

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Brian Moore
Administrative Law Judge**

In the Matter of

CERTAIN SMART TELEVISIONS

Inv. No. 337-TA-1338

COMPLAINANT MAXELL LTD.'S RESPONSIVE *MARKMAN* BRIEF

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1	Expert Declaration of Dr. Shukri Sourì in Support of Maxell, Ltd.'s Claim Constructions Regarding U.S. Patent Nos. 11,017,815 and 8,170,394
2	Expert Declaration of Stephen Gray in Support of Maxell, Ltd.'s Claim Constructions Regarding U.S. Patent Nos. 10,958,971 and 8,549,109
3	U.S. Patent No. 8,170,394
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5	U.S. Patent No. 10,958,971
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11	IBM Dictionary of Computing (1994)
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15	Microsoft Computer Dictionary, Fifth Edition, 2002
16	Chambers Dictionary of Science and Technology, 2007
17	Comprehensive Dictionary of Electrical Engineering, Second Edition, 2005
18	U.S. Patent No. 5,731,844 (one of the patents at issue in <i>Alcatel USA Res. Inc. v. Microsoft Corp.</i> , 2008 WL 2625852, at *1 (E.D. Tex. Jun 27, 2008))

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19	VIZIO Opening Claim Construction Brief in the C.D. California (<i>Maxell, Ltd., et al. v. VIZIO, Inc.</i> , No. 2:21-cv-06758-GW-DFM, Dkt. 144 (Oct. 27, 2022))
20	Final Rulings on Markman/Claim Construction in the C.D. California (<i>Maxell, Ltd., et al. v. VIZIO, Inc.</i> , No. 2:21-cv-06758-GW-DFM, Dkt. 158 (Dec. 21, 2022)) (“C.D. Cal. matter Markman Order”)
21	U.S. Patent No. 7,126,587 (Kawakami)
22	U.S. Application No. 11/508,209 - Notice of Allowance (December 27, 2011)
23	Respondent VIZIO, Inc.’s Preliminary Proposed Constructions for Disputed Terms (December 29, 2022)

Rather than adhere to traditional canons of claim construction and follow the guidance of binding authority, the Respondent, VIZIO, used its claim construction brief as a testing ground for various non-infringement and invalidity arguments. Of the ten disputed terms at issue, VIZIO forwards a means-plus-function analysis for four of the terms—input unit, controller, and processor (twice)—despite **none** of those terms using the terms “means.” For other terms (*e.g.*, “input unit” and the “distinct panels” / “mutually different” / “buttons mutually differing” term), VIZIO improperly imports limitations from the specification and/or found explicitly in other claims, as well as attempts to rewrite the language of “the radio modem...network” term. VIZIO’s approach to claim construction should not be countenanced. The Court need only apply the true purpose of claim construction—“to ‘determine the meaning and scope of the patent claims asserted to be infringed’” (*see O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008)—and adopt Maxell’s constructions that are supported by the intrinsic and extrinsic evidence.

A. Disputed Terms for the ’109 Patent

Term 1: “input unit” (’109 Patent, claim 4)

VIZIO ignores that courts have routinely found “input unit” (and similar phrases such as “input section”) connotes sufficient structure and should be given its plain and ordinary meaning. *See* Maxell Br. at 9. Indeed, “input unit” would be readily understood by a POSITA and requires no construction. *See* Ex. 2, Gray Decl. at ¶¶ 53-62; *see also TiVo Inc. v. EchoStar Commc’ns Corp.*, 2005 U.S. Dist. LEXIS 46879, at *25 (E.D. Tex. Aug. 18, 2005).

Rather, in its attempt to gain a non-infringement argument, VIZIO argues that “[t]he term ‘unit’ is a known ‘nonce’ word—a generic substitute for the word ‘means’—that does not connote any particular structures to a POSITA.” VIZIO Br. at 7-8 (citing *Diebold Nixdorf, Inc. v. Int’l Trade Comm’n*, 899 F.3d 1291, 1301 (Fed. Cir. 2018)). VIZIO is wrong. The full term presented

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for construction, is “input unit,” not “unit” alone. Thus, VIZIO’s only legal “hook” for imposing a means plus function analysis, *Diebold*, is wholly inapposite. *See id.* at 8 (VIZIO’s parenthetical citation to *Diebold*, in fact, underscores the irrelevance of the case).

Moreover, VIZIO contends that “[a]dding the adjective ‘input’ to ‘unit’ does not impart sufficient structure to perform the claimed function of ‘input[ting] video content.’” VIZIO Br. at 7-8. Maxell anticipated this argument in its opening brief, noting that the Federal Circuit has held that modifiers, such as “input” here, can impart structure to otherwise nonce terms. *See* Maxell BR. at 9 (citing *Williamson v. Citrix Online, LLC.*, 792 F.3d 1339, 1350 (Fed. Cir. 2015)). That is exactly the case here. *See* Maxell Br. at 9-10 (explaining the structural support for the term including receiving a variety of types of signals). VIZIO’s argument is not credible, remaining silent on the modifier discussion in *Williamson*, and ignores that other courts have found that input and unit together connote sufficient structure to avoid interpretation under § 112 ¶ 6. *See* Maxell Br. at 9.

For example, in *Alcatel USA Res. Inc. v. Microsoft Corp.*, the court held that Alcatel did not overcome the presumption that “input unit” is not a means plus function term. 2008 WL 2625852, at *17 (E.D. Tex. Jun 27, 2008). In doing so, the court analyzed the specification of the patent and stated that it disclosed:

[A]n I/O unit as a structure connected to other components, which include the input device, memory, processors, tuner, and video recorder, where these components communicate with other components through the I/O unit. '844 Patent, Fig. 1, col. 4:61–66, col. 5:41–46, col. 10:20–24, col. 13:39–43, col. 13:65–col. 14:2. This disclosure is consistent with extrinsic evidence that indicates an “input unit” connotes structure. IEEE STANDARD DICTIONARY OF ELECTRICAL AND ELECTRONICS TERMS, “input device” 524 (6th ed.1997) (defining “input device” as “a device used to enter data into a computer system” and listing “input unit” as synonym for “input device”);

Alcatel, 2008 WL 2625852, at *17; *see also* Ex. 18, U.S. Patent No. 5,731,844 (the patent at issue in *Alcatel*). The analysis in *Alcatel*, involving a similar disclosure as the '109 Patent, is equally applicable here.

