

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
 WACO DIVISION

OZMO LICENSING, LLC) Docket No. WA 22-CA-642 ADA
)
 vs.) Waco, Texas
)
 DELL TECHNOLOGIES, INC.,)
 DELL, INC.) June 28, 2023

TRANSCRIPT OF MARKMAN HEARING VIA VIDEOCONFERENCE
 BEFORE THE HONORABLE ALAN D. ALBRIGHT

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15:07:57 1 THE COURT: Okeydokey. I am ready to move
15:07:59 2 forward. Give me one quick second. Okay. I'll hear from
15:08:19 3 Dell on this.

15:08:22 4 MR. GUARAGNA: Good afternoon, your Honor.
15:08:23 5 It's John Guaragna from DLA Piper for Dell. With
15:08:26 6 me on the line from DLA are Erin Gibson --

15:08:29 7 THE COURT: Okay. Go ahead. Jen, have you
15:08:32 8 called the case?

15:08:33 9 THE CLERK: No, sir.

15:08:35 10 THE COURT: If you'll go ahead and call the case
15:08:36 11 and I'll have Mr. Guaragna finish, please.

15:08:38 12 THE CLERK: A civil action in Case 6:22-CV-642,
15:08:42 13 Ozmo Licensing, LLC vs. Dell Technologies, Incorporated,
15:08:45 14 Et Al. Case called for a Markman hearing.

15:08:48 15 MR. GUARAGNA: Good afternoon, your Honor.
15:08:49 16 John Guaragna from Dell. John Guaragna from DLA
15:08:54 17 Piper for Dell. With me, I've got Erin Gibson also from
15:08:57 18 DLA Piper.

15:08:58 19 MS. GIBSON: Good afternoon.

15:08:59 20 THE COURT: Good afternoon.

15:09:01 21 MR. GUARAGNA: Also Brian Erickson from DLA, who
15:09:03 22 will be handling part of the argument, your Honor.

15:09:05 23 MR. ERICKSON: Good afternoon.

15:09:06 24 MR. GUARAGNA: And I've got Chris Katsantonis,
15:09:09 25 who is a junior associate here at DLA Piper, and he's

15:09:12 1 going to be having the privilege of making his first
15:09:14 2 Markman argument before your Honor this afternoon. Also
15:09:17 3 with us, your Honor, from Dell are Dave Kuznick and Bailey
15:09:23 4 Watkins, inhouse counsel, and we're ready to proceed.

15:09:26 5 THE COURT: I think Mr. Erickson has sort of a --
15:09:29 6 almost feel like a -- I feel like it's the second coming
15:09:31 7 with the way the light is emanating from behind him.
15:09:36 8 Maybe there will be a revelation by the end of all this.

15:09:41 9 MR. ERICKSON: It's the proper reflection, your
15:09:43 10 Honor, that bothers me.

15:09:45 11 THE COURT: So the first claim term "wireless
15:09:50 12 local area network" and that's a claim term I'm sure has
15:09:56 13 never been discussed in the history of patent litigation.
15:09:59 14 And so, I will hear from Dell.

15:10:05 15 MR. ERICKSON: Thank you, your Honor. If I may
15:10:07 16 share our screen to display our slides.

15:10:09 17 THE COURT: Sure.

15:10:11 18 MR. ERICKSON: Thank you.

15:10:27 19 Your Honor, defendants' slide 3 provides the
15:10:30 20 constructions related to both the wireless local area
15:10:33 21 network and wireless personal area network terms as well
15:10:38 22 as some fine-tuning proposals from Dell. Now, the parties
15:10:42 23 briefed these terms together because the key dispute under
15:10:46 24 02 Micro is the difference between them and just when your
15:10:51 25 Honor directed us to address the first term, if may I,

15:10:54 1 because this is how they were briefed, if it's okay if we
15:10:56 2 address them together in this presentation, as well.

15:10:58 3 THE COURT: Sure.

