

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

Rosen Technologies, LLC,

Plaintiff,

v.

Lennox Industries, Inc.,

Defendant.

CASE NO. 3:22-CV-0732-K

JURY TRIAL DEMANDED

PLAINTIFF'S OPENING CLAIM CONSTRUCTION BRIEF

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Plaintiff Rosen Technologies LLC (“Plaintiff”) submits this opening claim construction brief setting forth its proposed constructions of the disputed terms and phrases of U.S. Patent Nos. 6,619,555 (the “’555 Patent”), 6,789,739 (the “’739 Patent”), 7,156,318 (the “’318 Patent”), 7,185,825 (the “’825 Patent”), and 7,232,075 (the “’075 Patent”) (attached hereto as Exhibits A through E) and refuting the proposed constructions set forth by Defendant Lennox Industries, Inc. (“Defendant”).

I. SUMMARY OF THE ARGUMENTS

There are a total of twenty-seven terms presented for construction in this matter. Most of the terms are understood and do not need unnecessary construction. Plaintiff believes that only five of the proposed terms require construction, four of which clearly invoke § 112(6) as “means plus function” terms, while the fifth term “storage means” discloses sufficient structure to rebut the “means plus function” presumption. In contrast, Defendant has proposed that all twenty-seven terms are indefinite despite the lack of ambiguity, sufficient guidance from the specification and, in some cases, from the claims themselves. Furthermore, Defendant has attempted to argue that nearly every proposed term is a “means plus function” term, regardless of the fact that twenty-two of those terms lack the standard language to invoke § 112(6). This Court should reject Defendant’s blatant attempt to avoid its day in Court by claiming all of the terms as indefinite despite the evidence from the specification, the claims to the contrary, and basic understanding by a POSITA.

II. THE PATENTS-IN-SUIT AND THE CLAIM TERMS AT ISSUE

A. The ’555 Patent

The ’555 Patent is entitled “Thermostat System Communicating With A Remote Correspondent For Receiving And Displaying Diverse Information,” and was issued on September 16, 2003, with Howard B. Rosen as the sole named inventor. The ’555 Patent was filed on February 13, 2002, as U.S. Patent Application No. 10/075,886, and claims February 13, 2002, as the priority

date. The '555 Patent describes a thermostat that includes a temperature sensor, an LCD display, and a processor with a memory for storage. The thermostat stores an array of key words representing data that can be acquired from a remote correspondent and parsed to present the desired information on the LCD display. A number of different exemplary embodiments are described. '555 patent at Abstract. In particular, the '555 patent describes details of the various embodiments including the specific processes by which the communicating thermostat periodically establishes communications with a source of current information which is then parsed and compared to the table of key words stored in the memory of the thermostat, parsing for specific pieces of information and presenting the desired information on the display. *Id.* '555 patent 2:15-27. The '555 Patent recognized several problems with existing programmable and non-programmable thermostat systems. *Id.* at 1:48-64. Specifically, in the prior art, “thermostat systems are [either] programmable by a user” or “may limit, or even make no provision for, user programming... [such as] thermostats distributed throughout a large commercial establishment.” *Id.* To address one or more shortcomings of these existing thermostats, the '555 Patent discloses, inter alia, a “thermostat system incorporating a communication interface for receiving and displaying diverse information from a remote correspondent.” *Id.* at 1:8-10.

B. The '739 Patent

The '739 Patent is entitled “Thermostat System with Location Data,” and was issued on September 14, 2004, with Howard Rosen as the sole named inventor. The '739 Patent was filed on November 4, 2002, as U.S. Patent Application No. 10/287,677. It is a continuation-in-part of application No. 10/075,886, filed on Feb. 13, 2002, now Pat. No. 6,619,555 (the '555 patent). As such, it shares the same specification and the same priority date of February 13, 2002. Like the '555 patent, the '739 patent describes a thermostat that includes a temperature sensor, an LCD display, and a processor with a memory for storage. The thermostat stores an array of key words

representing data that can be acquired from a remote correspondent and parsed to present the desired information on the LCD display. A number of different exemplary embodiments are described. The '739 patent describes embodiments in which location data is stored in the thermostat and shared with a remote device and a responsive action is taken. '739 Patent at 7:10-31

C. The '318 Patent

The '318 Patent is entitled “Programmable Thermostat Incorporating A Liquid Crystal Display Selectively Presenting Adaptable System Menus Including Changeable Interactive Virtual Buttons,” and was issued on January 2, 2007 with Howard Rosen as the sole named inventor. The '318 Patent was filed as application 10/654,235 on September 3, 2003, which is its presumed priority date. The '318 Patent recognized several problems with existing programmable thermostats. '318 Patent at 1:65-2:9. Specifically, in the prior art solution, “[t]here is a fundamental problem with the prior art programmable thermostat systems: they are difficult to program to the extent that some users are unable to successfully program them. This is because the user interfaces which have been employed in prior art programmable interfaces are not highly intuitive.” *Id.* at 2:10-15. Furthermore, the prior art relied on “fixed position real or virtual buttons, at least some of which have multi-functions depending upon the point which a user has reached in the programming process.” *Id.* at 2:15-20. To address one or more shortcomings of these existing thermostats, the '318 Patent discloses, inter alia, “a field programmable thermostat which may be user-configured to limit functionality only as necessary for the specific conditioned space for which the program is being established.” *Id.* at 3:1-5.

D. The '825 Patent

The '825 Patent is entitled “Programmable Thermostat Employing A Fail Safe Real Time Clock,” and was issued on March 6, 2007. The '825 patent was filed as application 10/875,579

on June 24, 2004, which is its claimed priority date. The '825 Patent recognized several problems with existing thermostat systems. '825 Patent at 2:10-55. Specifically, in the prior art, “power to a programmable thermostat is supplied from the controlled space conditioning equipment, and either a battery or very high-capacity capacitor (‘super-cap’) provides backup power to ‘ride out’ equipment power failure (‘outage’) until power is restored”. *Id.* at 2:18-22. Furthermore, “[b]atteries must be changed at intervals to ensure that the thermostat will continue to hold its time and setting throughout an outage.” *Id.* at 2:22-25. To address one or more shortcomings of these existing thermostats, the '825 Patent discloses, among other things, a “a fail safe real-time clock in a programmable clock, particularly a thermostat incorporating a vacation mode of operation.” *Id.* at 2:56-59.

