

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**Intellectual Ventures I LLC and  
Intellectual Ventures II LLC,**

**Plaintiffs/Counter-Defendants,**

**v.**

**VMware, Inc.,**

**Defendant/Counter-Plaintiff.**

**Civil Action No. 1:19-CV-01075-ADA**

**JURY TRIAL DEMANDED**

**DEFENDANT VMWARE, INC.'S RESPONSIVE CLAIM CONSTRUCTION BRIEF**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. DISPUTED TERMS FROM U.S. PATENT NO. RE44,686 (the “’686 patent”)..... 1

A. “modif[y/ied] [a] resource allocation” / “modify[ing] [the] computer resources allocated to a virtual server” (’686 patent claims 5–7) ..... 1

B. “resource unavailable messages resulting from denied requests to modify a resource allocation” (’686 patent claims 5–7)..... 3

C. “determination that a virtual server is overloaded” (’686 patent claims 5–7) ..... 4

D. “virtual server” (’686 patent claims 5–7)..... 6

E. “determining that a second physical host can accommodate the requested modified resource allocation” (’686 patent claims 5–7) ..... 8

F. “component configured to” Means-Plus-Function Terms (’686 patent claim 7) ..... 10

III. DISPUTED TERMS FROM U.S. PATENT NO. RE42,726 (the “’726 patent”)..... 12

A. Terms that overlap with disputed claim terms in the ’686 patent..... 12

B. “resource denials” (’726 patent claims 1, 4–5 and 8) ..... 13

C. “quality of service guarantee” (’726 patent claims 1 and 4)..... 15

D. Mean-Plus-Function Elements (’726 Patent claims 1, 3, 4, 5, 7) ..... 17

a. “a virtual server resource monitor [communicatively coupled to the first physical host and] configured to monitor resource denials and to send a virtual server overloaded signal in response to the resource denials” (’726 patent claims 1 and 5) // “program code for creating a virtual server resource monitor communicatively coupled to the first physical host and configured to monitor resource denials and, in response to the resource denials, to send a virtual server overloaded signal” (’726 patent claim 4) ..... 17

b. “a virtual server resource modifier [communicatively coupled to the first physical host and] configured to receive the virtual server overloaded signal and, in response to the virtual server overloaded signal, to modify a resource allocation for the virtual server and to send a virtual server resource modification signal” (’726 patent claims 1 & 5); “program code for creating a virtual server resource modifier communicatively coupled to the first physical host and configured to receive the virtual server overloaded signal and, in response to the virtual server overloaded signal, to modify a resource allocation for the virtual server and to send a virtual server resource modification signal” (’726 patent claim 4)..... 18

c. “a load balanc[ing/er] [module] [communicatively coupled to the plurality of physical hosts and] configured to receive the virtual server resource modification signal and to determine whether the first physical host is overloaded and, in response to a determination that the first physical host is overloaded, to send a physical host transfer signal that indicates a second physical host” (’726 patent claims 1 and 5) // “program code for creating a load balancing module communicatively coupled to the plurality of

..

physical hosts and configured to receive the virtual server resource modification signal and to determine whether the first physical host is overloaded and, in response to a determination that the first physical host is overloaded, to send a physical host transfer signal that indicates a second physical host” (’726 claim 4) ..... 20

d. “a dynamic virtual server mover [communicatively coupled to the plurality of physical hosts and] configured to receive the physical host transfer signal and, in response to the physical host transfer signal, to transfer the virtual server from the first physical host to the second physical host” (’726 patent claims 1 and 5) // “program code for creating a dynamic virtual server mover communicatively coupled to the plurality of physical hosts and configured to receive the physical host transfer signal and, in response to the physical host transfer signal, to transfer the virtual server from the first physical host to the second physical host” (’726 patent claim 4) ..... 21

e. “the dynamic virtual server mover is further configured to direct the first physical host to store, in the file system, a set of system files for the virtual server and to direct the second physical host to access, from the file system, the set of system files for the virtual server, thereby transferring the virtual server from the first physical host to the second physical host” (’726 claims 3 and 7) ..... 22