VIZIO's zeal to improperly impart a means plus function analysis to "input unit" is clarified when viewing its proposed "structure" for what it truly is—a transparent attempt to obtain a non-infringement argument under the guise of limiting the claims to a single embodiment. Specifically, VIZIO claims that "the only structure disclosed in the '109 Patent specification associated with the claimed function of *"input[ting] video content"* is "a circuit which receives antenna/cable broadcast video content and restores the broadcast video content into video content to be digitally processed." VIZIO Br. at 9. VIZIO is incorrect—the specification is not so limited. Rather, the specification explains that, for example, the "network communication unit 207" can be used to input video content in the context of receiving data of a homepage of an internet site from the internet. *See* Ex. 4, '109 Patent, 8:30-42; *see* Maxell Br. at 9-11. The specification further describes, "[a]lthough description has been given of the internet as an example of content information in conjunction with the embodiment, the embodiment is not restricted by this example. That is, information indicating such content as a TV program is also available." Ex. 4 at 12:51-55.

A POSITA, such as Maxell's expert, Stephen Gray, would readily understand, both from the claim language itself and from the exemplary descriptions of an "input unit" in the specification, that the term refers to a definite class of structures that are used to receive data from the outside world. *See* Ex. 2, Gray Decl. at ¶¶ 58-62. Contrary to VIZIO's assertions, that such a class of structures could include more than a single structure is not cause for alarm or provides support for adopting VIZIO's construction. *See* VIZIO Br. at 8-9; *see also* *Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1322 (Fed. Cir. 2004) (the fact that "the disputed term is not

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limited to a single structure does not disqualify it as corresponding structure, as long as the class of structures is identifiable by a person of ordinary skill in the art”).

The Court should reject VIZIO’s means plus function construction because “input unit” connotes sufficient structure to a POSITA and should be given its plain and ordinary meaning.

Term 2: “control unit” (’109 Patent, claim 4)

While the parties agree that this term should be construed as a means-plus-function term, that is where the similarities end. VIZIO proposes four different functions, F4.2-4.4, which are all a subset of F4.1 and Maxell’s proposed function. Maxell does not ignore these functions as Vizio contends. VIZIO Br. at 11-12. Rather, there is no reason to break the function into four parts. Maxell’s proposal/VIZIO’s F4.1 function is less confusing and should be adopted.

Both parties’ structures include a microprocessor or processor to perform various operations. Maxell’s recited operations that the microprocessor is arranged to perform, however, are supported by both the claim language and specification, and are helpful for understanding the term. VIZIO has not provided any support for breaking the structure into six different parts.

VIZIO argues that “[t]he term “*control unit*” is indefinite because the ’109 Patent specification fails to disclose adequate corresponding structure to perform *any* claimed function, much less *all* of the claimed functions as required.” VIZIO Br. at 12 (citing *Williamson*). VIZIO largely relies on its expert, Henry Houh, the same expert it used in the pending Central District of California case against Maxell (“the C.D. Cal. matter”) involving a related patent to the ’109 Patent (U.S. Patent No. 9,578,369). *Compare* VIZIO Br. at 12-14 with Ex. 19, VIZIO Opening Claim Construction Brief in the C.D. Cal. matter at 3-7.

In further support of its indefiniteness argument, VIZIO also misleadingly describes the facts in *Konami Gaming, Inc. v. High 5 Games, LLC*. VIZIO Br. at 12 (citing to 2018 WL 1020120, *13-14 (D. Nev. Feb. 22, 2018), *aff’d*, 756 Fed. Appx. 994 (Fed. Cir. 2019)). VIZIO
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claims that “the court addressed a computer-implemented means-plus-function term that, similar to “*control unit*” here, performed functions associated with what appears on a display.” See VIZIO Br. at 12 (and noting that *Konami* found that the specification did not contain look-up tables or other “step-by-step procedure” for accomplishing the claimed function). But *Konami* stated that “processor” and “game controller” terms needed to perform far more detailed functionality than just “what appears on a display” as VIZIO believes, noting **seven** functions that the terms must perform:

[T]he Court finds that the four patents all disclose that the gaming machine “processor” (and/or “game controller” and/or “memory device” and/or “display device” and/or “control module”) must perform, at least, the following functions:

- (a) display a “matrix” of “simulated rotatable reel[s]” and determine the manner of the display in terms of the number of rows or columns or other manner of visual arrangement,
- (b) maintain an identifiable “subset” of “a plurality of symbols” to be placed in symbol positions on the digital display of “simulated reels,”
- (c) “pre-select” which symbols will appear in whatever chosen matrices of display exist for the duration of each play of the game,
- (d) determine based upon an “assigned” “hierarchy of probability” the “winning arrangement of symbols” over multiple iterations of the game and then determine the display and selection of the set of symbols for each play of the game,
- (e) maintain and follow a flowchart or algorithm identifying the “fixed” or pre-determined “symbol element” positions of the displayed symbols on the “simulated reel[s]” including a “pre-select[ed]” “win element,” a “consecutive run” of “identical symbols,” and a “random” selection of symbols from the subset of symbols “pre-select[ed]” for the entire iteration of a game for the non-identical symbol positions,
- (f) randomly determine when the “consecutive run” of “identical symbols” will be a part of the winning selection of the game, and
- (g) “increase[e] probability of a winning outcome” in direct relation to the consecutive run of identical symbols or the matrix of symbols appearing with the consecutive run of symbols.

Konami, 2018 WL 1020120, *13-14. In other words, VIZIO appears to have found a corner case with the most detailed functions to support its argument that “control unit” (and the “processor” and “controller” terms discussed *infra* for which VIZIO also relies on *Konami*) must have needlessly complex and confusing structure; otherwise, the term is indefinite. The law is not so rigid. *See* Maxell Br. at 15.