E. The '075 Patent

The '075 Patent is entitled “Thermostat System with Touchscreen With User Interfaces Or Operational Algorithms Via A Remote Correspondent” and was issued on June 19, 2007. The '075 patent was filed as application 11/039,180 on January 19, 2005, as a continuation in part of application 10/440,474 which was filed on May 15, 2003, and ultimately issued as U.S. Patent 7,050,026. The '075 patent claims priority to May 15, 2003. The '075 Patent recognized several problems with existing thermostat systems. '075 patent at 1:34-3:4. Specifically, in the prior art “information or operational interfaces of programmable thermostats can be incomprehensible or overly challenging to many users with advanced age, learning skills, poor vision and others in similar circumstances.” *Id.* at 2:27-30. In the prior art, “user interface that use a mixture of raised push buttons with representations of environmental sensor information and control data on a segmented liquid crystal display.” *Id.* at 2:35-38. The '075 Patent provides a solution to the prior art problems where “thermostat systems are [either] programmable by a user” or “may limit, or even make no provision for, user programming... [such as] thermostats distributed throughout a

large commercial establishment.” *Id.* To address one or more shortcomings of these existing thermostats, the ’075 Patent discloses, inter alia, a thermostat “whose user interface can be easily changed after installation to accommodate equipment or control options not anticipated at installation or to change the user interface to a form not possible with a control program originally installed with the thermostat.” *Id.* at 3:5-10.

III. APPLICABLE LEGAL PRINCIPLES

Claim construction is “simply a way of elaborating the normally terse claim language in order to understand and explain, but not to change, the scope of the claims.” *DeMarini Sports, Inc. v. Worth, Inc.*, 239 F.3d 1314, 1322-23 (Fed. Cir. 2001) (quoting *Embrex, Inc. v. Serv. Eng’g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000); see also *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996). An inventor particularly points out and distinctly identifies the subject matter of the invention in the claims, and no one, including the Court, can change the invention through claim construction. See *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1365 (Fed. Cir. 1999) (citing *Autogiro Co. of Am. V. United States*, 384 F.2d 391, 396 (Ct. Cl. 1967); *Digital Biometrics, Inc. v. Identix, Inc.*, 149 F.3d 1335, 1344 (Fed. Cir. 1998).

The proper starting point for any claim construction exercise (*i.e.*, the first analytical tool in the hierarchy) is the actual language of the claim itself. *Interactive Gift Exp., Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001); see also *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (*en banc*) (“[T]he claims themselves provide substantial guidance as to the meaning of particular claim terms.”). The Federal Circuit reaffirmed the basic principles of claim construction in *Phillips*, 415 F.3d at 1313-17. Briefly stated, these principles are: the words of a claim are to be given the ordinary and customary meaning that a person of ordinary skill in the art would have understood the claim language to have in light of the patent documents at the time the patent application was filed. *Id.* at 1313. A court should derive this “ordinary and customary

meaning” by looking to the claim language, the specification, and the prosecution history. *Id.* at 1314-17. In looking to the specification, the Court must be careful to avoid unduly limiting the scope and meaning of the claim term. *See Comark Communs. V. Harris Corp.*, 156 F.3d 1182, 1186-87 (Fed. Cir. 1998) (“[T]here is sometimes a fine line between reading a claim in light of the specification, and reading a limitation into the claim from the specification”); *see also Interactive Gift Express v. Compuserve Inc.*, 231 F.3d 859, 866 (Fed. Cir. 2000). While the claims should be interpreted in view of the specification, it is improper to read limitations from the specification into the claims. *See SRI Intern. V. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc); *see also Comark*, 156 F.3d at 1186. In conjunction with this intrinsic evidence, a court may also consider extrinsic evidence (such as dictionaries), although such evidence is generally “less significant” than the intrinsic record when determining the meaning of the claim language. *Phillips*, 415 F.3d at 1317-18.

In *Phillips*, the Federal Circuit reiterated that “reading a limitation from the written description into the claims is ‘one of the cardinal sins of patent law.’” *Id.* at 1320 (emphasis added). Even where the patent contains only a single embodiment (unlike the patent-in-suit), it is reversible error to read limitations into the claims absent a clear intention to do so. *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 904-06 (Fed. Cir. 2004).

Furthermore, not all claim terms require construction. “[D]istrict Courts are not (and should not be) required to construe *every* limitation present in a patent’s asserted claims.” *O2 Micro Int’l Ltd. V. Beyond Innovation Tech. Co.*, 512 F.3d 1351, 1362-63 (Fed. Cir. 2008). Claim construction “is not an obligatory exercise in redundancy.” *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997). The purpose of claim construction is to aid the jury by explaining the scope of the claims. *Embrex*, 216 F. 3d at 1347.

As to indefiniteness, the Supreme Court has held “a patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014). One must bear in mind, moreover, that patents are “not addressed to lawyers, or even to the public generally,” but rather to those skilled in the relevant art. *Id.* at 2128. Furthermore, “the definiteness requirement, so understood, mandates clarity, while recognizing that absolute precision is unattainable.” *Id.* at 2129.

When determining whether a claim term is subject to 35 U.S.C. § 112(6) relies on whether or not “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 v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). “[U]se of the word ‘means’ creates a presumption that § 112, ¶ 6 applies.” *Personalized Media Communs., L.L.C. v. ITC*, 161 F.3d 696, 703 (Fed. Cir. 1998); *Williamson*, 792 F.3d at (en banc in relevant part). This presumption can be overcome if “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. “The ultimate question is whether ‘the claim language, read in light of the specification, recites sufficiently definite structure to avoid § 112(6).’” *MJ’D Prod. Inc. v. Iancu*, 933 F.3d 1336, 1342 (Fed. Cir. 2019) (quoting *Media Rights Techs. Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366, 1372 (Fed. Cir. 2015)). “Sufficient structure exists when the claim language specifies the exact structure that performs the functions in question without need to resort to other portions of the specification or extrinsic evidence for an adequate understanding of the structure.” *TriMed, Inc. v. Stryker Corp.*, 514 F.3d 1256, 1259-60 (Fed. Cir. 2008). Conversely, the failure to use the word “means” creates

a presumption that § 112(6) does not apply. *MJ'D*, 933 F.3d at 1341. “In deciding whether either presumption has been rebutted, the focus remains on whether the claim as properly construed recites sufficiently definite structure to avoid the ambit of § 112, P 6.” *Personalized*, 161 F.3d at 704.

“If the function is performed by a general-purpose computer or microprocessor, then the specification must also disclose the algorithm that the computer performs to accomplish that function.” *Triton Tech of Tex., LLC v. Nintendo of Am., Inc.*, 753 F.3d 1375, 1378 (Fed. Cir. 2014). “Failure to disclose the corresponding algorithm for a computer-implemented means-plus-function term renders the claim indefinite.” *Id.* “An algorithm is properly disclosed if a person of ordinary skill in the art can read the patent as a whole and determine what steps the processor uses to accomplish that function.” *Univ. of South Florida Research Foundation, Inc. v. Brit Systems, Inc.*, 3:18-cv-259-K (N.D. Tex., March 6, 2019) (citing *Triton*, 735 F.3d at 1378-80).

