that Patent Owner may file a Reply addressing any issue raised in Petitioner’s Opposition. Patent Owner’s Reply is due two weeks from entry of Petitioner’s Opposition, and is limited to five pages.

Case IPR2014-00090

Patent 7,024,527

PETITIONER:

Lori Gordon

Michael Q. Lee

Daniel Block

STERNE, KESSLER, GOLDSTEIN & FOX

Lgordon-PTAB@skgf.com

Mlee-PTAB@skgf.com

Dblock-PTAB@skgf.com

PATENT OWNER:

Joseph Richetti

Daniel Crowe

Alexander Walden

BRYAN CAVE LLP

Joe.richetti@bryancave.com

dacrowe@bryancave.com

alexander.walden@bryancave.com