15:11:00 4 MR. ERICKSON: Okay. Thank you, your Honor.

15:11:01 5 So defendants propose that these terms be
15:11:06 6 construed to include the numerical coverage ranges that
15:11:09 7 are found in the definitions in the intrinsic record and
15:11:11 8 the ordinary meaning of these terms. The Court's
15:11:13 9 preliminary constructions that are shown here in the
15:11:16 10 middle with Ozmo's proposals do not include the numerical
15:11:20 11 ranges proposed by Dell. The Court did preliminarily
15:11:23 12 construe wireless personal area network as a short-range
15:11:28 13 wireless network. But the Court did not construe wireless
15:11:31 14 local area network and the lack of a construction leaves
15:11:35 15 unresolved the key dispute between the parties.
15:11:38 16 Specifically, whether these networks have different
15:11:41 17 coverage ranges.

15:11:42 18 Now, based on the briefing and all of the
15:11:44 19 evidence, including the declaration of Ozmo's own experts,
15:11:48 20 which we will discuss in a moment, it appears to be
15:11:51 21 undisputed that a wireless local area network is a
15:11:56 22 longer-range wireless network relative to a wireless
15:11:59 23 personal area network. Thus, while Dell still contends
15:12:02 24 that the numerical ranges should be used in the Court's
15:12:05 25 construction, Dell has proposed a fine-tuning to the

15:12:09 1 Court's preliminary construction of local area network to
15:12:12 2 make clear that it is a longer-range wireless network.

15:12:18 3 There's a second proposed tuning on slide 3
15:12:20 4 related to the personal area network term, which is to
15:12:24 5 delete the phrase "usable to connect peripherals to
15:12:27 6 devices in close proximity." I'll circle back to address
15:12:31 7 that one at the end of my remarks.

15:12:34 8 Moving to slide 4, your Honor, this illustrates
15:12:38 9 figure 1 from the 814 patent. There are six patents
15:12:42 10 asserted in this litigation. They all share a common
15:12:46 11 specification so the parties cite only to the 814 patent,
15:12:51 12 but you should have the understanding that this is common
15:12:54 13 to all six of the patents-in-suit.

15:12:58 14 Now, figure 1 is addressing the background of the
15:13:00 15 invention and in the background, they explain there are
15:13:03 16 many different wireless networks known in the art.
15:13:05 17 They're all standardized. You see the standards on the
15:13:08 18 left here. And they note that they can be grouped based
15:13:11 19 on targeted range. They explain that personal area
15:13:16 20 network is the shortest. It can go up to 10 meters, which
15:13:20 21 is 30 feet. Wireless local area network can go up to a
15:13:24 22 hundred meters, 300 feet. And then, you have metropolitan
15:13:28 23 area and wide area that can be measured in kilometers.

15:13:31 24 So the industry created these terms solely to
15:13:37 25 describe the different size areas covered by these

15:13:42 1 different types of networks. You can see it in the name
15:13:45 2 itself. They're all wireless area networks. Wide being
15:13:48 3 the largest. Metropolitan being the second largest, I
15:13:53 4 guess I would say. Local being a medium size network and
15:13:56 5 personal being very small. And the differences are huge,
15:13:58 6 your Honor. The two are focused on for purposes of this
15:14:01 7 case are the local area and personal area. This figure,
15:14:04 8 of course, is not to scale. As you can see, the local
15:14:07 9 area is 10 times greater in coverage range than the
15:14:12 10 personal area network, so this is not a small difference.
15:14:16 11 Area, of course, is the square of the range, so
15:14:19 12 it's actually a hundred times larger area, all right? So
15:14:23 13 ten times larger coverage range. A hundred times larger
15:14:28 14 area. So that's why the industry uses different terms to
15:14:31 15 describe these different -- very different types of areas.
15:14:37 16 Moving to slide 5, your Honor, these are excerpts from
15:14:40 17 what the parties refer to as Vleugels I. This is another
15:14:46 18 application to the same inventors that's incorporated by
15:14:49 19 reference in its entirety into the common specification.
15:14:52 20 And the parties rely on Vleugels I for various aspects of
15:14:57 21 claim construction.
15:14:58 22 What you see here on slide 5 on the left, we have
15:15:01 23 reproduced paragraph 7 and this introduces a concept that
15:15:06 24 wireless communication systems can be categorized based on
15:15:09 25 coverage range. And you'll notice in light blue and, your

