

EXHIBIT C

EXHIBIT C

Disputed Claim Terms

I. The Parties’ Respective Proposed Constructions For the Disputed Terms

	Claim Terms and Phrases	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
U.S. Reissued Patent Nos. RE44,686 (the “686 patent”) and RE42,726 (the “726 patent”)			
1.	<p>“modif[y/ied] [a] resource allocation” / “modify[ing] [the] computer resources allocated to a virtual server”</p> <p>(’686 patent claims 5-7)</p>	<p>“modif[y/ied] set of functions and features of a physical host used in implementing tasks for the virtual server” / “modify[ing] a set of the functions and features of a physical host used in implementing tasks for the virtual server”</p>	<p>“modif[y/ied] [a] quality of service guarantee” / “modified service guarantee of a virtual server”</p> <p><i>See also</i> construction of “service guarantee”</p>
	<p>“modify[ing] a resource allocation for the virtual server” / “modifying [the] computer resources allocated to a virtual server”</p> <p>(’726 patent claims 1, 4-5 and 8)</p>	<p>“modify[ing] a set of the functions and features of a physical host used in implementing tasks for the virtual server” / “modify[ing] a set of the functions and features of a physical host used in implementing tasks for the virtual server”</p>	<p>“modify[ing] a quality of service guarantee for the virtual server” / “modifying [the] quality of service guarantee of a virtual server”</p> <p><i>See also</i> construction of “service guarantee”</p>
2.	<p>“resource unavailable messages resulting from denied requests to modify a resource allocation” / “resource unavailable messages” / “denied requests to modify a resource allocation”</p> <p>(’686 patent claims 5-7)</p>	<p>“resource unavailable messages” = “an indication that a request by the virtual server cannot be immediately serviced”</p> <p>“denied requests to modify a resource allocation” = “a request by the virtual server that cannot be immediately serviced”</p>	<p>“resource unavailable messages resulting from denied requests to modify a resource allocation” = “indications that a request by the virtual server for additional resources are either implicitly or explicitly denied, resulting from denied requests to modify a resource allocation”</p> <p>“resource unavailable messages” = “indications that a request by the virtual server for additional resources are either implicitly or explicitly denied”</p>

EXHIBIT C

Disputed Claim Terms

	Claim Terms and Phrases	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
			“denied requests to allocation” = Plain and ordinary meaning <i>but see</i> construction of “allocation”
3.	“resource denials” (’726 patent claims 1, 4-5 and 8)	“indications that requests by the virtual server cannot be immediately serviced”	“indications that requests for additional resources from a virtual server for additional resources implicitly or explicitly”
4.	“determination that a virtual server is overloaded” (’686 patent claims 5-7)	Plain and ordinary meaning	“determination that a virtual server is overloaded resource denials for additional resources beyond a pre-configured threshold” <i>See also</i> construction of “denials”
	“virtual server overloaded signal” (’726 patent claims 1, 4-5 and 8)	“an indication that a virtual server has been or is being denied resources”	“signal indicating that a virtual server has been or is being denied resources of resource denials for additional resources beyond a pre-configured threshold” <i>See also</i> construction of “denials”
5.	“virtual server” (’686 patent claims 5-7) (’726 patent claims 1-11)	plain and ordinary meaning; in the alternative: “a virtual machine that resides on a physical server and uses the physical server’s resources but has the appearance of being a separate dedicated machine”	“a process executing on a physical server that accepts communications from a client that is capable of receiving a service guarantee from the client”

EXHIBIT C

Disputed Claim Terms

	Claim Terms and Phrases	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
6.	<p>“determining that a second physical host can accommodate the requested modified resource allocation”</p> <p>(’686 patent claims 5-7)</p>	<p>plain and ordinary meaning; in the alternative: “determining that a second physical host can accommodate the request(s) by the virtual server that could not be immediately serviced”</p>	<p>Indefinite</p>
7.	<p>“quality of service guarantee”</p> <p>(’726 patent claims 1 and 4)</p>	<p>“a guaranteed resource allotment which can be dynamically increased/modified”</p>	<p>“information that specifies the amount of an assignment can be dynamically modified”</p>
8.	<p>“a component configured to receive an indication that a first physical host is overloaded, wherein the indication is based on a determination that a virtual server is overloaded and wherein the determination that a virtual server is overloaded is based on one or more resource unavailable messages resulting from denied requests to modify a resource allocation”</p> <p>(’686 patent claim 7)</p>	<p>Not subject to § 112 ¶ 6 - in the alternative:</p> <p>Function: receive an indication that a first physical host is overloaded</p> <p>Structure: Dynamic Resource Configuration Module 100; Physical Hosts 160A-C; Virtual Servers 162A-G</p>	<p>Means-plus function indefinite.</p> <p>Function: receive an indication that a first physical host is overloaded wherein the indication is based on a determination that a virtual server is overloaded the determination that a virtual server is overloaded is based on one or more resource unavailable messages resulting from denied requests to modify a resource allocation</p> <p>Structure: This term lacks sufficient structure in the specification.</p>
9.	<p>“a component configured to determine that a second physical host can</p>	<p>Not subject to § 112 ¶ 6 - in the alternative:</p>	<p>Means-plus function indefinite.</p>

EXHIBIT C

Disputed Claim Terms

	Claim Terms and Phrases	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
	accommodate the requested modified resource allocation” (’686 patent claim 7)	Function: determine that a second physical host can accommodate the requested modified resource allocation Structure: Dynamic Resource Configuration Module 100; Physical Hosts 160A-C; Virtual Servers 162AG	Function: determine that a second physical host can accommodate the requested modified resource allocation Structure: This term is not defined in the specification. There is a lack of sufficient context in the specification.
10.	“a component configured to generate a physical host transfer signal that indicates a second physical host and to transfer the virtual server from the first physical host to the second physical host if the first physical host is overloaded” (’686 patent claim 7)	Not subject to § 112 ¶ 6 - in the alternative: Function: generate a physical host transfer signal Structure: Dynamic Resource Configuration Module 100*; Physical Hosts 160A-C; Virtual Servers 162A-G *Dynamic Resource Configuration Module 100 includes the structure identified by VMware in its Reply Brief (<u>Load Balancing Module 130; Load Balancing Calculator 530; Virtual Server Resource Monitor 110; and Physical Host Resource Monitor 540</u>) with the exception of the pin-cites to the specification.	Means-plus function: Function: generate a physical host transfer signal that indicates a second physical host and to transfer the virtual server from the first physical host to the second physical host if the first physical host is overloaded <i>See also</i> construction of “physical host” in the specification. Structure: Dynamic Resource Configuration Module 140 as described in Figure 6.
11.	“a virtual server resource monitor [communicatively coupled to the first physical host and] configured to monitor resource denials and to send a	Not subject to § 112 ¶ 6 - in the alternative:	Means-plus function: Function: [creating a virtual server resource monitor and]

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.