IV. DISPUTED TERMS FROM U.S. PATENT NO. 7,949,752 (the “’752 patent”) ..... 23

A. “exhausted” (’752 patent claims 1, 9 and 24) ..... 23

B. “consumed” (recited in ’752 patent claims 1, 9 and 24) ..... 25

C. “service” (’752 patent claims 1, 3, 9 and 24) ..... 26

D. Means-Plus-Function Terms ..... 28

V. DISPUTED TERMS FROM U.S. PATENT NO. RE43,051 (the “’051 patent”) ..... 29

A. “virtual server” (’051 patent claims 1, 3 and 6) ..... 29

B. “physical interface[s]” (’051 patent claims 1 and 3) ..... 32

C. physical interfaces and tunnel identifiers in the storing / receiving / determining / sending terms (’051 patent claims 1 and 3) ..... 34

D. “customer forwarding [table/information]” (’051 patent claims 1 and 3) ..... 36

VI. DISPUTED TERMS FROM U.S. PATENT NO. RE44,818 (the “’818 patent”) ..... 37

A. “hierarchical token bucket resource allocation”/ “token” (recited in ’818 patent claims 1, 17, 30, 32, 33 and 37–42) ..... 37

B. “enforc[e/ing]”, “receiv[e/ing]”, “classify[ing]”, “compar[e/ing]”, “forward[ing]”, and “buffer[ing]” (’818 patent claims 1, 17, 30, 32, 33, 37, 38, 39, 42) ..... 40

C. “maintaining a connection over a network fabric” (’818 patent claims 1, 17, 30, 32 and 42) ..... 42

D. “virtual storage network interface layer of an application server” / “virtual network interface layer of an application server”/ “virtual interface layer of an application server” (’818 patent claims 1, 17, 30, 32 and 42) ..... 44

...

E.	“one or more input/output virtualization modules comprising computer-readable instructions operative to cause the one or more processors to” performs functions terms ('818 patent claim 17).....	45
VII.	CONCLUSION.....	47

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Bell Atlantic Network Services, Inc. v. Covad Comm'cns Grp., Inc.</i> , 262 F.3d 1258 (Fed. Cir. 2001).....	42
<i>In re Berg</i> , 320 F.3d 1310 (Fed. Cir. 2003).....	8
<i>Edwards Lifesciences LLC v. Cook Inc.</i> , 582 F.3d. 1322 (Fed. Cir. 2009).....	41
<i>GE Lighting Sols., LLC v. AgiLight, Inc.</i> , 750 F.3d 1304 (Fed. Cir. 2014).....	24
<i>Glob. Equity Mgmt (SA) Pty. Ltd. v. Expedia, Inc.</i> , No. 2:16-cv-00095-RWS-RSP, 2016 WL 7416132 (E.D. Tex. Dec. 22, 2016).....	46
<i>Honeywell Int'l, Inc. v. ITT Industries, Inc.</i> , 452 F.3d 1312 (Fed. Cir. 2006).....	41
<i>Imperium (IP) Holdings, Inc. v. Apple, Inc.</i> , 920 F. Supp. 2d 747 (E.D. Tex. 2013).....	10
<i>Inventio AG v. ThyssenKrupp Elevator Am. Corp.</i> , 649 F.3d 1350 (Fed. Cir. 2011).....	46, 47
<i>Markman v. Westview Instruments, Inc.</i> , 517 U.S. 370 (1996).....	28
<i>Merck &amp; Co. v. Teva Pharm. USA, Inc.</i> , 395 F.3d 1364 (Fed. Cir. 2005).....	1, 2
<i>Micro Chem., Inc. v. Great Plains Chem. Co.</i> , 194 F.3d 1250 (Fed. Cir. 1999).....	29
<i>Microsoft Corp. v. Multi-Tech Systems, Inc.</i> , 357 F.3d 1347 (Fed. Cir. 2004).....	41, 42
<i>Novo Indus., L.P. v. Micro Molds Corp.</i> , 350 F.3d 1348 (Fed. Cir. 2003).....	10
<i>O2 Micro Int'l v. Beyond Innovation Techn. Co.</i> , 521 F.3d 1351 (2008).....	6, 37, 38

# 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.