IV. PERSON HAVING ORDINARY SKILL IN THE ART

As noted above, claim terms are generally given their plain and ordinary meaning as understood by one of skill in the art at the time of the invention. The Federal Circuit has set out a number of factors a court should consider in determining level of ordinary skill in the art, including: (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field. *Env'tl. Designs, Ltd. V. Union Oil Co. of California*, 713 F.2d 693, 696-97 (Fed. Cir. 1983). In any given case, not all such factors may be present, and one or more factor may predominate over another. *Id.*

Plaintiff contends that a person having ordinary skill in the art of the inventions of the Patents-in-Suit (a “POSITA”) would have at a bachelor’s degree in engineering, computer science,

or a comparable field, with at least 2 years' experience in temperature controls, embedded control systems, electronic thermostats, or HVAC controls, or similarly relevant industry experience, with relevant experience substituting for education and vice versa. See Decl. of Dr. John A. Palmer at 66, attached hereto as Exhibit F ("Palmer Decl.").

V. AGREED CONSTRUCTIONS

The Parties have tentatively agreed to the construction of the following term:

Patent	Term	Claim	Agreed Construction
'318	"is been touched again"	4	"has been touched again"

VI. DISPUTED CLAIM TERMS

A. Combined Terms

The following claim terms are used identically in several of the Patents-in-Suit and as such are addressed jointly.

- i. *"a sensor input coupled to said temperature sensor for receiving said electrical signal therefrom" ('555 Patent, Claim 18, '825 Patent, Claim 1, '075 Patent, Claim 1) / "a sensor input coupled to each said environmental condition sensors for receiving said electrical signal therefrom" ('318 Patent, Claim 1)*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	Means plus function limitation Function: receiving said electrical signal from the sensor Structure: Indefinite.

The Court does not need to construe the terms "a sensor input coupled to said temperature sensor for receiving said electrical signal therefrom" and "a sensor input coupled to each said environmental condition sensors for receiving said electrical signals therefrom" as these terms have a readily understood plain and ordinary meaning. In contrast, Defendant has proposed that these terms are means-plus-function terms which are indefinite for failing to disclose the associated

structure. Decl. Matthew Shoemake at ¶¶ 86-102, attached hereto as Exhibit G¹. Dr. Shoemake argues—unconvincingly—that the patents-in-suit do “not disclose structure for the sensor input . . . that is adequate to perform the recited function and is clearly linked to the recited function. Indeed, here no structure is disclosed at all of the input and the output.” *Id.* at ¶ 102. This is simply untrue. First and foremost, Defendant and Dr. Shoemake failed entirely to overcome the presumption that these claim terms are not means-plus-function claim terms. Dr. Shoemake’s argument is rendered meritless by Figs. 1 and 2 and the specification. For example, Figs. 1 and 2 of the ’555 Patent each clearly show an “input/output” unit 10 connected to temperature sensor 5. Furthermore, while Dr. Shoemake asserts that “A ‘sensor input’ is not a term of art nor is a ‘control output.’ These terms are not defined anywhere for a POSA that I am aware of” the fact is that he was readily able to identify the “input/output” unit from the figures (*id.* at ¶¶ 96-97).² In contrast, Dr. Palmer states that:

A POSITA would readily recognize that for an electronic thermostat to function properly, it is necessary that it include a temperature sensor. Such a temperature sensor may include a thermistor or thermocouple, for example. The connection between the sensor and the rest of the system is commonly understood to be the sensor input. Therefore, no construction of the claim limitation “a sensor input coupled to said temperature sensor for receiving said electrical signal therefrom,” is necessary and it should be read in light of its plain and ordinary meaning.

Palmer Decl. at ¶ 80.³ It is clear from the declarations of both Dr. Shoemake and Dr. Palmer that this term does not trigger a means-plus function term. Furthermore, Dr. Shoemake’s argument is rendered meritless as the term itself discloses the structure, *i.e.*, a sensor input. In other words, a “sensor input” has “sufficiently definite meaning as the name for structure.” *Williamson*, 792 F.3d at 1349. As such, the term “sensor input” is one that would readily be understood by one of skill

¹ Dr. Shoemake did not list any experience working directly with thermostat products. See Ex. A at ¶¶ 8-17.

² It also of note the Dr. Shoemake is familiar with the term “sensor input” which appears in Dr. Shoemake’s own patent. See U.S. Patent No. 8,914,837.

³ Dr. Palmer’s work history deals extensively with thermostats. See Ex. B at ¶¶ 10, 12, and 14.

in the art and simply does not require construction, nor is it a means-plus-function claim or indefinite.

- ii. *“a control output coupled to the space conditioning equipment for issuing control signals thereto” (’555 Patent, Claim 18, ’318 Patent, Claim 1, ’825 Patent, Claim 1, ’075 Patent, Claim 1)*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	Means plus function limitation. Function: issuing control signals to space conditioning equipment. Structure: Indefinite.

For similar reasons as addressed above in relation to the “sensor input” terms, the term “a control output coupled to the space conditioning equipment for issuing control signals thereto” also requires no construction, having a plain and ordinary meaning which is readily understood by one of skill in the art. Again, Defendant argues that this term is a means-plus-function term, without providing a shred of evidence required to overcome the presumption that it is not. A brief review of Fig. 2 proves Defendant’s argument meritless, showing that the input/output unit 10 is connected to space conditioning equipment 3. ’555 Patent at Fig. 2. Furthermore, the ’555 Patent states that

if the temperature in the conditioned space 4 is found to be too low when operation is in the heating mode, the processor 1 signals the space conditioning equipment 3 circulate, through ducts 6, 7, air from/to the conditioned space 4 which is heated by the space conditioning equipment before return to the conditioned space. This heating phase continues until the sensor 5 indicates that the space is now too hot (or approaching too hot) with reference to the set point such that the processor 1 sends signal(s) to the space conditioning equipment 3 to cease the heating function, all as very well known in the art.

’555 Patent at 3:38-48. In addition, Dr. Palmer stated that

A POSITA would readily recognize that for an electronic thermostat to function properly, it is necessary that it provide a signal to the space conditioning equipment (or HVAC equipment) to indicate when it should operate and when it should not.

The interface between the control device and the device being controlled is commonly referred to as a control output. Therefore, no construction of the claim limitation “a control output coupled to the space conditioning equipment for issuing control signals thereto,” is necessary and it should be read in light of its plain and ordinary meaning.