15:15:15 1 Honor, we've attempted to highlight all of the wireless
15:15:18 2 local area terms in light blue and information relevant to
15:15:21 3 the local area network in light blue and personal area
15:15:25 4 network in yellow. You'll see they first introduced the
15:15:28 5 local area network and they say it has a typical coverage
15:15:31 6 range on the order of 300 feet. Then they go on to
15:15:33 7 describe other aspects that can also be part of the local
15:15:37 8 area network.

15:15:38 9 The next paragraph, paragraph 8 goes to the next
15:15:41 10 type of network, next category, which is a personal area
15:15:44 11 network and they say it's a short-ranged wireless network
15:15:47 12 that's consistent with the Court's preliminary
15:15:49 13 construction. But they do clarify that when they refer to
15:15:53 14 short range, they mean a typical coverage range on the
15:15:56 15 order of 30 feet. So defendants contend that this is an
15:16:00 16 express definition, but it's also tracking precisely the
15:16:04 17 ordinary meanings of these terms. These terms were
15:16:08 18 created by the industry to describe categories of networks
15:16:11 19 of these sizes.

15:16:13 20 So this reenforces, your Honor, that defendants'
15:16:16 21 numerical limitations are correct and should be adopted in
15:16:19 22 the Court's construction; but failing that, defendants
15:16:22 23 propose fine-tuning. We should all be able to agree even
15:16:26 24 if we're not going to agree on the numerical limits that a
15:16:29 25 wireless local area network is a category of network that

15:16:33 1 has a longer range than the personal area network.

15:16:37 2 Moving to slide 6, this shows the next paragraph
15:16:41 3 of Vleugels I, which is paragraph 9.

15:16:45 4 THE COURT: Could you hold on? I'll be right
15:16:47 5 back.

15:16:49 6 MR. ERICKSON: Yes, your Honor.

15:17:32 7 THE COURT: Okay. Would you put back up your
15:17:37 8 current proposed constructions? Now, when you say gotta
15:17:51 9 be a WLAN, I think a concern I have about that is maybe
15:17:59 10 just grammatical, which is, I think what you're saying is
15:18:02 11 plain and ordinary meaning, which is a longer-range
15:18:05 12 wireless network than a WPAN is what you're saying.

15:18:10 13 MR. ERICKSON: Yes, your Honor.

15:18:11 14 THE COURT: Okay. Got it. And I'm not sure why
15:18:20 15 we're having this fight in the sense that -- I'm not sure
15:18:26 16 why you want me to say this because it's all right but I
15:18:33 17 think it's correct clearly that the one is larger than the
15:18:36 18 other. I'm not sure why we're having this fight. There
15:18:41 19 must be something that's going on here that I'm not
15:18:45 20 following because I can't imagine -- I cannot imagine an
15:18:52 21 expert who's dealing with either of these claim terms
15:18:54 22 having a problem or not -- number one, not understanding
15:18:59 23 what they both mean and the other is not agreeing that one
15:19:01 24 is longer range than the other.

15:19:04 25 MR. ERICKSON: Your Honor, we proposed this

15:19:06 1 fine-tuning to Ozmo this morning. They did not agree at
15:19:13 2 that time. After our call, they sent us an e-mail saying
15:19:15 3 they would not agree to this fine-tuning. So we'll just
15:19:18 4 have to -- they didn't explain why they wouldn't. We'll
15:19:22 5 just have to wait to see their presentation today.

15:19:25 6 THE COURT: Let me hear from -- who's going to
15:19:30 7 argue for the plaintiff?

