

**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 DISCLOSURE OF EXTRINSIC EVIDENCE

Pursuant to the Case Schedule (Dkt. No. 23), Defendant Microsoft Corporation (“Defendant”) hereby discloses extrinsic evidence in connection with claim construction proceedings. Unless otherwise specified below, where a claim term is identified below, Defendant’s extrinsic evidence applies for purposes of all asserted claims of the patent-in-suit, and of all elements of all such claims containing the claim term. Defendant reserves the right to amend or supplement this disclosure, including to add or withdraw evidence as may be appropriate, particularly in response to or in consideration of Daedalus Blue LLC’s (“Plaintiff’s”) extrinsic evidence for the terms below, the parties’ upcoming meet and confer on claim construction issues, Plaintiff’s belated supplemental infringement contentions that were not served until Friday, July 30, 2021, or in response to Plaintiff’s arguments advanced during claim construction proceedings.

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

Claim Term Identified for Construction	Defendants' Extrinsic Evidence
“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”	Testimony of Dr. Markus Jakobsson, <i>see</i> below for summary

Dr. Markus Jakobsson has 24 years of academic and industrial experience in applying, designing, studying, teaching and writing about computer systems, security and cloud computing. He received a Master of Science degree in Computer Engineering from Lund Institute of Technology, Sweden (1993), a Master of Science degree in Computer Science from University of California at San Diego (1994), and a Ph.D. in Computer Science from University of California at San Diego (1997). At the University of California at San Diego (UC San Diego), his field of study was computer science, with a specialization in cryptography, Internet security, and anonymous payment systems. His coursework included systems programming, such as parallel computers. While he was a graduate student at UC San Diego, he was employed at San Diego Supercomputer Center and General Atomics, where he worked as a Researcher supporting the development of the SET protocol and studying in the areas of authentication and privacy. His Ph.D. thesis research related to cryptographic techniques for online payments and anonymity. Based on his knowledge, experience and review of the intrinsic and extrinsic record, Dr. Jakobsson is expected to testify that the phrase “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” would not have been

understood by a person of ordinary skill in the art to have a definite meaning or connote a particular structure.

Dr. Jakobsson is expected to testify that this phrase had no recognized meaning to those of ordinary skill in the art, and did not suggest any particular structure, as of the claimed date of invention of the '730 patent. He is further expected to testify that this phrase recites “logic” for performing the claimed 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” — without reciting any structure for performing the function. Thus, Dr. Jakobsson is expected to testify that a person of ordinary skill in the art (POSITA) would have looked to the specification of the '730 patent for guidance as to the structure required to perform the function. Dr. Jakobsson is expected to testify that a POSITA would have appreciated that the function is performed by software “logic” according to the claims and specification of the '730 patent. Dr. Jakobsson is further expected to testify that the specification of the '730 patent does not disclose any algorithms or other structure for performing the function recited in this phrase.

Dr. Jakobsson is expected to testify that the only discussion of the claimed distribution according to “predicted resource needs of each of the multiple workloads utilizing the server resources” recited in claim 1 is contained at column 7:4-11. He is further expected to testify that this disclosure confirms that the claimed function is performed by “algorithms” of software, but that this disclosure reveals no algorithms setting forth how the claimed “logic” actually determines the “predicted resource needs of each of the multiple workloads utilizing the server resources.” More specifically, the disclosure merely recites that the load balancers can predict

the resource requirements “utilizing one of many algorithms” without identifying any particular algorithms that can be used.

Similarly, Dr. Jakobsson is expected to testify that the only discussion of the claimed distribution according to “current ... resource needs of each of the multiple workloads utilizing the server resources” recited in claim 1 is contained at columns 5:32-38 and 6:64-7:3. He is further expected to testify that this disclosure confirms that the claimed function is performed by software, but that this disclosure reveals no algorithms setting forth how the claimed “logic” actually determines the “current ... resource needs of each of the multiple workloads utilizing the server resources.” More specifically, the disclosure merely recites that the system’s load balancers measure the current offered load, without explaining any algorithm for how that measuring is performed.

Accordingly, Dr. Jakobsson is expected to testify that claim 1 and all claims depending therefrom are indefinite.

Claim Term Identified for Construction	Defendants’ Extrinsic Evidence
“global resource allocator ... 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”	Testimony of Dr. Markus Jakobsson, <i>see</i> below for summary

Dr. Markus Jakobsson’s qualifications are summarized above. Based on his knowledge, experience and review of the intrinsic and extrinsic record, Dr. Jakobsson is expected to testify that the phrase “global resource allocator” would not have been understood by a person of ordinary skill in the art to have a definite meaning or connote a particular structure.

Dr. Jakobsson is expected to testify that this phrase had no recognized meaning to those of ordinary skill in the art, and did not suggest any particular structure, as of the claimed date of invention of the '730 patent. Thus, Dr. Jakobsson is expected to testify that a person of ordinary skill in the art (POSITA) would have looked to the specification of the '730 patent for guidance as to the structure required to perform the claimed functions 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.” Dr. Jakobsson is expected to testify that a POSITA would have appreciated that these functions are performed by software according to the claims and specification of the '730 patent. Dr. Jakobsson is further expected to testify that the specification of the '730 patent discloses an algorithm for performing the functions recited in this phrase, as set forth in the following portions of the '730 patent specification:

1. Split server resources between VMs evenly to start (*see* '730 patent, 5:24-56);
2. Receive measurements and/or prediction data from the load balancer(s) (*see id.*, 2:9-19, 2:42-52, 5:24-56, Claim 11, Fig. 3A);
3. Predict what resources are needed by each customer (*see id.*, 5:24-56, Fig. 3A);
4. Determine if any server capacity would be exhausted based on the predicted resource requirements (*see id.*, 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 (*see id.*, 5:24-56, 6:58-7:58, Fig. 3A).

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