Palmer Decl. at ¶ 84. Again, this term is in no way a means-plus function term as the term itself discloses the structure, *i.e.*, a control output. *Infra* at 10. In other words, a “control output” has “sufficiently definite meaning as the name for structure.” *Williamson*, 792 F.3d at 1349. As such, no construction is necessary for this term as it is commonly understood.

iii. “means coupling said communications interface and said first remote correspondent” (*'555 Patent, Claim 18, '075 Patent, Claim 1*)

<u>Plaintiff</u>	<u>Defendant</u>
Subject to § 112 ¶6	Means plus function limitation
Structure: serial link and/or data link and any equivalents	Function: coupling said communications interface and said first remote correspondent
Function: coupling the communications interface and the remote correspondent	Structure: Indefinite.

Both Plaintiff and Defendant agree that the term “means coupling said communications interface and said first remote correspondent” is a means-plus-function term governed by § 112(6). Furthermore, the parties also agree that the function is “coupling said communications interface and said remote correspondent.” The only disagreement between the parties is the proper structure. Plaintiff contends, and the specification supports, that the recited structure which performs the function is the “serial link and/or data link and any equivalents.” This is supported by the written specification which describes the structure as a serial link (*'075 Patent* at 5:65-6:11), a serial link in combination with a modem and an internet service provider (*id.*), or a data link in combination with a modem and an internet service provider (*id.* at 6:12-18) in the various embodiments. *See also* Palmer Decl. at ¶ 79. This is shown also in Figs. 2-4 which show serial link 16 and data link 26 as coupling the communications interface 14 with remote correspondents 15 and 23.

Furthermore, an expert in the field, Dr. Palmer, has also established that this term refers to the serial link or data link rather than the physical connection. *See* Depo. Dr. John A. Palmer at 64:12-27, attached hereto as Exhibit H (“A POSITA would understand coupling . . . is not a physical connection per se, it’s a communications connection to allow information to flow.”); 65:4-11 (“[T]he POSITA would understand . . . that the issue is not physical coupling, it’s communications coupling”). As such, the specification clearly identifies the structures which perform the function, and this claim term should be construed as such.

B. Means-Plus-Function Terms

i. “storage means” (’739 Patent Claim, Claim 1)

<u>Plaintiff</u>	<u>Defendant</u>
“storage”	Storage means is a means plus function limitation
In the Alternative:	
Subject to § 112 ¶6	Function: storing a physical location of the environmental controller
Structure: memory	Structure: Indefinite
Function: storing location data	

While this claim term invokes § 112(6) via the use of the term “means” a “POSITA would recognize that ‘storage means’ in the context of the claim language, ‘...stored as location data in storage means in the controller’ refers to data storage integral to the controller.” Palmer Decl. at ¶ 94. As such, this term requires no construction. *See Centillion Data Sys., LLC v. Convergys Corp.*, 529 F. Supp. 2d 982, 995 (S.D. Ind. 2008) (holding term “storage means” was not means plus function since “structure was sufficiently known to one of ordinary skill in the art at the time of the invention.”). Even if this Court were find that it is subject to § 112(6) the Court should construe as having a structure of “memory” and the function as “storing location data.” Both the written specification and the figures make clear that the structure which performs the function of

“storing location data” is a “memory.” For example, Figs. 2-4 clearly identify the Memory 8, which the written specification states that the invention includes “a processor having: a CPU, real time clock and a memory for storing program and data information.” ’739 Patent at 2:7-9. Furthermore, the specification states that “there is stored in the memory 8 (typically, in ASCII format) a series of key terms pertaining to a subject of interest such as the local weather.” *Id.* at 3:62-64. As such, this term is not subject to § 112(6) and requires no construction. If the Court were to find that this term is governed by § 112(6), it should adopt Plaintiff’s proposed construction as the claims and the specification clearly identify the function and the structure.

- ii. *“means coupling suitable power for energizing said thermostat from said space conditioning equipment to said thermostat”* (’825 Patent, Claims 1, 11)

<u>Plaintiff</u>	<u>Defendant</u>
Subject to § 112 ¶6	Means plus function limitation
Structure: a (power) line and any equivalents	Function: coupling suitable power for energizing said thermostat from said space conditioning equipment to said thermostat
Function: coupling suitable power for energizing said thermostat from said space conditioning equipment to said thermostat	Structure: A power line connected to an isolation diode

Plaintiff contends that this term is controlled by § 112(6). Both Plaintiff and Defendant agree on the function, and the only point of disagreement is the structure which performs said function. Defendant’s argument that the associated structure should be limited to “a power line connected to” is an impermissible attempt to narrow the scope beyond that disclosed by the specification. For example, the ’825 Patent notes that power can be “supplied from the space conditioning equipment 3 via a line 30 through an isolation diode 33.” ’825 Patent at 5:3-5. Put simply, the specification contemplates a power line or any equivalents as the associated structure. As noted by Dr. Palmer one of skill in the art would readily understand the associated structure to be “a wire or line capable of carrying the small amount of current necessary to provide power for

the purpose.” Palmer. Decl. at ¶ 117. This is broader in scope than Defendant’s unnecessarily limited “a power line connected to”. As such, the Court should adopt Plaintiff’s proposed construction for this term and reject Defendant’s attempt to unnecessarily limit the scope.

iii. “means for controlling space conditioning equipment” (’075 Patent, Claim 4) STEVE

<u>Plaintiff</u>	<u>Defendant</u>
Subject to § 112 ¶6	Means plus function limitation
Structure: virtual buttons operating with control programs including as described in 11:7-13:62 and any equivalents	Function: controlling space conditioning Equipment
Function: controlling space conditioning equipment	Structure: Indefinite

Both Plaintiff and Defendant agree this this term is a means-plus-function claim and also on the function. The sole disagreement is the structure. While Defendant has proposed this term is indefinite for failing to disclose a structure, “[t]he specification makes clear that the virtual buttons operating with control programs including as described in 11:7-13:62 is the structure that performs the function of controlling the space conditioning equipment as directed from the transferred functional programming.” Palmer Decl. at ¶ 133. Furthermore, the specification clearly describes the structure and associates it with the function of controlling the space conditioning equipment. For example, in the description of Figure 10, the specification states

Virtual button 110 can undergo step 111 in response to a user touch which also causes a change in the operating state of the invention programmable thermostat and a change of the legend associated with virtual button 110 to one of the virtual buttons in column 132. In the example, successive steps 133 to 137 indicate that a user has touched virtual button 110 one or more times to cause the operating state of the programmable thermostat and the legend of virtual button 110 to change . . .