15:19:34 8 MR. RUPP: Good afternoon, your Honor.

15:19:36 9 Karl Rupp. Let me introduce who is going to
15:19:38 10 speak today. I'll be speaking to the second term. Jim
15:19:40 11 Hall from Prince Lobel will speak to this particular term,
15:19:43 12 your Honor. And also on the call are some other lawyers
15:19:46 13 from Prince Lobel, as well as our client, Chris Dubuc.

15:19:52 14 THE COURT: Mr. Hall, what is the fight here?
15:19:55 15 I'm not sure I'm following what the fight is.

15:19:58 16 MR. HALL: Well, your Honor, it seems from the
15:20:00 17 beginning that Dell really wanted to import these
15:20:03 18 numerical limitations into the claim and how they're --

15:20:06 19 THE COURT: Well, they're not going to be
15:20:09 20 numerical. I'm not going to impose numeric limitations.
15:20:13 21 But there's no question that there is a difference between
15:20:17 22 the two and that one of the differences is in -- if I walk
15:20:22 23 out of this room with my EarPods on, they're going to stop
15:20:25 24 working because they're Bluetooth, and if I walk out of
15:20:27 25 here with my phone, I'm not. So I'm not sure what the

15:20:30 1 fight is over here.

15:20:32 2 MR. HALL: There's no fight over the difference
15:20:34 3 between the two networks. Our position was during claim
15:20:40 4 construction that WLAN, or wireless local area network, is
15:20:45 5 readily amenable to its plain and ordinary meaning. And
15:20:47 6 we adopted your Honor's construction of PAN from the Acer
15:20:53 7 case in which you construed just personal area network as
15:20:56 8 a short-range wireless network usable to connect
15:21:00 9 peripherals to devices in close proximity.

15:21:02 10 Our position is that that definition of WPAN
15:21:08 11 alone juxtaposes the two networks to show that they're
15:21:14 12 different.

15:21:19 13 THE COURT: Okay. Let me go back to Dell.
15:21:27 14 Again, I can't understand what the fight is going to be
15:21:32 15 here when your -- I don't understand what the fight's
15:21:37 16 going to be between the two parties when you're doing your
15:21:40 17 infringement analysis with these two words. Maybe you can
15:21:43 18 help me out here. I mean, the plain and ordinary meaning
15:21:45 19 to me is -- even I as a dog watching a television level
15:21:53 20 technical person is, you know, that WLAN is a larger --
15:22:00 21 even though it's a local area network, it's broader than a
15:22:07 22 WPAN and I'm not sure why I need to construe it.

15:22:12 23 MR. ERICKSON: There is a dispute, your Honor,
15:22:13 24 related to, I think, infringement. We don't have
15:22:16 25 something like validity contentions yet, so we don't know

15:22:19 1 what Ozmo will argue with respect to the prior art. But
15:22:22 2 we do know from at least some of the networks that's being
15:22:26 3 accused on the infringement side, they have identical
15:22:29 4 ranges. So in other words, some of the accused networks,
15:22:32 5 they'll say the wireless local area network is a 300-foot
15:22:37 6 range network and the personal area network is also a
15:22:40 7 300-foot range network. So they do --

15:22:43 8 THE COURT: I have a hard time believing that an
15:22:50 9 engineer would say that about -- I'm not for sure I'm
15:22:56 10 pronouncing it right, the WPAN or the W -- I don't know
15:23:00 11 how they would say that. I don't know how they would say
15:23:01 12 that they have the same range. That's what I'm missing
15:23:04 13 here.

15:23:05 14 MR. ERICKSON: We don't have an expert report
15:23:07 15 yet, your Honor, but we do know that Ozmo as a party has
15:23:13 16 contended that Wi-Fi is a local area network, which I
15:23:16 17 don't think anyone would dispute, but they've also accused
15:23:18 18 Wi-Fi direct, which is a type of Wi-Fi, as the exact same
15:23:22 19 range as Wi-Fi. It's Wi-Fi direct is the personal area
15:23:26 20 network. So that accusation is out there by Ozmo, the
15:23:29 21 party. We don't know how they're going to back that up,
15:23:31 22 but that shows that the parties do dispute whether
15:23:35 23 same-size networks can practice these two limitations.

