

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

OZMO LICENSING LLC,

Plaintiff,

v.

DELL TECHNOLOGIES INC., and
DELL INC.,

Defendants.

Civil Action No. 6:22-cv-00642-ADA

JURY TRIAL DEMANDED

PLAINTIFF'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Ozmo Licensing LLC, (“Ozmo”), alleges Dell Technologies Inc. and Dell Inc, (collectively “Dell”), infringe six patents owned by Ozmo: U.S. Patent Nos. 8,599,814 (“the ’814 patent”); 9,264,991 (“the ’991 patent”); 10,873,906 (“the ’906 patent”); 11,012,934 (“the ’934 patent”); 11,122,504 (“the ’504 patent”); and 11,252,659 (“the ’659 patent”).

This Court has familiarity with all but one of the patents-in-suit, having construed a number of the following disputed terms in the case captioned *Ozmo Licensing LLC v. Acer Inc. at al.*, 6:21-cv-1225-ADA (henceforth “the Acer case”). In all such cases, Ozmo’s proposed constructions adopt this Court’s claim constructions in the Acer case, while Dell disputes them. To do so, Dell makes numerous incorrect factual assertions and mis-cites case law. For the reasons set forth below, the Court should adopt Ozmo’s proposed constructions.

II. BACKGROUND

Ozmo’s patents teach improved systems and methods for integrating a wireless personal area network (“WPAN”) infrastructure into a wireless local area network (“WLAN”) infrastructure. Prior to the inventions of the patents-in-suit, problems arose when integrating WPANs into WLANs operating in the same frequency spectrum, because the WLAN and WPAN transmissions interfered with each other. Ozmo’s improved systems and methods minimized interference between WLANs and WPANs that co-existed in the same wireless medium, as well as other problems arising from previous integrations of WLANs and WPANs, such as power dissipation, lack of synchronization, low transmission rates, and latency in communications.

In the prior art, nodes of a WPAN required unacceptably high levels of power dissipation to support sufficiently high data rates. In addition, hubs that switched traffic between a WLAN and a WPAN incurred unacceptable switching-induced latencies. The inventors solved these

problems, first by introducing a WPAN protocol that was an overlay protocol of a WLAN protocol and that was only partially consistent with the WLAN protocol. The inventors also introduced a hub that was compliant with both that WPAN protocol and the WLAN protocol, and that maintained its connections with both the WLAN using the WLAN protocol and the WPAN using the WPAN protocol.

Other aspects of those inventions, as relevant to particular claim constructions, will be discussed in the corresponding sections below.

Ozmo expects that in construing the claims the Court will rely principally upon the intrinsic record of the six patents, which would include their claims and specifications, as well as their prosecution histories. Although each was separately prosecuted, they share a common ancestral application and thus the same specification.¹

Each patent-in-suit also incorporates by reference the entire contents of U.S. Patent Application Ser. No. 11/376,753 (referred to in the patents-in-suit as “Vleugels I”), filed by the same inventors. (Ruderman Decl., Ex. 1)². By virtue of that incorporation by reference, Vleugels I forms part of the intrinsic record of the patents-in-suit, and thus may be relied upon by this Court to construe the claims of those patents. *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000). Because of this Court’s extensive familiarity with claim construction, this Brief will forgo an introductory “Legal Standards” section, but will cite cases, where appropriate, in specific sections below.

¹ All citations to that common specification in this Brief are to the ’814 patent (Ex. 5).

² That application was later allowed as U.S. Patent No. 9,036,613 (“the ’613 patent”). The written disclosure of Vleugels I is identical to the specification of the ’613 patent (Ex. 1). Henceforth, all citations to exhibits refer to those included with the Ruderman Declaration.

III. DISPUTED TERMS³

A. “WLAN” / “WPAN”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
“WLAN” – “a wireless network with a typical coverage range on the order of 300 feet”	“WLAN” – plain and ordinary meaning
“WPAN” – “a wireless network with a typical coverage range on the order of 30 feet”	“WPAN” – “a short-range <i>wireless</i> network usable to connect peripherals to devices in close proximity” ⁴

Ozmo proposes its construction of WPAN based on this Court’s previous construction of “personal area network” from the Acer case. In that case, in which Ozmo asserted most of the claims asserted in this case, this Court partially adopted Acer’s proposed construction (i.e., “a short-range wireless network usable to connect peripherals to devices in close proximity”) derived from the common patent specification, but removed the reference to “wireless” and “decline[d] to adopt [Acer’s] proposed construction that would exclude [devices that are not power sensitive].” See Ex. 2 (ECF 36) at 32-34. In this case, Ozmo adds “wireless” to its proposed construction because “WPAN” is the term in dispute, but otherwise agrees with this Court’s previous construction and the reasoning behind it. As the Court found previously, the common specification of the patents-in-suit supports Ozmo’s proposed construction: “A WPAN is a short-range wireless network, with typical coverage ranges on the order of 30 feet, usable to connect peripherals to devices in close proximity, thereby eliminating cables usually present for such connections.” Ex. 5 (’814 patent) at col. 9, lns. 36-39. This construction of “WPAN” is therefore proper and should be adopted.