In contrast to VIZIO’s assertions, the ’109 Patent specification provides sufficient corresponding structure to a POSITA of how the term performs the claimed functionality. *See* Maxell Br. p. 14-15 (citing to the ’109 Patent at 5:7-10, 10:23-33, 10:58-64, and 11:5-11 and Gray Decl. at ¶¶ 63-67). This intrinsic evidence, along with Figure 5, provides more than adequate corresponding structure that “clearly links or associates that structure to the function recited in the claim.” *See* Ex. 20, C.D. Cal. matter Markman Order at 16 (citing *Williamson*, 792 F.3d at 1592 in construing “control unit” in the ’369 Patent, a patent related to the ’109 Patent). Thus, similar to the result in the C.D. Cal. matter, the Court should equally reject VIZIO’s indefiniteness arguments. *See id.*

Finally, VIZIO claims that “Maxell improperly broadens the scope of the claimed functions by ignoring three of the *four* claimed ‘control’ functions.” VIZIO Br. at 14. VIZIO further contends that “Maxell also improperly narrows the scope of the claimed functions by rewriting the four claimed functions into four wholly new unclaimed functions, and characterizes them as ‘corresponding structure.’” *Id.* VIZIO is wrong on both counts.

Maxell’s proposed structure encompasses all of VIZIO’s proposed functions (as well as structural proposals albeit in a simplified manner), and is consistent with the claim language. Maxell’s proposed structure is well supported by the specification as explained above. Further, Maxell’s construction is supported by the court’s construction of “control unit” in the C.D. Cal.

matter. Notably, the court there rejected VIZIO’s attempt to copy and paste sentences worth of unnecessary and confusing structural language and largely adopted Maxell’s simplified definition that encompassed the claimed functions, modifying it slightly “to avoid broadening not supported by the specification.” See Ex. 20, C.D. Cal. matter Markman Order at 15-16. In the related patent before the California court, the parties’ proposed constructions and the court’s ultimate construction are provided below for context:

VIZIO’s Proposed Constructions for the “control unit” structure in the related ’369 Patent in the C.D. Cal. matter (footnotes omitted)	Maxell’s Proposed Construction for the “control unit” structure in the related ’369 Patent in the C.D. Cal. matter	The court’s construction for the “control unit” structure in the related ’369 Patent in the C.D. Cal. matter
Corresponding Structure: a microprocessor (or processor) that is arranged to: S1: control operations, including the recited functions, to reproduce video on the display unit; S2: (1) receive information related to a request to display a first video content; and (2) cause display of the first video content on the display unit; S3: (1) receive a first information⁸, such as data (<i>e.g.</i>, URL), or communication⁹ via the communication unit; (2) cause the termination of the first video content on the display unit; and (3) initiate display of the second video content on the display unit S4: (1) receive a second information, such as operation data (<i>e.g.</i>, “move” or “select”), or communication via the communication unit; and (2) control the display unit to reflect the information or communication to control displaying of the second video content; and S5: (1) receive a third information, such as data indicating termination, or communication via the communication unit; and (2) cause the second video content on the display unit to terminate.	Structure: an information processing device within an information or display processing apparatus, for example an MPU or microprocessor, that: (1) controls operations of processing units required to reproduce digital content; (2) accesses the internet; and (3) controls the display unit based upon information received from the communication unit	Structure: a microprocessor or processor that is arranged to: (1) control operations of the processing units required to reproduce digital content, (2) control operations of the processing units required to accesses the internet, and (3) control operations of the display unit to terminate the display of content on display apparatus

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See *id.* at 12-14, 16, 28-29. Although the claim language is slightly different between the asserted claims of the '369 Patent in the C.D. Cal. matter and claim 4 of the related '109 Patent here, the same overall analysis and result should similarly apply. Indeed, of the four sub-parts to Maxell's proposed structure for "control unit" here, sub-parts 1-3 are identical to the sub-parts in the C.D. Cal. matter construction above (accounting for one claim language difference), with sub-part 4 ("(4) control operations of the communication unit to receive information from the portable terminal") added to accommodate for further differences in the claim language.¹ As such, VIZIO's claim that "Maxell seeks to rewrite the claim" is baseless. VIZIO Br. at 15. Maxell's construction hews to the language that the *C.D. Cal. crafted* and does not violate any principles of claim construction.

In sum, Maxell's proposed construction for "control unit" should be adopted.

B. Disputed Terms for the '971 Patent

Term 3: "processor" ('971 Patent, claim 1)

By itself, the term "processor" invokes sufficient structure to a POSITA that does not require invocation of a means-plus-function analysis. By reciting the term "processor," the claim itself shows that this term has sufficiently definite and known structure and should be construed consistent with its plain and ordinary meaning. See Maxell Br. at 19-24.

Once again, VIZIO would disavow the understanding of the masses in order to shoehorn in its means-plus-function analysis. For example, VIZIO contends, without citation, that "whether

¹ Given that the "microprocessor/processor" preamble and sub-parts 1-3 of Maxell's proposed construction were drafted by the court in the C.D. Cal. matter to "avoid broadening not supported by the specification," and the specification of the '109 Patent is essentially identical to the related '369 Patent, then by definition there cannot be any broadening as to that portion of Maxell's construction. And VIZIO's vague "broadening" argument does not specifically address Maxell's sub-part 4, which simply accounts for differences in the claim language between the '109 and '369 Patents.

a term is a means-plus-function term turns on the claimed function.” VIZIO Br. at 34. The actual test is “whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Williamson*, 792 F.3d at 1348; *Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1996) (“What is important is ... that the term, as the name for structure, has a reasonably well understood meaning in the art.”). That is the analysis that Maxell’s expert, Mr. Gray, conducted, concluding that the “processor” term has sufficiently definite and a known structure to a POSITA and should be construed consistent with its plain and ordinary meaning. See Ex. 2, Gray Decl., ¶¶ 30-40.