’075 Patent at 11:16-24. The specification further describes an exemplary control program (*id.* at 11:26-45) which is illustrated by Figure 10. Given the clear guidance of the specification and accompanying figures, a POSITA “would readily understand that the virtual buttons and associated

control programming is used to send control signals. As such, one of skill in the art would readily understand the structure performing this function and would not find this term indefinite.” Palmer Decl. at ¶ 137. This Court should, therefore, adopt Plaintiff’s proposed construction as the structure is in no way indefinite.

C. ’555 Patent Terms

- i. *“a communications interface adapted to establish bi-directional communications between said processor and a remote correspondent which is a source of current information”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	Means plus function limitation. Function: establish bi-directional communications between said process and a remote correspondent which is a source of current information. Structure: Indefinite.

The Court should decline to construe this term as it has a readily understood plain and ordinary meaning. Furthermore, it does not have the characteristics of a means-plus-function term, and it should not be construed as one. Defendant’s arguments stray from even the most basic principles of claim construction to support the erroneous positions that the term is a means-plus-function term and that it is indefinite. Decl. Matthew Shoemake at ¶¶ 103-117. Defendant and Dr. Shoemake appear to conflate terms requiring construction under § 112(6) with those where the words of the claims themselves are well understood to have a sufficiently definite meaning as the very name for the structure. As Dr. Palmer unequivocally stated:

Specifically, a POSITA would understand that “a communications interface to establish bi-directional communications” describes a well-known and commonly used family of devices such as serial communications ports, ethernet ports, etc.

Palmer Dec. at ¶ 88. Here, the claim language, read in light of the specification, recites sufficiently definite structure to avoid § 112, and Defendant has not presented anything to suggest the contrary. Dr. Shoemake at once describes the claimed communications interface as an “abstraction” and points to the structure identified in Figs. 1-4 of the ‘555 Patent. Decl. Matthew Shoemake at ¶¶ 105-107. Dr. Shoemake confusingly points to the communications interface, but also states that the structure is not illustrated. *Id.* This inconsistency, by itself, shows the frailty of Defendant’s argument. However, as shown by Dr. Palmer, the term communications interface refers to a well-known and commonly used family of devices. As such, Defendant’s arguments fail. This term does not require construction. It is not a means-plus function term and, even if it were, it would not be indefinite.

ii. *“a first remote correspondent which is a source of current information”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	Indefinite

Plaintiff proposes that this term is readily understood by those of ordinary skill in the art and, therefore, no construction is necessary. Furthermore, it is not indefinite. The test for indefiniteness is whether the claims, viewed in light of the specification and prosecution history, “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 572 U.S. at 910, 134 S. Ct. 2120. This term far surpasses the requirements set forth in *Nautilus*.

In his declaration, Dr. Shoemake bases the entirety of his argument on the ridiculous notion that a POSITA would not be able to understand the scope of the invention because “current information” does not have objective boundaries. Decl. Matthew Shoemake Decl. at ¶¶ 118-132. Dr. Shoemake’s argument is confusing because he is able to identify several examples of current

information from the specification. *Id.* He seems to contend that because, in some instances, stock quotes may be delayed, it is unclear how a POSITA would define “current information.” *Id.* Dr. Shoemake’s arguments are far-fetched. On the other hand, Dr. Palmer quite reasonably states that:

Similarly, “current information,” is easily understood to be information of a time sensitive nature that has not been supplanted by more recent information. The specification gives examples of the types of current information that may be obtained from the remote correspondent, including “current local weather information” (4:4-32) and “current stock quotations for stock indexes and individual stocks, mutual funds and the like” (5: 2-15). It further explains that the remote correspondents are generally, though not exclusively, accessed through the internet. (5:65-6:11) Thus, the claim limitation may be understood in its plain and ordinary meaning, and it is not indefinite.

Palmer Decl. at ¶ 90. Given this, the claim term certainly informs those skilled in the art about the scope of the invention with reasonable certainty and it is not indefinite.

- iii. *“a program stored in said memory for displaying messages received from said remote correspondent”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	Means plus function limitation. Function: displaying messages received from said remote correspondent. Structure: Indefinite.

The Court should decline to construe this term as it has a readily understood plain and ordinary meaning. The language of the claim is easily understood by a POSITA and its usage within the specification and the claim is consistent with the understanding of a POSITA. Palmer Decl. at 92. Accordingly, no construction is necessary. Furthermore, even if it were a means-plus function term—which it is not—the figures and accompanying discussion are disclosed in a degree of detail such that a person of skill in the art would know how make the claimed program for displaying messages from said remote correspondent. *Id.* For example, Figures 1 and 7 and the discussion at column 5, lines 38-56 provides more than sufficient information for a POSITA to

ascertain the scope of the invention and the steps necessary to accomplish the function. In fact, Dr. Palmer testified as follows:

Q. Can you explain to me what you mean by that last sentence?

A. Well, in a nutshell, the person of ordinary skill of the art who is building the thermostat is going to be selecting certain chipsets for the processor and for the display and so forth, and with those, those parts, there will be specific functions that would be implemented, often they'll be implemented as part of the chipset or preprogrammed into the chipset that would be for the purpose of displaying messages. And, so, the specifics of the code, for example, implementation of this program would not be necessary because it's going to be dependent on the specific chip sets that are used, but they're standard functions for sending signals to be displayed. And, so, somebody who is one of ordinary skill in the art would know how to make that, that display occur using the functions that are specific to the chipsets that they use.

Q. Okay, so, are you suggesting that if a person of skill in the art would know how to make the, quote, claimed program for displaying messages, end quote, that the '555 patent doesn't need to disclose a specific algorithm?

MR. MOORE: Objection, form.

A. It does not need to disclose the specific code or the details of the algorithm, because the procedure is well-known.

Exhibit H at 76:9-77:7. Accordingly, the claim term is definite and does not need to be construed.

iv. *“which received messages do not pertain to the operation of said thermostat system”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	Indefinite

Plaintiff proposes that this term is readily understood by those of ordinary skill in the art and, therefore, no construction is necessary. Furthermore, it is not indefinite. The test for indefiniteness is whether the claims, viewed in light of the specification and prosecution history, “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 572 U.S. at 910, 134 S. Ct. 2120. This term far surpasses the requirements set forth in *Nautilus*.