³ In view of the closeness of the parties’ proposed means-plus-function constructions of “a routing module for receiving ...” (*see* ECF 32 at 33), in order to simplify issues for the Court to decide, Ozmo agrees with Dell’s proposed construction.

⁴ Updated proposal to include “wireless” – though there are some claims that only refer to a “PAN,” rather than a “WPAN,” those claims make clear that the connection is wireless.

Because the term is well-known even to lay persons, Ozmo proposes that WLAN should be construed according to its plain and ordinary meaning. *See Philips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (“In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words.”). There can be no dispute that “WLAN” was and is a known term that simply means “wireless local area network.” *See, e.g.*, Ex. 3 (Expert Rebuttal Declaration of Dr. Jacob Sharony (“Sharony Decl.”)) at ¶ 24 & Ex. B thereto (IEEE Std. 802.11, 1999 Edition) at p. 3 (“Abstract: The medium access control (MAC) and physical characteristics for *wireless local area networks* (LANs) are specified in this standard....”) (emphasis added)); There is no dispute that a WLAN is a different network than a WPAN. But that does not mean that the former term requires an express construction, especially given that both parties have provided proposed constructions for the latter that clearly differentiates the two types of networks.

Dell’s argument for its narrow constructions regarding these terms is twofold.

First, Dell argues that the patentee provided an “express definition” of WLAN and WPAN in the specification. ECF 32 at 12. This is incorrect because in order “[t]o act as his/her own lexicographer, the patentee must ‘*clearly* set forth a definition of the disputed claim term,’ and ‘*clearly* express an intent to define the term.’” *PM Holdings, LLC v. Heart of Texas Surgery Ctr PLLC*, No. 6:21-cv-00644-ADA, 2022 WL 1230272 at *2 (W.D. Tex. Apr. 26, 2022) (citing *Thorner v. Sony Comp. Entm’t Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (emphasis added)). Here, each citation relied on by Dell to support its “express definition” argument is cropped and taken out of context. Providing that context shows that the patentee did *not* expressly define these terms.

Dell cites to Vleugels I at ¶¶ [0007]-[0008], conveniently inserting ellipses when the cited text undercuts its argument. ECF 32 at 12. For full context, these paragraphs are set forth below (emphasis added throughout to underscore the non-definitional nature of the text):

Wireless communication systems *can* be categorized based on coverage range, *which in some cases is dictated by use*. A wireless local area network or “WLAN”, has a *typical* coverage range on the order of 300 feet and is useful for providing communications between computing devices in some (possibly loosely) defined space such as a home, office, building, park, airport, etc. In some modes of operation, one or more of the nodes is coupled to a wired network to allow other nodes to communicate beyond the wireless network range via that wired network. In 802.11 terminology, such nodes are referred to as “access points” and the *typical* protocol is such that the other nodes (referred to as “stations”) associate with an access point and communication is generally between a station and an access point. Some wireless networks operate in an “ad hoc” mode, wherein node devices communicate with each other without an access point being present.

A personal area network or “PAN” is a short-range wireless network, with *typical* coverage ranges on the order of 30 feet, usable to connect peripherals to devices in close proximity, thereby eliminating cables usually present for such connections. *For example*, a PAN *might be used* to connect a headset to a mobile phone or music/audio player, a mouse or keyboard to a laptop, a PDA or laptop to a mobile phone (for syncing, phone number lookup or the like), etc. Yet another *example* of a wireless PAN application is wireless medical monitoring devices that wirelessly connect monitoring hardware to a pager or similar read-out device. Yet another *example* is a remote control that connects to a wireless-enabled electronic device.

Taken in context, these passages fall far short of “lexicography.” *See, e.g., In re American Acad. Of Science Tech Center*, 367 F.3d 1359, 1365 (Fed. Cir. 2004) (“This court has recognized that a patentee ‘may demonstrate an intent to deviate from the ordinary and accustomed meaning of a claim term by including in the specification *expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope.*’”) (citation omitted) (emphasis added). As seen in the passages above, the patentee used *exemplary* language rather than using expressions of manifest exclusion or restriction. Similarly, the very next paragraph in Vleugels I (paragraph [0009]) provides even more context illustrating that Dell’s position that the terms were expressly defined is incorrect (emphasis added):

A personal area network (PAN) is *generally* used for the interconnection of information technology devices within the range of an individual person, *typically* within a range of 10 meters. For example, a person traveling with a laptop will likely be the sole user of that laptop and will be the same person handling the personal digital assistant (PDA) and portable printer that interconnect to the laptop without having to plug anything in, using some form of wireless technology. *Typically*, PAN nodes interact wirelessly, but nothing herein would preclude having some wired nodes. By contrast, a wireless LAN *tends to be* a local area network (LAN) that is connected without wires and serves multiple users.