VIZIO unilaterally alters the test set forth in *Williamson* by injecting a requirement for “special programming” for the claimed processor. VIZIO Br at 34 (citing *In re Katz Interactive Call Processing Pat. Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011)). However, a proper reading of *Katz* reveals that the terms construed by the court there (and the examples discussed therein) were unable to overcome the presumption that 112 ¶ 6 applies *where the claim uses the term “means”* and were thus analyzed as means-plus-function terms (and found indefinite). *Katz*, 639 F.3d at 1313-1315 (construing terms such as “means for processing,” “processing means,” “means for assigning,” and “means for assigning”...). The requirement invented by VIZIO for “special programming” is based on these examples being found indefinite after the court determined that the term must be construed under 112 ¶ 6. Said differently, VIZIO is working through a means-plus-function analysis backwards in an effort to justify the court to adopt its view—this is wrong.

Conversely, the claimed “processor” here recites sufficient structure to avoid such analysis. Again, VIZIO argues their conclusion in a secondary test as satisfying a preceding test. VIZIO Br. at 34-35. The law does not require a claim to recite “special programming” in order to demonstrate sufficient structure. Rather, the “standard is whether the words of the claim are

understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Williamson*, 792. F.3d at 1349.

As cited in Maxell’s opening brief, numerous courts have found that “processor” does not invoke 35 USC § 112 ¶ 6, but that the term has its plain and ordinary meaning. *See* Maxell Br. at 19-20. As one example, in *Panoptis Patent Mgmt., LLC v. Blackberry Ltd.*, a court construed “a processor for associating a text message with an attachment” to have its plain meaning. 2017 WL 497571, at *19 (E.D. Tex. Feb. 7, 2017). In doing so, the court expressly rejected arguments, similarly made by VIZIO here, that the processor failed to recite sufficient structure because “the claim ‘does not describe how the processor performs that function’ and that ‘mere disclosure of a generic data processor cannot denote sufficient structure with respect to the functions performed.’” *Id.* at *18 (quoting defendant’s arguments). The same “function” arguments fail in this case, too. *See* VIZIO Br. at 33-35.

Here, as in *Panoptis*, the claim language—“controls the radio modem to wirelessly communicate with the Internet or local area network based on a first user instruction from a remote controller” (Ex. 5, ’971 Patent, 20:52-55)—“imparts additional structural significance and understandability to the ‘processor.’” *See Panoptis*, 2017 WL 497571 at *19; *see id.* at *18 (citing to additional cases and technical dictionary definitions similar to those cited by Maxell’s expert, Mr. Gray (*see* Ex. 2, ¶ 35), in support of finding a processor refers to a “recognized class of structures” to avoid the application of § 112 ¶ 6). Even unasserted dependent claims 3 and 4 disclose the processor executing “an update process based on the information, updates the application, and stores an updated application in the memory.” *See* Ex. 5, ’971 Patent, claims 3-4. Such surrounding disclosure, which is in line with the “storing” example in *Katz* rather than the extreme example in *Konami* (VIZIO Br. at 34), demonstrates the definiteness of the “processor”

term and unnecessary of a means-plus-function analysis.²

A “processor” would be understood by a POSITA as having a definite structure. *See* Maxell Br. at 19-24; Ex. 2, Gray Decl. at ¶¶ 30-40; *see also* *Panoptis*, 2017 WL 497571 at *18-19. Therefore, the Court can ignore the “special programming” or “algorithms” discussion in VIZIO’s corresponding structure section for this term. VIZIO Br. at 35-37.

Accordingly, VIZIO’s arguments that 112 ¶ 6 applies should be rejected.

Term 4: “radio modem” (’971 Patent, claim 1)

A POSITA would understand “radio modem” as used in the claims of the ’971 Patent and VIZIO fails to demonstrate otherwise. Rather, VIZIO’s arguments show agreement that a POSITA would have understood the term and that the specification of the ’971 Patent aligns with that understanding. VIZIO Br. at 37; *see also* Ex. 2, Gray Decl. at ¶ 43; Ex. 8, Houh ’971 Decl. at ¶ 120. What remains unclear is why or whether VIZIO’s understanding departs from the plain and ordinary meaning of “radio modem.” Vitzally, VIZIO’s arguments lack any explanation for why the term must be construed at all. “[A] party wishing to alter the meaning of a clear claim term must overcome the presumption that the ordinary and accustomed meaning is the proper one, demonstrating why such an alteration is required.” *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1363 (Fed. Cir. 1999). VIZIO makes no such demonstration.

Any modification to plain language would be unnecessary and improper, and simply rewording claim language is not the point of claim construction. *See Z-Man Fishing Prods. v.*

² Another of VIZIO’s cases, *Net MoneyIN, Inc. v. VeriSign, Inc.*, involved the construction of “generating means.” 545 F.3d 1359, 1367 (Fed. Cir. 2008). There, the plaintiff was trying to rebut the presumption of a means-plus-function term, which is not the situation here. Similarly, VIZIO’s reliance on *Egenera, Inc. v. Cisco Sys., Inc.*, 972 F.3d 1367, 1374-75 (Fed. Cir. 2020), which involved a means-plus-function analysis to a software-related term (“logic to modify”), is similarly inapplicable to the “processor” term in the ’971 Patent.

Queen, 2020 U.S. Dist. LEXIS 233374, *25-26 (W.D.N.C. Dec. 10, 2020) (“the Court also rejects their proposed ‘rewording’ of these disputed claim terms.”).

Accordingly, VIZIO’s proposed construction should be rejected.

Term 5: “the radio modem establishes a wireless communication with the cellular phone while being connected to the Internet or the local area network” (’971 Patent, claim 1)

Similar to the shorter “radio modem” term (term 4), VIZIO does not overcome the “presumption that the ordinary and accustomed meaning is the proper one” for this term, the longer “radio modem” term. *See K-2 Corp.*, 191 F.3d at 1363. But VIZIO goes farther on this term, opting to not just rewrite the term, but improperly injecting language from specification embodiments in the rewritten term as well. Such an approach is wrong and should be rejected.

As previously discussed, a POSITA would understand “radio modem” as used in the claims of the ’971 Patent and VIZIO fails to demonstrate otherwise. *See* Term 4 discussion *supra*.