15:23:41 24 THE COURT: Okay. I'll be back in a second.

15:23:59 25 Would you put up that -- will you put up your

15:24:02 1 construction one more time? Dell's construction one more
15:24:04 2 time. The Court is going to go with plain and ordinary
15:24:13 3 meaning for WLAN. Plain and ordinary meaning, which is a
15:24:16 4 longer-range wireless network than WPAN. That's going to
15:24:20 5 be the construction for WLAN. I am not going to modify
15:24:25 6 the construction for WPAN that I've given in the past.

15:24:30 7 So let's move on to the next claim term, which I
15:24:35 8 guess we've dealt with here. And then, we have, if I'm
15:24:40 9 correct, "overlay protocol" and I look forward to hearing
15:24:45 10 the argument on that.

15:24:49 11 MR. KATSANTONIS: Good afternoon, your Honor.

15:24:51 12 Chris Katsantonis with Dell. I will be briefly
15:24:54 13 addressing the Court's preliminary construction for the
15:24:56 14 overlay protocol term. But first, before I get started, I
15:24:59 15 would like to take a moment to thank your Honor for the
15:25:02 16 opportunity to be part of this Markman hearing today as
15:25:05 17 this is not only my first Markman hearing but also the
15:25:08 18 first time presenting before this court. So thank you,
15:25:10 19 your Honor.

15:25:10 20 THE COURT: Well, you should have your lawyers
15:25:12 21 take you out for a cocktail after this to celebrate.

15:25:15 22 MR. KATSANTONIS: I'll be sure to bring that up
15:25:17 23 with them, your Honor. Thank you.

15:25:19 24 So jumping in, your Honor, we respectfully
15:25:22 25 request this court to modify its preliminary construction

15:25:26 1 for the overlay protocol term in view of Ozmo's sur-reply
15:25:32 2 briefing. I'd like to move to slide 15 where we have
15:25:35 3 Ozmo's proposed construction which we understand has been
15:25:38 4 adopted by the Court as its preliminary construction.
15:25:41 5 Now, the only part of the construction that we disagree
15:25:43 6 with here is the portion that's been highlighted or
15:25:47 7 underlined in red. Excuse me. And this underlined
15:25:52 8 portion is the inclusion of this concept that the overlay
15:25:57 9 protocol has commonalities with a first protocol to reduce
15:26:01 10 interference such that the first and second networks can
15:26:03 11 coexist.

15:26:04 12 Now, the reason why we disagree with the
15:26:06 13 inclusion of this language, your Honor, is because it
15:26:09 14 improperly reads in a limitation into the claims.
15:26:13 15 Specifically, for taking a look at Ozmo's sur-reply at
15:26:17 16 page 6, Ozmo concedes, acknowledges that there are many
15:26:21 17 parts in the intrinsic record where the inventors further
15:26:24 18 elaborated on various aspects of the overlay protocol,
15:26:28 19 where they described various different embodiments related
15:26:31 20 to this overlay protocol.

15:26:33 21 And this concept of reducing interference for
15:26:37 22 coexistence purposes as a product of using common aspects
15:26:43 23 of between a first and second network, well, that's simply
15:26:47 24 just one of the very many embodiments that is described
15:26:49 25 within the intrinsic record. And throughout our claim

15:26:53 1 construction briefing, your Honor, we identify these
15:26:56 2 various different embodiments. And Ozmo without any
15:27:01 3 cognizant legal basis has turned around and said no. This
15:27:05 4 is the embodiment that's going to be imported into the
15:27:07 5 limitation -- into the construction for overlay protocol,
15:27:12 6 excuse me.

