

1 UNITED STATES DISTRICT COURT  
 2 WESTERN DISTRICT OF TEXAS  
 AUSTIN DIVISION

3 INTELLECTUAL VENTURES I, ) Docket No. A 19-CA-1075 ADA  
 LLC, INTELLECTUAL )  
 4 VENTURES II, LLC )  
 )  
 5 vs. ) Austin, Texas  
 )  
 6 VMWARE, INC. ) May 14, 2020

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 8 TRANSCRIPT OF TELEPHONIC MARKMAN HEARING  
 BEFORE THE HONORABLE ALAN D. ALBRIGHT

9  
 10 APPEARANCES:

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1 **(Appearances Continued:)**

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14:01:02 1 THE COURT: Well, welcome, everyone, to the  
14:01:04 2 Markman hearing in this case.

14:01:05 3 If counsel for the plaintiff, whoever's going to  
14:01:09 4 be speaking, if you would identify yourself, and then, if  
14:01:14 5 counsel for defendant would, who's going to be speaking,  
14:01:17 6 identify him or herself. And then, I'd like to get on the  
14:01:21 7 record where the parties are with respect to which claim  
14:01:24 8 terms we need to take up.

14:01:26 9 So starting with the plaintiff, if you would  
14:01:28 10 please address the Court.

14:01:30 11 MR. GILLILAND: Your Honor, this is Derek  
14:01:31 12 Gilliland here on behalf of Intellectual Ventures. And  
14:01:36 13 there should also be on the line from Prince Lobel on  
14:01:39 14 behalf of Intellectual Ventures, there should be Jonathan  
14:01:41 15 DeBlois, Mr. Matthew Vella, Mr. Robert Gilman, Mr. Alex  
14:01:41 16 Breger.

14:01:47 17 And I believe Mr. DeBlois will be addressing two  
14:01:50 18 of the remaining terms in dispute: Those being  
14:01:53 19 "exhausted" and "consumed." Mr. Vella will be addressing  
14:01:56 20 the third term, No. 26, "virtual server," and with the  
14:02:00 21 modification of claim 27, as discussed by e-mail where  
14:02:06 22 "physical" there is changed to "physical interface," I  
14:02:10 23 believe claim 27. And all of the other claims are agreed  
14:02:12 24 to -- or term claim.

14:02:14 25 THE COURT: Thank you, Mr. Gilliland.

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14:02:15 1 And before anyone else talks, I screwed up. I  
14:02:17 2 should have allowed Suzanne to call the case so we have  
14:02:20 3 that on the record.

14:02:22 4 Suzanne, if you'd be so kind as to call the case,  
14:02:24 5 please.

14:02:25 6 THE CLERK: Certainly.

14:02:25 7 Markman hearing in Civil Action 1:19-CV-1075,  
14:02:32 8 styled, Intellectual Ventures I and II, LLC vs. VMware,  
14:02:36 9 Incorporated.

14:02:39 10 THE COURT: Okay. Having done that, if counsel  
14:02:41 11 for the defendant would identify whoever's going to be  
14:02:43 12 speaking, please.

14:02:46 13 MS. VIDAL: Good afternoon, Judge.

14:02:47 14 This is Kathy Vidal from Winston & Strawn,  
14:02:50 15 speaking on behalf of VMware. Speaking with me today are  
14:02:53 16 my colleagues, Mike Rueckheim and William Logan. We've  
14:02:58 17 got a lot of our team on, including Brett Johnson. So I  
14:03:00 18 won't name them all. And we also have our client, VMware  
14:03:03 19 on, including Brooks Beard, who I believe you know, who is  
14:03:06 20 the head of litigation.

14:03:07 21 THE COURT: Okay. And, Ms. Vidal, who will be  
14:03:10 22 speaking on behalf -- primarily today? Or is there more  
14:03:14 23 than one person?

14:03:15 24 MS. VIDAL: It would be three of us: Mike  
14:03:18 25 Rueckheim, William Logan and myself.

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14:03:19 1 THE COURT: Okay. Very good.

14:03:21 2 And I was having a little bit of a hard time  
14:03:23 3 hearing Mr. Gilliland.

14:03:26 4 Ms. Vidal, if you want to go through and tell the  
14:03:28 5 Court what you think the claim terms that are left to take  
14:03:33 6 up at the hearing are, that will make sure that we're all  
14:03:36 7 on the same page.

14:03:37 8 MS. VIDAL: I appreciate that, your Honor.

14:03:39 9 There are only three that are left. And I have  
14:03:42 10 to say, with the caveat that VMware does reserve its right  
14:03:46 11 to all the terms you left on the cutting room floor. So  
14:03:49 12 I'll start with that that say we focus our discussion  
14:03:50 13 today on three terms, "exhausted," "consumed," and those  
14:03:55 14 are both from the 752 patent, and "virtual server" from  
14:03:59 15 the 051.

14:04:01 16 THE COURT: Okay. Mr. Gilliland, since I think  
14:04:08 17 is more likely that it is the defendant who is going to be  
14:04:13 18 either an opponent either for what the Court proposed or a  
14:04:18 19 proponent for something else, I'm going to allow VMware to  
14:04:24 20 go first unless you have some objection to that.

14:04:27 21 MR. GILLILAND: This is Derek Gilliland.

14:04:30 22 And we have no objection to that. We're agreed  
14:04:31 23 on the terms to be argued.

14:04:33 24 THE COURT: Ms. Vidal, if you could tell me which  
14:04:39 25 of the -- if which of the claim terms makes the most sense

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