VIZIO first changes “establishes a wireless communication with the cellular phone” to “initiates a wireless connection with a modem of a cellular phone.” *See* VIZIO Br. at 29-31. While VIZIO’s rewrite appears subtle, zooming out reveals that VIZIO’s proposed construction shifts the order of operation contrary to the claim language itself. The relevant limitation of claim 1 begins “wherein, ***upon receiving a second user instruction from a cellular phone***, the radio modem establishes a wireless communication with the cellular phone. . .” Ex. 5, 20:56-58 (emphasis added). Thus, upon receiving a wireless signal from the cellular phone does the radio modem of the display apparatus establish a connection with the cellular phone. VIZIO’s construction, however, wholly ignores the preceding clause in claim 1.

Nor is VIZIO’s reliance on other parts of the intrinsic evidence persuasive. VIZIO Br. at 29-31. At most, the cited material stands for the unremarkable proposition that the display apparatus and cellular phone can communicate with each other and each device may establish a

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connection with one another. *See id.* But such breadth in the disclosure does not require VIZIO's proposed rewrite directed to the radio modem initiating the wireless connection, which is nothing more than limiting the claims to a single embodiment. *See GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1308-10 (Fed. Cir. 2014) (holding the district court erred in construing the term "IDC connector," which had a common meaning in the art as referring to a range of devices, as being limited to a specific type of connector as doing so improperly read limitations into the claim from the specification and limited the claim scope to a single embodiment disclosed despite no evidence that the inventor acted as a lexicographer).

Moreover, VIZIO unambiguously adds "sets transmission parameters" and modifier language relating to the "modem of" the cellular phone/device to the claim purportedly based on embodiments from the specification. *See* VIZIO Br. at 31-32. For example, "transmission parameters" is explicitly mentioned only once in the '971 Patent, and nowhere in the claims. *See* Ex. 5, 3:11-12 ("Fig. 9 shows a diagram showing an example of transmission parameters of a radio modem in the embodiment"). But even VIZIO's expert admits that VIZIO's specification support shows "examples" of transmission parameters being set—such language is nowhere required by the claims. *See* Ex. 8, Houh Decl., ¶ 79. This is nothing more than a violation of a core claim construction canon—importing limitations from the specification into the claim. *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004) ("it is improper to read a limitation from the specification into the claims"); *Gart v. Logitech, Inc.*, 254 F.3d 1334, 1343 (Fed. Cir. 2001) ("Such a construction would improperly add a limitation appearing in the specification and the drawings, but not appearing in the unambiguous language of the claim."). Similarly, there is simply no need to add the "modem of" before the cellular phone/device terms in claim 1 as a POSITA would readily understand the individual elements in this term without the

need for further modifications based on the improper importation of limitations from the specification.³ See *id.*; Ex. 2, Gray Decl., ¶ 2.

Accordingly, VIZIO's proposed construction should be rejected.

Term 6: "carrier frequency" ('971 Patent, claim 1)

Once more, VIZIO fails to establish *why* its construction is necessary. In order to apply anything beyond the plain and ordinary meaning, VIZIO "must overcome the presumption that the ordinary and accustomed meaning is the proper one, demonstrating why such an alteration is required." *K-2 Corp.*, 191 F.3d at 1363. VIZIO makes no attempt at such demonstration here, instead arguing a POSITA's understanding in light of the specification. VIZIO Br. at 32.

Accordingly, VIZIO's unnecessary construction should be rejected and the plain and ordinary meaning should control.

C. Disputed Terms for the '394 Patent

Term 7: "controller" ('394 Patent, claims 2, 4, 7)

"Controller" is not a nonce word. Far from it. The term "controller" standing alone, connotes sufficient structure to a POSITA. The issue VIZIO creates here is whether a known, structural component is claimed, or whether a generic controller requiring sophisticated and specialized programming is claimed. See VIZIO Br. at 19-22. A controller, like a processor, connotes a class of structures such that the inquiry should end without further entertaining a 112 ¶ 6 analysis of the claimed function and corresponding structure in the specification. See *SkyHawke*

³ Contrary to VIZIO's assertion, Maxell's plain and ordinary meaning construction is not meant to "defer disclosure of its implicit construction until Maxell addresses its infringement and/or validity positions." See VIZIO Br. at 28. Maxell filed hundreds of pages of infringement contentions with its complaint—there is no sandbagging here, the terms in this phrase are common and do not need construction. VIZIO's throwaway written description claim equally has no merit. *Id.* at 29 n.10. Indeed, it is VIZIO's proposed construction that seeks to improperly limit the full breadth of the claimed subject matter.

Techs., LLC v. DECA Int'l Corp., 2019 U.S. Dist. LEXIS 220590, *51-52 (C.D. Cal. Dec. 23, 2019) (finding “processor” not subject to 112 ¶ 6 and stating that “[a] computer, like a processor, connotes a known class of structures such that the inquiry would end **without an analysis of the claimed function and corresponding patent specification disclosure**”) (emphasis added). As such, the Court should reject VIZIO’s proposed construction and adopt a plain and ordinary meaning for “controller” similar to a myriad of other courts across the country. *See* Maxell Br. at 30-32.

Construction under 112 ¶ 6 can apply “if the challenger demonstrates that the claim term fails to ‘recite sufficiently definite structure’ or else recites ‘function without reciting sufficient structure for performing that function.’” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (citation omitted). VIZIO’s arguments do not demonstrate either situation.

The claimed “controller” is sufficiently definite structure to a POSITA as found by a plethora of cases, and VIZIO has not demonstrated otherwise. *See* Maxell Br. at 30-32. As made clear to a point beyond contention, a controller is well understood. Ex. 1, Sourì Decl. ¶ 55.