15:27:12 7 But, your Honor --

15:27:13 8 THE COURT: Let me ask you.

15:27:15 9 MR. KATSANTONIS: Yes.

15:27:15 10 THE COURT: I'm sorry. If I could ask a
15:27:17 11 question. So as I understand your argument, you are not
15:27:22 12 saying that overlay protocol, the claim term, is not a
15:27:28 13 protocol governing a second network which protocol has
15:27:31 14 aspects in common with a first network protocol to reduce
15:27:34 15 interference such that the second and first networks can
15:27:38 16 coexist. You're saying that it can do more than -- it
15:27:46 17 does more than just being there to reduce interference
15:27:49 18 such that the second and first networks can coexist. So
15:27:55 19 this is unfairly limiting.

15:27:58 20 MR. KATSANTONIS: Yes, your Honor. That's
15:27:59 21 exactly it.

15:27:59 22 THE COURT: Okay. So let me ask -- I'm sorry.
15:28:07 23 You can continue and then, I'll go to the other side.
15:28:09 24 Please.

15:28:10 25 MR. KATSANTONIS: Yes, your Honor.

15:28:12 1 So this construction that Ozmo has proposed, they
15:28:16 2 have not contended that this is the plain and ordinary
15:28:19 3 meaning of an overlay protocol. It's not. It's not the
15:28:22 4 definition of an overlay protocol. And there's also no
15:28:26 5 disclaimer warranting the importation of this embodiment
15:28:30 6 into the claims much less the exclusion of certain
15:28:35 7 embodiments that are contemplated by the intrinsic record.

15:28:39 8 And excluding an embodiment is exactly what would
15:28:41 9 happen, your Honor, under the Court's current preliminary
15:28:44 10 construction. Specifically, in Vleugels I, as my
15:28:48 11 colleague, Mr. Erickson, explained earlier, is part of the
15:28:51 12 intrinsic record. Vleugels I at paragraph 90 discusses
15:28:55 13 that interference problems between two networks -- network
15:29:00 14 protocols, rather, can be addressed by using different
15:29:03 15 frequency bands for each of the network protocols. So in
15:29:07 16 that situation, your Honor, it is not the commonalities
15:29:09 17 between a first network and a second network that reduces
15:29:13 18 interference such that those first and second networks can
15:29:17 19 coexist. It's actually the differences between the two
15:29:20 20 network protocols that facilitates the reduction in
15:29:23 21 interference and allows those first and second networks to
15:29:27 22 coexist.

15:29:28 23 And therefore, your Honor, we would propose that
15:29:32 24 the Court delete the portion here that we have underlined
15:29:34 25 in red from its preliminary construction as that would not

15:29:40 1 improperly -- properly exclude any of the disclosed
15:29:43 2 embodiments in the intrinsic record.

15:29:47 3 THE COURT: Okay. I'll be back in just one
15:29:49 4 second. I'm sorry, could you put that slide back up.
15:30:09 5 Thanks. I'll be right back.

15:34:18 6 Okay. If we could go back on the record with I
15:34:23 7 thought -- do my best, Katsantonis? Did I get close?

15:34:28 8 MR. KATSANTONIS: Katsantonis.

15:34:30 9 THE COURT: Katsantonis. I thought you did a
15:34:32 10 very good job, but I'm going to maintain the Court's
15:34:37 11 preliminary construction. And that was all I had down
15:34:42 12 that we needed to argue unless I'm missing something.

15:34:44 13 Is there anything else we need to take up?

15:34:47 14 MR. GUARAGNA: No, your Honor.

15:34:51 15 MR. RUPP: Not from plaintiff either, your Honor.

15:34:52 16 THE COURT: Stay cool out there. Take care.
15:34:54 17 Have a good day.

15:34:54 18 MR. RUPP: Thank you, Judge.

19 (Proceedings concluded.)

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2
3 UNITED STATES DISTRICT COURT)
4 WESTERN DISTRICT OF TEXAS)

5
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