In his declaration, Dr. Shoemake bases the entirety of his argument on yet another ridiculous notion—that a POSITA would not be able to understand the scope of the invention because “pertains to” does not have objective boundaries. Shoemake Decl. at 156-164. He argues that some may contend that stock prices and current temperature do not pertain to the operation of a thermostat, but others may disagree. Dr. Shoemake’s arguments are, again, far-fetched. On the other hand, Dr. Palmer reasonably states that:

A POSITA would readily understand that for any control system, there is information and data that pertains to the operation of the control system and there is data that does not. . . . Those parameters that are utilized in the control algorithms would clearly be understood as pertaining to the operation of the thermostat system. Information that is obtained for the purpose of display only would, of course, be considered as not pertaining to the operation of the thermostat system. Such an interpretation is consistent with the wording of the claim, the understanding of a POSITA, and the discussion of the specification. Thus, this claim limitation needs no construction should be read according to its plain and ordinary meaning.

Palmer Decl. at 93. Given this, the claim term, again, informs those skilled in the art about the scope of the invention with reasonable certainty and it is not indefinite.

D. ’739 Patent Terms

- i. *“a physical location of the environmental controller stored as location data in storage means in the controller”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	Storage means is a means plus function limitation Function: storing a physical location of the environmental controller Structure: Indefinite

This term needs no construction and is not a means plus function term. To the extent that the term includes “storage means,” this construction was already discussed at VII(B)(i) above. As

mentioned before, the lack of the use of the means term creates a presumption that § 112(6) does not apply.

Once this Court has construed “storage means” the term does not need additional construction. The term would be easily understood as referring to data storage integral to the controller storing data specific to the physical location of the environmental controller. The ’739 Patent describes memory for storing program and data information. ’739 Patent at 2:1-8. The Patent also describes examples where physical location such as correspondent address are stored in memory. 5:38-41. A POSITA would recognize that physical location stored as location data describes information regarding the physical location of the environmental controller which may be geographical coordinates, a street address, the room designation within the structure, or other similar information. Palmer Decl. at ¶ 97.

As such, in view of the proper construction of “storage means” discussed above, § 112(6) does not apply to the entire term, and the term is readily understood.

- ii. *“transmitter means connected to the controller adapted to transmit location data to a remote device physically remote from the controller so that a location response is induced at the remote device”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Means plus function limitation
Plain and Ordinary Meaning	Function: transmitting location data to a remote device physically remote from the controller so that a location response is induced at the remote device Structure: Modem with Internet or Network Connection

The only dispute here is whether or not §112(6) applies to this term, and it does not as sufficient structure is recited in the actual claim language. Specifically, the structure of a

“transmitter” is recited in the actual claim language. Indeed, if the term “means” were omitted from the element, it would not substantially modify the meaning of the phrase. Palmer Decl. at ¶99

“transmitter ~~means~~ connected to the controller adapted to transmit location data to a remote device physically remote from the controller so that a location response is induced at the remote device”

A lay juror would not be confused by what a transmitter is. As such, no construction is necessary here.

iii. *“physically remote from the controller”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Indefinite
Plain and Ordinary Meaning	

Here, Defendant argues that the term “physically remote from the controller” is indefinite. However, the ’739 Patent provides numerous support which indicates that “physically remote from the controller” refers to a “remote site.” ’739 Patent, Abstract.

A specific distance is not required to constitute remote as Defendant argues. Palmer Decl. at ¶100. (A specific distance quantity is not necessary for the POSITA to easily recognize the difference between a device that is not remote from the controller and a device that is remote from the controller.) As made evident in the claim language of claim 1:

1. A location response system with an environmental controller located at a single physical location adapted to be an integral part of a system of environmental sensing or control for a local and substantially enclosed space comprising:

- A) a physical location of the environmental controller stored as location data in storage means in the controller;
- B) transmitter means connected to the controller adapted to transmit location data to a remote device physically remote from the controller, so that a location response is induced at the remote device; and

Furthermore, the specification recites, “[t]he second remote correspondent 23 may be another thermostat System (controlling another conditioned space...)” ’739 Patent at 6:23-25. Likewise, a POSITA and a jury would understand that a device that is outside of the space that is being environmentally controlled by the environmental controller would be remote from the controller, while a device that was in the same space as that under the control of the environmental controller would not be considered to be remote from the controller. Palmer Decl. at, ¶100. (See also ’739 Patent at 6:45-49 (“Those skilled in the art will appreciate that, in a large facility incorporating subdivisions in the conditioned space, each conditioned space having its own thermostat system, each of the thermostat systems may independently employ the invention as previously described.”); *Id.*, at 6:37-44 (“The processor 1 may determine, in response to this new weather information supplied by the first remote correspondent 15, that the heat should be turned on (or the set point raised) at the site of the second remote correspondent 23 in order to protect water pipes against freezing, warm the conditioned space controlled by the Second remote correspondent in anticipation of its upcoming occupation, etc.))

Given the specification and claim language, no construction is necessary.

- iv. *“location response is storage of the location data at the remote device and correlation of the physical location to location response data stored at or available to the remote device or created by processing of location data at the remote device whereafter location response data is transmitted from the remote device to the controller”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Indefinite
Plain and Ordinary Meaning	

Again, Defendant argues that another claim term is indefinite, however, this claim term would be understood by a POSITA to describe a specific set of steps to be undertaken with regard to the location of the thermostat. Palmer Decl. at ¶102. The claim term describes what location response is the storage of the location data at the remote device, correlated with the physical location to location response data stored or available to the remote device. Furthermore, location response may also include location response data transmitted from the remote device to the controller as a result of processing of location data at the remote device.

- v. *“location response is storage of the location data at the remote device and correlation of the physical to location response data stored at or available to the remote device or created by processing of location data at the remote device”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Invalid—Does not further limit the independent claim.
Plain and Ordinary Meaning	

Plaintiff proposes that this term is readily understood by those of ordinary skill in the art and, therefore, no construction is necessary. Furthermore, it is not indefinite. The test for indefiniteness is whether the claims, viewed in light of the specification and prosecution history, “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 572 U.S. at 910, 134 S. Ct. 2120. This term far surpasses the requirements set forth in *Nautilus*.

Dr. Palmer quite states that:

A POSITA would understand that a touch screen such as that described in this claim would necessarily need information directed to it from the processor to display, and would necessarily need to direct information to the processor in order for the processor to take actions responsive to the control inputs introduced by the user through the touch screen. This is succinctly and unambiguously communicated to a POSITA in the plain and ordinary language of this claim limitation.

Palmer Decl. at 103. Given this, the claim term certainly informs those skilled in the art about the scope of the invention with reasonable certainty and it is not indefinite. Defendant relies on mere attorney argument to suggest that the term is an “oxymoron.” In reality, the term is readily understood by a POSITA and is most certainly not indefinite.