For example, in *Telcordia Techs., Inc. v. Cisco Sys., Inc.*, the Federal Circuit held that the construed term (monitoring means), which included a “circuitry at a controller” as part of the corresponding structure, had sufficient structure (and thus was not indefinite) because “[t]he record shows that an ordinary artisan would have recognized the controller as an electronic device with a known structure.” 612 F.3d 1365, 1376-77 (Fed. Cir. 2010).⁴ Such is the situation here. Dr. Sourì provided detailed testimony concerning why the skilled artisan would have recognized “controller”

⁴ Though decided before *Williamson*, *Telcordia* makes no mention of the “strong” presumption standard that *Williamson* rejected. Instead, *Telcordia* properly applied the post-*Williamson* standard, namely, consideration of whether the term would be recognized by those of skill in the art as the name for structure. *Telcordia*, 612 F.3d at 1377 (“The record shows that an ordinary artisan would have recognized the controller as an electronic device with a known structure.”).

as referring to a known structure. *See* Maxell Br. at 31; *see also* Ex. 1, Sourì Decl., ¶¶ 53-58.⁵ As additional support, Dr. Sourì cited five separate technical dictionaries defining “controller” in a manner illustrating that it refers to a known structure (*Id.* at ¶ 54) providing evidence beyond that in *Telcordia* that a person of ordinary skill would have understood “controller” as the name for structure. *See* Maxell Br. at 32-33 (citing dictionary definitions including multiple definitions including “device” in the definition); *see also SkyHawke*, at *61, n.12; (“the fact that the technical dictionary definitions exists for the term [] that refers to it as a ‘device’ supports that it is a term that connotes structure”).

Maxell’s authority, in its opening brief and herein, overwhelmingly demonstrates that further analysis is unnecessary and VIZIO’s authority does not support an opposite finding, *i.e.* that 112 ¶ 6 applies. For example, in *Egenera* the Nevada court determined that the software term “logic to modify” was subject to construction under 112 ¶ 6. *See* 972 F.3d at 1374-75. The court there rejected Egenera’s offering that plain and ordinary understanding of the term meant “software, firmware, circuitry or some combination thereof.” *Id.* at 1374. Here, Maxell does not argue that the construction of “controller” includes “software, firmware, circuitry or some combination thereof.”

In fact, VIZIO forwarded similar means-plus-function arguments in the C.D. Cal. matter on a “controller” term (with a function of “control[ling] a waiting [condition] of the broadcast program receiving apparatus”) in a different, unrelated patent to the ’394 Patent, including citing

⁵ VIZIO’s claim that Dr. Sourì identified the “wrong component” is incorrect. VIZIO Br. at 21 n.5. Dr. Sourì identified system control unit CPU 9 as exemplary (“e.g., system control unit CPU 9”), not as definitively as the controller. *See id.*; Ex. 1, Sourì Decl., ¶ 56. Similarly, there is no reason to accord Dr. Sourì’s opinions “little (if any weight)” as VIZIO contends. *See* VIZIO Br. at 21 n.5. Dr. Sourì did not provide a means-plus-function opinion on the controller term because he was not asked to. *See* Ex. 13 to VIZIO Br. at 85:16-89:11.

to *Egenera*. See Ex. 20, C.D. Cal. matter Markman Order at 23-24. The court rejected VIZIO means-plus-function arguments, held that “controller” term be accorded its plain and ordinary meaning, and noted that “the term ‘controller’ implies more structure than the term ‘logic to modify’ and thus does not find *Egenera* analogous.” See *id.* at 24. The same result applies here.

Nor is the conclusion in *Konami* finding a “gaming controller” subject to 112 ¶ 6 controlling here. See VIZIO Brief at 20-21. A “gaming controller” is a separate physical device entirely and not at all the same as the well-known “controller” of an electronic circuit that a POSITA would understand. In addition, apart from the different nature of the claimed functions between the controller in the ’394 Patent and the gaming controller in *Konami* (see *supra*), “Konami’s patents disclose little to no information about how the ‘game controller’ operates or how it interacts with other parts of the invention that might otherwise disclose sufficient structure.” *Konami*, at *12.

The specification of the ’394 Patent further establishes the structural character of the “controller” term. See *Finjan v. Proofpoint*, 2015 WL 7770208, at *10-11 (N.D. Cal. Dec. 3, 2015) (finding “content processor” had sufficient structure because the specification described how the processor interacted with the invention’s other components and illustrated the processor’s location and relationship to other components). For example, the ’394 Patent specification discloses “data monitor unit 5 (CPU)” with its location and relationship to other components. See, e.g. Ex. 3, ’394 Patent at FIG. 1 (diagram showing the structure of a digital content reproducing apparatus); 3:19-40 (description of the components included in FIG. 1).

Moreover, VIZIO’s insistence that the claims include an “algorithm or step-by-step procedure” in order to recite sufficient structure is incorrect. VIZIO Brief at 20. In doing so, VIZIO blurs the analysis performed under 112 ¶ 6 with the test for whether 112 ¶ 6 applies in this first

place. No case law supports this. Rather, because “controller” connotes sufficient structure, an algorithm is not necessary in the claims. VIZIO’s mixing of the test and the result muddies the waters, churning up more issues than it resolves. In sum, because 112 ¶ 6 does not apply, it is not necessary to consider their circular arguments regarding the corresponding structure.

Accordingly, VIZIO’s arguments for imposing 112 ¶ 6 where it is not necessary should be rejected.

Term 8: “distinct panels” / “mutually different” / “buttons mutually differing” (’394 Patent, claims 2, 4, 7)

To avoid the presumption that plain and ordinary meaning applies (*see K-2 Corp.*, 191 F.3d at 1363), VIZIO’s argument for narrowing these terms rests, primarily, on a supposed patentee lexicographer or prosecution disclaimer basis. VIZIO is wrong.

