

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DAEDALUS BLUE LLC,

Plaintiff

vs.

MICROSOFT CORPORATION,

Defendant.

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C.A. No. 6:20-cv-01152-ADA

JURY TRIAL DEMANDED

**DEFENDANT’S REVISED PROPOSED
CLAIM CONSTRUCTIONS**

Pursuant to the Case Schedule (Dkt. No. 23), Defendant Microsoft Corporation (“Defendant”) hereby identifies its revised proposed claim constructions. Unless otherwise specified below, where a claim term or phrase is identified below, Defendant seeks to have it construed for purposes of all asserted claims of the identified patent-in-suit, and of all elements of all such claims containing the claim term or phrase.

Defendant reserves the right to further revise its claim constructions, particularly in response to or in consideration of any revisions by Daedalus Blue, LLC (“Plaintiff”) to its proposed construction of the terms or phrases below, or arguments raised by Plaintiff in its Markman briefing or at the Markman hearing. Defendant also reserves the right to amend or supplement its revised claim constructions, including to add or withdraw terms, as may be appropriate.

I. U.S. Patent No. 7,177,886

Claim Term Identified for Construction	Defendant’s Preliminary Proposed Construction
<p>“producing said acknowledgement signal subsequent to the applying and logging of the selected critical database transaction” (claim 1) / “producing an acknowledgment indicating that the transferred log file entries have been received” (claims 6, 7, 10)</p>	<p>Plain and ordinary meaning, which is “producing the acknowledgement signal in response to the applying and logging of the selected critical database transaction” (claim 1) / “producing the acknowledgement signal in response to the receipt of the transferred log file entries” (claims 6, 7, 10)</p>

II. U.S. Patent No. 7,437,730

Claim Term Identified for Construction	Defendant’s Preliminary Proposed Construction
<p>“workload(s)”</p>	<p>Plain and ordinary meaning, which is that each workload is “a processing task that is divided”</p>
<p>“resource management logic to distribute server resources to each of the plurality of virtual machines according to current and predicted resource needs of each of the multiple workloads utilizing the server resources”</p>	<p>Under the <i>Williamson</i> doctrine, the phrase “resource management logic to distribute server resources . . .” is a means-plus-function phrase under 35 U.S.C. section 112(f), because “logic” is equivalent to “means” or “module,” because “resource management logic” does not connote specific structure to a person of ordinary skill in the art, and because the phrase recites the function “to distribute server resources to each of the plurality of virtual machines according to current and predicted resource needs of each of the multiple workloads utilizing the server resources.”</p> <p>This term is indefinite because the specification does not detail any algorithm, much less a sufficient algorithm, to perform the claimed function.</p>

<p>“dynamically adjusted”</p>	<p>Plain and ordinary meaning, which is “automatically shifted from one server to another server”</p>
<p>“global resource allocator (GRA) ... for receiving said offered workload messages and assigning an optimum matching of combinations of whole integer numbers of workload servers and fractional virtual workload servers that the GRA controls to each of the respective customer workloads according to identified resource requirements”</p>	<p>Pursuant to the <i>Williamson</i> doctrine, the phrase “global resource allocator” is a means-plus function phrase under 35 U.S.C. section 112(f), because “global resource allocator” is a purely functional phrase reciting the function of “global resource allocation,” which does not connote specific structure to a person of ordinary skill in the art, and because the “global resource allocator” performs the function of “receiving said offered workload messages and assigning an optimum matching of combinations of whole integer numbers of workload servers and fractional virtual workload servers that the GRA controls to each of the respective customer workloads according to identified resource requirements.” The structure corresponding to the global resource allocator that performs the claimed function is a computer-implemented algorithm that includes the following steps:</p> <ol style="list-style-type: none"> 1. Split server resources between VMs evenly to start (<i>see</i> ’730 Patent, 5:24-56); 2. Receive measurements and/or prediction data from the load balancer(s) (<i>see id.</i>, 2:9-19, 2:42-52, 5:24-56, Claim 11, Fig. 3A); 3. Predict what resources are needed by each customer (<i>see id.</i>, 5:24-56, Fig. 3A); 4. Determine if any server capacity would be exhausted based on the predicted resource requirements (<i>see id.</i>, 6:58-7:58, Fig. 3A); IF NO GO TO STEP 5; IF YES GO TO STEP 6. 5. (FROM STEP 4: If no), adjust resource allocation for each of the VMs on all servers to conform with the prediction (<i>see id.</i>, 5:24-56, 6:58-7:58, Fig. 3A).

	6. (FROM STEP 4: If yes), mark the servers as overloaded. Contact the resource control agents at each server with resource assignments for each virtual machine pursuant to a process of moving load from the overloaded servers (<i>see id.</i> , 6:58-7:58, Figs. 3A, 3B).
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III. U.S. Patent No. 8,381,209

Claim Term Identified for Construction	Defendant's Preliminary Proposed Construction
"enforcing ... routing at a hypervisor layer via dynamic updating of routing controls"	Plain and ordinary meaning, which is "upon migration, automatically changing the routing controls at a hypervisor layer to rout network traffic for the virtual machine to the second device"

IV. U.S. Patent No. 8,572,612

Claim Term Identified for Construction	Defendant's Preliminary Proposed Construction
"flagging the instance of a VM"	Plain and ordinary meaning, which is "adding a marker to the configuration information for a particular VM occurrence indicating whether that VM occurrence is to be autonomically scaled"

V. U.S. Patent No. 8,671,132

Claim Term Identified for Construction	Defendant's Preliminary Proposed Construction
"service class rule"	Plain and ordinary meaning, which is "a rule implemented by the [data management system] (claims 1, 15, 26), [metadata server] (claim 9), or [computer code executable by a processor] (claim 23) to

	<p>automatically assign a service class for a file based on an evaluation of the file.”</p>
<p>“communication module operable to communicate between the file evaluation module and a plurality of remote clients and configured to communicate with clients [comprising at least two different computing platforms] or [of varying computing platforms]” (Claims 1, 9)/ “means for communicating with a plurality of clients comprising at least two different computing platforms.” (Claim 26)</p>	<p>Under the <i>Williamson</i> doctrine, “communication module operable to communicate. . . ” is a means-plus-function phrase under 35 U.S.C. section 112(f), because “module” is equivalent to “means,” because “communication module” does not connote specific structure to a person of ordinary skill in the art, and because the phrase recites a function “to communicate between the file evaluation module and a plurality of remote clients and configured to communicate with clients [comprising at least two different computing platforms] or [of varying computing platforms]” (Claims 1, 9).</p> <p>The phrase “means for communicating . . . ” is a means-plus-function phrase under 35 U.S.C. section 112(f), because the phrase recites a “means” for performing the function of “communicating with a plurality of clients comprising at least two different computing platforms” which does not connote specific structure to a person of ordinary skill in the art.</p> <p>This term is indefinite because the specification does not detail any algorithm, much less a sufficient algorithm, for performing the claimed function.</p>

Dated: August 11, 2021

Respectfully submitted,

/s/ Jared Bobrow

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