E. '318 Patent Terms

- i. *“an input/output unit coupled between said processor and said touch screen for carrying out information transfer therebetween”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Indefinite
Plain and Ordinary Meaning	

Plaintiff proposes that this term is readily understood by those of ordinary skill in the art and, therefore, no construction is necessary. Furthermore, it is not indefinite. The test for indefiniteness is whether the claims, viewed in light of the specification and prosecution history, “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus*, 572 U.S. at 910, 134 S. Ct. 2120. This term far surpasses the requirements set forth in *Nautilus*.

Dr. Palmer quite states that:

A POSITA would understand that a touch screen such as that described in this claim would necessarily need information directed to it from the processor to display, and would necessarily need to direct information to the processor in order for the processor to take actions responsive to the control inputs introduced by the user through the touch screen. This is succinctly and unambiguously communicated to a POSITA in the plain and ordinary language of this claim limitation.

Palmer Decl. at 103. Given this, the claim term certainly informs those skilled in the art about the scope of the invention with reasonable certainty and it is not indefinite. Defendant relies on mere attorney argument to suggest that the term is an “oxymoron.” In reality, the term is readily understood by a POSITA and is most certainly not indefinite.

- ii. *“a control program stored in said memory for causing said central processing unit to communicate through said input/output unit to selectively: 1) establish on said liquid crystal display: a) a representation of a first virtual button at a first predetermined position on the liquid crystal display; and b) a first legend indicative of a first control function of said thermostat, which first control function is for controlling a first space conditioning equipment component, which first control function is active when the first legend is viewable; 2) read the position on the touch pad juxtaposed with said first predetermined position on said liquid crystal display to determine if the representation of said first virtual button has been touched; 3) if the first virtual button has been touched: a) determining that the thermostat has been directed to control a second space conditioning equipment component; b) activating a second control function for controlling the second space conditioning equipment component; and c) displaying on said liquid crystal display a second legend indicative of said second control function of said thermostat, which second control function is for controlling the second space conditioning equipment component, which second control function is active when the second legend is viewable”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Means plus function limitation.
Plain and Ordinary Meaning	Function: causing said central processing unit to communicate through said input/output unit to selectively: 1) establish on said liquid crystal display: a) a representation of a first virtual button at a first predetermined position on the liquid crystal display; and b) a first legend indicative of a first control function of said thermostat, which first control function is for controlling a first space conditioning equipment component, which first control function is active when the first legend is viewable; 2) read the position on the touch pad juxtaposed with said first predetermined position on said liquid crystal display to

	determine if the representation of said first virtual button has been touched; 3) if the first virtual button has been touched: a) determining that the thermostat has been directed to control a second space conditioning equipment component; b) activating a second control function for controlling the second space conditioning equipment component; and c) displaying on said liquid crystal display a second legend indicative of said second control function of said thermostat, which second control function is for controlling the second space conditioning equipment component, which second control function is active when the second legend is viewable. Structure: Indefinite.
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The Court should also decline to construe this term as it has a readily understood plain and ordinary meaning. The language of the claim is easily understood by a POSITA and its usage within the specification and the claim is consistent with the understanding of a POSITA. Palmer Decl. at 109-110. Accordingly, no construction is necessary. Furthermore, even if it were a means-plus function term—which it is not—the claim itself describes an algorithm with a degree of detail such that a person of skill in the art would know how make the claimed program. *Id.* For a POSITA to discern the structure of the claim requires only a careful reading, relying on an interpretation based on the plain and ordinary meaning of the words contained therein. *Id.* In fact, where a claim recites a function, but then goes on to elaborate sufficient structure, material, or acts within the claim itself to perform entirely the recited function, the claim is not in means-plus-function format. *See, e.g., Cole v. Kimberly-Clark Corp.*, 102 F.3d 524, 41 USPQ2d 1001 (Fed. Cir. 1996). This precedent applies here. Accordingly, the claim term is definite and does not need to be construed.

iii. *“the graphic”*

<u>Plaintiff</u>	<u>Defendant</u>
No construction necessary.	Indefinite: No antecedent basis.

When read in context of the claims themselves, the term “the graphic” would be understood with reasonable certainty by a POSITA. Therefore, it is not indefinite. The term “the graphic” is only included in claims that depend from claim 4. Claim 4 states:

The programmable thermostat system of claim 3 in which if the first virtual button is been touched again after step D)3), determining that the thermostat controls a third space conditioning equipment component, activating a third control function for controlling the third space conditioning equipment component, and changing the second legend to a third legend indicative of the third control function of the thermostat.

‘318 Patent, Claim 4. Claim 5, which is representative of the claims containing this term states:

The programmable thermostat system of claim 4 in which one of the space conditioning equipment components is a heater and the graphic includes the word “heat” associated with said virtual button when the heater is controlled.

‘318 Patent, Claim 5. When the claims are read in the proper context, the term “the graphic” very clearly refers to a graphic associated with a virtual button of a legend indicative of a control function. Palmer Decl. at ¶¶ 111-117. Claim 4 provides the antecedent basis for the term, stating “if the first virtual button is been touched again...changing the second legend to a third legend indicative of the third control function of the thermostat.” It follows that the term “the graphic” in dependent claims refers to a graphic associated with a virtual button legend indicative of a control function, and that is what one of skill in the art would understand the term to mean. *Id.* The term is not indefinite.

F. **’825 Patent Terms**iv. *“real time clock”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary Plain and Ordinary Meaning	An off the shelf real time clock integrated circuit component that does not have a battery or other backup device in case of a power failure

The term “real time clock” is a well-known term and would be easily understood by a lay juror, however Defendant proffers a constrained limitation inconsistent with the ’825 Patent and well known term. Indeed, Defendant’s own expert uses the term “real time clock” as it would be commonly understood by a POSITA in his discussion of his own background. Shoemaker Decl. at ¶¶ 9, 15.

Here, Defendant attempts to use an exemplary embodiment which includes a real time clock operating with a non-volatile memory to fabricate a new limitation and import that limitation into the proposed construction. See ’825 Patent at Fig. 2.

First, there is no explicit limitation in the claim language that a “real time clock” must be an “off the shelf” nor “integrated circuit.” Defendant again tries to import a limitation from Fig. 2’s exemplary embodiment in the unambiguous claim term.

Second, while the real time clock in an exemplary embodiment does not employ a battery, the inventor did not act as his own lexicographer to redefine the term “real time clock” to explicitly require that a “real time clock” as claimed must “not have a battery or other backup device in case of a power failure.” This limitation is simply unnecessary and inconsistent with the law on claim construction.

G. ’075 Patent Terms

v. *“functional programming”*

<u>Plaintiff</u>	<u>Defendant</u>
No construction necessary.	Discrete executable code that changes a previously existing function or virtual button or adds a new function or virtual button and does not include data-only transfers.