Lexicography does not apply

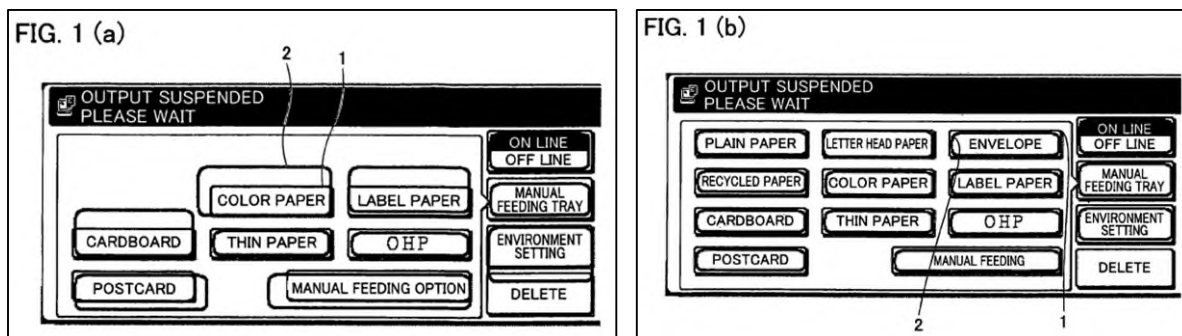
“It is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments, the patentee must ‘clearly express an intent’ to redefine the term.” *Thorner v. Sony Comput. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (citations omitted). Thus, VIZIO’s argument that the specification of the ’394 Patent’s “silence” with respect to any embodiments with panels having overlapping buttons or functionality falls short of the high bar necessary to demonstrate lexicography. VIZIO Br. at 22. Furthermore, a lack of a specific embodiment “where the two ‘panels’ have any buttons and/or functionality in common” is not required, let alone fatal. VIZIO Br. at 22. The Federal Circuit tells us that “silence does not support reading the claims to exclude [a particular limitation.]” *Seabed Geosolutions (US) Inc. v. Mageis FF LLC*, 8 F.4th 1285, 1288 (Fed. Cir. 2021) (rejecting the argument that the patent’s silence about gimbals means that the specification only describes a non-gimbaled geophone). VIZIO’s lexicographer argument should be rejected.

There is no prosecution disclaimer

During the '394 Patent's prosecution, Maxell distinguished the claimed inventions from art that taught a single panel displayed with and without certain buttons "grayed out." See VIZIO Br. at 23-24. According to VIZIO, these statements justify limiting "distinct panels" to those with buttons that are "all mutually different." *Id.* Not so. Maxell distinguished the claimed inventions from the prior art (Kawakami), which simply "disabled" or "grayed out" certain buttons of the same panel. Ex. 20 to VIZIO Br. at 9 (December 8, 2011 Amendment); *see also* VIZIO Br. at 23 n.7 (The Examiner also explained that it was "notoriously well known in the GUI display art" to "gray-out" or "simply remove[] ... non-active and/or non-enabled buttons/options from the displayed GUI.").

In response to the examiner's interpretation of Kawakami as providing "two differing operation panels," the patentee amended the claim 2 (application claim 13) to delineate between a "linear content operation panel" and an "interactive content operation panel" (i) not by "disabling buttons," (claim 2) but by (ii) including mutually different buttons or (iii) providing mutually differing functions. See Ex. 20 to VIZIO Br. at 11, 14 (December 8, 2011 Amendment); VIZIO Br. at 24.

The patentee's statements in the prosecution history compel two conclusions. First, the patentee sought to distinguish claim 2 from Kawakami on the basis of there being "distinct" (that is, separate or different) panels. Whereas Kawakami taught only one panel in two variations (*i.e.*, with some buttons disabled), claim 2 recites "distinct panels." Indeed, a close examination of the figures in Kawakami show that the "panels" in Kawakami are not "distinct panels"; rather, they are the same panel, with Figure 1(b) including all buttons in the panel and Figure 1(a) disabling some of those buttons:



See Ex. 20 to VIZIO Br. at 11; Ex. 21, Kawakami at Figs. 1(a), 1(b).

The patent examiner shared the same understanding as Maxell. The examiner found that Kawakami failed to teach “the alternative display of linear **and** interactive content operation **panels.**” Ex. 22 (December 27, 2011 Notice of Allowance) at 5 (emphasis added). Thus, Maxell distinguished the claims, not by requiring all buttons of each panel being different from all buttons in the others, but rather on the basis of there being separate panels.

Second, the patentee also distinguished claim 2 from Kawakami by disclaiming panels that merely “gray out” or disable certain buttons. This too is made plain by the very amendment referenced by VIZIO as a basis for disavowal, the December 8, 2011 Amendment, which states that “wherein the linear content operation panel and the interactive content operation panel are **distinct panels** from each other, which are not generated by a disabling of buttons.” Ex. 20 to VIZIO Br. at 10 (December 8, 2011 Amendment) (emphasis added). This is consistent with the ’394 Patent’s specification, which likewise distinguishes at least the invention of claim 2 on this same basis: “In [a typical] apparatus, reproduction keys for linear contents and interactive contents are displayed on a screen and unusable keys are disabled....” ’394 Patent at 1:36-42.

Disavowal by prosecution history disclaimer is an “exacting” standard requiring a “clear and unmistakable disclaimer.” *Thorner*, 669 F.3d 1362 at 1366-67; *see also Epistar Corp. v. Int’l Trade Comm’n*, 566 F.3d 1321, 1335 (Fed. Cir. 2009) (disavowal requires “expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope”).

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assertion regarding the “COLOR PAPER button, *as one example*” statement from the prosecution history falls well short of this bar. See VIZIO Br. at 24 (emphasis added). Maxell’s statement was not one of disavowal or disclaimer, rather it merely identified one example in support of Maxell’s argument that the “panels” of Kawakami “do NOT have *buttons of one panel mutually different from buttons of the other panel*” where Kawakami’s figures show all of the same buttons and functions in both panels. See Ex. 20 to VIZIO Br. at 14 (emphasis in original). Thus, Maxell’s prosecution statements did not evidence a “clear and unmistakable disclaimer” as advocated by VIZIO. See *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324 (Fed. Cir. 2003).

Moreover, Maxell’s interpretation of these statements in the ’394 Patent’s prosecution history—disclaiming “grayed out” or disabled versions of the same panel—is entirely reasonable. And, under these circumstances, “[w]here an applicant’s statements are amenable to multiple reasonable interpretations, they cannot be deemed clear and unmistakable.” See *3M Innovative Props. Co. v. Tredegar Corp.*, 725 F.3d 1315, 1326 (Fed. Cir. 2013); see also *Athletic Alts., Inc. v. Prince Mfg., Inc.*, 73 F.3d 1573, 1580 (Fed. Cir. 1996) (ambiguous prosecution history is “unhelpful as an interpretive resource”).

Any disclaimer here by Maxell is, at most, disavowal of “the disabling of buttons to achieve alternative panel.” Ex. 20 to VIZIO Br. (Dec. 8, 2011 Amendment) at 12. Nothing in the prosecution history clearly and unmistakably surrendered “GUI panels having shared buttons or functions” and such disclaimer cannot apply. See VIZIO Br. at 22.

Claim Differentiation

As set forth fully in Maxell’s opening brief, the doctrine of claim differentiation further supports rejecting VIZIO’s construction. See Maxell Br. at 36. VIZIO addresses this argument in

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passing through a footnote, but its arguments are unavailing. See VIZIO Br. at 24 n.8. As set forth above, VIZIO cannot overcome the presumption by statements in the specification or prosecution history. Moreover, VIZIO’s declaration that claim differentiation “does not apply to claim 2, which has no corresponding dependent claim” is meritless—VIZIO is advocating for the same construction across each of these terms—“distinct panels” / “mutually different” / “buttons mutually differing.”

* * *

Accordingly, the Court should reject VIZIO’s erroneous construction for this term and adopt a plain and ordinary meaning construction.

D. Disputed Terms for the ’815 Patent

Term 9: “processor” (’815 Patent, claims 1, 21)

Similar to Maxell’s arguments for “processor” in the ’971 Patent, the term “processor” standing alone, connotes sufficient structure to a POSITA. By reciting the term “processor,” the claim itself shows that this term has sufficiently definite and known structure and should be construed consistent with its plain and ordinary meaning. See Maxell Br. at 43-47.

Of note, VIZIO changed its proposed construction for “processor” for the ’815 Patent, declining to provide an alternative construction for corresponding structure if the court declined to find the term indefinite. Compare Ex. 23 at 6-9 (VIZIO’s initial claim construction disclosure) with VIZIO Br. at 41-42. Now, realizing its inconsistency between its positions on the two “processor” terms, VIZIO asserts that that “processor” is a means-plus-function term but that the corresponding structure is indefinite. See VIZIO Br. at 41-42. Ultimately, VIZIO’s pivot does not matter because the court should reject its means-plus-function analysis.

To apply means-plus-function , VIZIO contends that “[t]here is no dispute that the claimed functions in claims 1 and 21 cannot be performed by a general-purpose processor without special programming. [] Thus, ‘processor’ is a means-plus-function term.” VIZIO Br. at 43.

Here, as with the other “processor” term (term 3), VIZIO conflates the analytical steps required for the § 112 ¶ 6 inquiry. VIZIO hunts for the function first and, satisfied that the “processor” cannot do the function, concludes that a § 112 ¶ 6 analysis must apply. *See id.* at 42-44. But this analysis is wholly unnecessary as a processor connotes a known class of structures, such that the inquiry would end without an analysis of the claimed function and corresponding patent specification disclosure. *See SkyHawke Techs., LLC v. DECA Int’l Corp.*, 2019 U.S. Dist. LEXIS 220590, at *51 (C.D. Cal. Dec. 23, 2019).

None of VIZIO’s authority supports overcoming the presumption against application of § 112 ¶ 6. As previously stated, for both the other processor (term 3) and controller (term 7) terms, neither the *Egenera* (software-related “logic to modify” term) nor *Konami* (substantially different functions than at issue here) are helpful to VIZIO’s construction for the “processor” term here. The court in the C.D. Cal. matter explicitly rejected VIZIO’s reliance on *Egenera* in attempting to construe a “controller” term, finding it non-analogous, and the same logic applies to the “processor” term here. *See* Ex. 20, C.D. Cal. matter Markman Order at 23-24. Similarly, *GoDaddy.com, LLC v. RPost Commc’ns. Ltd.*, involved a “processor for associating” two sets of data to generate a third set of data, a function wholly different than at issue here. *See* 2016 WL 212676, at *56-57 (D. Ariz. Jan. 19, 2016).

Thus, the court should reject VIZIO’s attempt to invoke a means-plus-function analysis for this term and accord “processor” its plain and ordinary meaning.

Term 10: “video information” (’815 Patent, claims 1, 21)

VIZIO contends that its “construction is wholly consistent with the intrinsic record and Maxell’s previous representations to the PTAB with respect to the related U.S. Patent 9,384,783 (“the ’783 Patent”).” See VIZIO Br. at 46-47. This is wrong. As mentioned in Maxell’s opening brief, the construction for “video information” previously agreed to by Maxell in a case involving a related patent (the ’783 Patent) was “video data represented by digital or analog signal.” See Maxell Br. at 47-48.

VIZIO attempts to create its own construction by improperly rewording the previously issued construction. VIZIO incorrectly states that the PTAB, in its Final Written Decision on the ’783 Patent, “adopted Maxell’s view that ‘*video information*’ is ‘AV data.’ VIZIO’s proposed construction simply adopts Maxell’s prior position on this term.” VIZIO Br. at 47 (citing Ex. 23 to VIZIO Br. at 11-13). Rather, the PTAB stated that “no construction of ‘video information’ is necessary to resolve the parties’ disputes. [] As such, we decline to construe ‘video information.’” Ex. 23 to VIZIO Br. at 15.

“Video information” would be readily understood by a POSITA and requires no construction. Neither “video” nor “information” have unique meanings and a POSITA would understand the term. Nor is Maxell seeking to “expand the scope of the claims” as VIZIO contends. VIZIO Br. at 47.

No construction is needed, and VIZIO’s unsupported construction should be rejected.

Dated: February 14, 2023

Respectfully submitted,

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CERTAIN SMART TELEVISIONS

Inv. No. 337-TA-1338

CERTIFICATE OF SERVICE

I, Brittany Etters, hereby certify that on February 14, 2023, a copy of the foregoing document was served upon the following parties as indicated:

The Honorable Katherine Hiner Acting Secretary U.S. International Trade Commission 500 E Street, S.W. Washington, DC 20436	☐ Via First Class Mail ☐ Via Hand Delivery ☒ Via Electronic Filing (EDIS) ☐ Via Overnight Courier ☐ Via Fax ☐ Via E-mail (<i>PDF</i>)
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