This Court should reject Defendant’s proposed construction as an impermissible attempt to limit the scope of the claims beyond that disclosed in the specification. This term would be “readily understood in the context of the claim language “functional programming module” and does not require construction.” Palmer Decl. at ¶ 142. Additionally, the specification does not support Defendant’s attempt to import limitations into the claim such as “executable code that changes a previously existing function or virtual button or adds a new function or virtual button”. For example, the specification states that

This invention relates to the art of thermostats and, more particularly, to a thermostat system incorporating a communication interface for receiving functional programming from a remote correspondent. In an extended version, this invention relates to a thermostat system for receiving functional programming which causes a change in a display of a thermostat with a touch sensitive screen as part of a user interface.

’075 Patent at 1:15-20. In addition, the specification further states that functional programming received can be for the purpose “that representations of information or touch sensitive buttons on a liquid crystal display are changed from those available to the thermostat before said receipt of functional programming.” *Id.* at 3:16-20. In other words, the specification itself contemplates changing the “information” displayed rather than “virtual buttons” or a “new function” as professed by Defendant. *Id.* at 3:16-20; *see also* 4:8-11; 10:34-35 (“Without specifically limiting such a definition, functional programming . . . includes”). Furthermore, there is no support for construing this claim to “not include data-only transfers.” While the specification does say that functional program “does not include data-only transfers” this is insufficient to so limit the construction. *See Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1373 (Fed. Cir. 2014) cert. denied, 135 S. Ct. 719, 190 L. Ed. 2d 463 (2014) (“There are no magic words that must be used, but to deviate from the plain and ordinary meaning of a claim term to one of skill in the art, the patentee must, with some language, indicate a clear intent to do so in the patent.”). Here the

patentee clearly did not intend to so limit the scope given that made that statement “without specifically limiting such a definition”. ’075 Patent at 10:35-36. Furthermore, the specification “states that functional programming only ‘in part’ changes or adds to one or more previous functions.” Palmer Decl. at ¶ 144 (quoting ’075 Patent at 4:8-11). Given that the specification clearly uses “functional programing” in conjunction with its plain and ordinary meaning, and contemplates a scope broader than Defendant’s proposed construction, the Court must reject Defendant’s proposed construction and adopt the plain and ordinary meaning.

- vi. *“a control program stored in said memory for causing said central processing unit to selectively: 1) establish on said liquid crystal display one or more representations of buttons at a separated and predetermined positions; 2) read the position on the touch pad juxtaposed with said predetermined position to determine if said representation of a button has been touched; and 3) if said a representation of a button has been touched, processing this information to establish a condition incorporated into the operation of said thermostat system; 4) establish communications between said processor and a first remote correspondent from which is transferred to said memory one or more modules of functional programming; and 5) operate said transferred functional programming to change or add to representations on the touch screen, where said changes or additions of representation on the touch screen were not available to the control program before their transfer to the memory”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Means plus function limitation
Plain and Ordinary Meaning	Function: causing said central processing unit to selectively: 1) establish on said liquid crystal display one or more representations of buttons at a separated and predetermined positions; 2) read the position on the touch pad juxtaposed with said predetermined position to determine if said representation of a button has been touched; and 3) if said a representation of a button has been touched, processing this information to establish a condition incorporated into the operation of said thermostat system; 4) establish communications between said processor and a first remote correspondent

	from which is transferred to said memory one or more modules of functional programming; and 5) operate said transferred functional programming to change or add to representations on the touch screen, where said changes or additions of representation on the touch screen were not available to the control program before their transfer to the memory; Structure: Indefinite.
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The Court should also decline to construe this term as it has a readily understood plain and ordinary meaning. The language of the claim is easily understood by a POSITA and its usage within the specification and the claim is consistent with the understanding of a POSITA. Palmer Decl. at ¶¶ 145-146. Accordingly, no construction is necessary. Furthermore, even if it were a means-plus function term—which it is not—the claim itself describes an algorithm with a degree of detail such that a person of skill in the art would know how make the claimed program. *Id.* For a POSITA to discern the structure of the claim requires only a careful reading, relying on an interpretation based on the plain and ordinary meaning of the words contained therein. *Id.* In fact, where a claim recites a function, but then goes on to elaborate sufficient structure, material, or acts within the claim itself to perform entirely the recited function, the claim is not in means-plus-function format. *See, e.g., Cole*, 102 F.3d 524. This precedent applies here. Accordingly, the claim term is definite and does not need to be construed.

vii. *“in which said communications interface is coupled to an external modem”*

<u>Plaintiff</u>	<u>Defendant</u>
No Construction Necessary	Indefinite
Plain and Ordinary Meaning	

Plaintiff proposes that this term is readily understood by a POSITA and, therefore, no construction is necessary. Furthermore, it is not indefinite. As discussed above, this term far

surpasses the requirements set forth in *Nautilus*. 572 U.S. at 910, 134 S. Ct. 2120. In his declaration, Dr. Shoemake argues that this term is indefinite because he cannot determine “what it means for the modem to be external.” Shoemake Decl. at ¶ 331. Dr. Shoemake makes this strained argument on a flawed reading of the specification’s description of the remote temperature sensors in relation to the thermostat housing. *Id.* at ¶ 330. Because the ’075 Patent allows for remote temperature sensors (shown as 5 in figures 1-4) and they are part of the disclosed invention, Dr. Shoemake attempts to make the stretched argument that he cannot determine what “external” means, and therefore an “external modem” is indefinite. *Id.* at 330-332. This argument fails in the face of the fact that the term itself states that the “communications interface is coupled to the external modem” and the specification clearly shows that such coupling is “using a serial link”. See Palmer Decl. at ¶ 147. Furthermore, Fig. 2 clearly shows that modem 20 separate from the communications interface and connected to it by the serial link 16. ’075 Patent at Fig. 2. The specification supports this by stating that the “external modem” is “external (to the thermostat system)” and that it is connected via serial link 16. *Id.* at 8:53-59. This is in direct contrast to the specification’s contemplation of an “internal modem” which is “integrated into the communications interface”. *Id.* at 8:66-9:2. One of skill in the art would therefore clearly be able to determine this term is used in accordance with its plain and ordinary meaning, *i.e.*, a modem which is not “integrated” into the communications interface, and requires no construction and is no way indefinite.

VII. CONCLUSION

For the foregoing reasons, the Court should reject Defendant’s proposed constructions, find that none of the terms discussed herein are indefinite, and adopt those constructions proposed by Plaintiff.

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 2023, I served the foregoing on counsel of record for Defendant via the Court's ECF system.

/s/ Stevenson Moore
Stevenson Moore