Therefore, even according to Dell's cherry-picked citations its proposals fail.

The remainder of the specification shows the same, that is, contrary to Dell's argument, the patentee did not intend to define "WLAN" and "WPAN" to include numerical limitations. The Field of the Invention simply differentiates "short-range wireless area networks ('WPANs') from "longer-range wireless local area networks ('WLANs') without any mention of numerical range limitations. Ex. 5 ('814 patent) at col. 1, lns. 25-29. And while Figure 1 "depicts *some* parameters associated with a few existing and emerging standards for wireless connectivity," the specification also mentions that "the 802.11x standard *is expanding into longer range applications.*" *Id.* at col. 1, lns. 33-34 and 66-67. It would be conspicuously odd that a patentee that noticed rapidly evolving networking ranges would nevertheless exclude such technological evolution from the scope of its patents. The remainder of the citations relied upon by Dell likewise include relative words and terms of degree that belie Dell's attempt to import numerical limitations into the claims.

In contrast, where the patentee did choose to be its own lexicographer, it did so clearly and manifestly:

For ease of understanding this disclosure, where it is important to make the distinction between devices, a device that exists to provide wireless connectivity is referred to as a "network interface", "network interface device", "wireless network interface device" or the like, while the device for which the wireless connectivity is being provided is referred to as a "computing device" or an "electronic device" notwithstanding the fact that some such devices do more than just compute or might not be thought of as devices that do actual computing and further notwithstanding

the fact that some network interface devices themselves have electronics and do computing.

Ex. 1 (Vleugels I) at [0016]. A person of ordinary skill in the art reading this would easily understand that the patent's referral to any of the quoted language means the express definitions provided in this passage. That the patentee did not follow this convention when introducing "WLAN" and "WPAN" adds further support to the fact that the patentee did not intend to introduce definitions for these terms.

Second, Dell also attempts to import numerical limitations from the specification into the claims under the guise that this Court's previous construction of "personal area network" renders the claims indefinite. ECF 32 at 15-16. The law, however, does not hold that terms of degree in patent claims are improper, and the cases Dell relies upon do not support its position. Rather, "terms of degree are [not] inherently indefinite. Claim language employing terms of degree has long been found definite where it provided enough certainty to one of skill in the art when read in the context of the invention." *Biosig Instruments, Inc. v. Nautilus, Inc.*, 783 F.3d 1374, 1378 (Fed. Cir. 2015) (citations omitted); *see also PM Holdings*, 2022 WL 1230272 at *6 (finding "that, in the context of the specification and Figures 1 and 2, the term 'near' 'inform[s] those skilled in the art about the scope of the invention with reasonable certainty.'" (citations omitted)).

As such, a person of ordinary skill would not have found WLAN and WPAN indefinite merely because one typically has longer range than the other. Ex. 3 (Sharony Decl.) at ¶ 25. In fact, Dell's own expert, Mr. Proctor, acknowledges as much. In paragraph 61 of his declaration, he states that: "... in defining WPAN, the specification provides that WPAN can be used to 'connect peripherals to devices in close proximity.' Although 'close' is another term of degree, it is my opinion that a POSITA would have understood it to be commensurate in scope with 'short.'" ECF 32-4 ("Proctor Decl."), ¶ 61. Dell's indefiniteness argument should be seen for what it is: a

bare attempt to have this Court improperly read limitations from the specification into the claims and narrow their scope.

Dell also takes issue with the phrase “usable to connect peripherals” in Ozmo’s proposed construction of WPAN. ECF 32 at 15-16. But including this phrase in the construction of WPAN (as this Court did for “personal area network” in the Acer case) is not improper because it does not render any claim language meaningless. That is, nothing about its inclusion would read out any limitations of any claim. Unasserted claim 16 of the ’814 patent simply sets out particular types of peripherals as WPAN devices, meaning that other types of peripherals may be included in the independent claim from which it depends. *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 951-52 (Fed. Cir. 2006).

Ozmo’s proposed construction for WPAN should be adopted because it is sufficiently definite and avoids adding improper limitations into the claim. Ozmo’s proposal that WLAN be construed by its plain and ordinary meaning should be adopted because the term itself has a clear and well-known meaning. The proper construction of WPAN will suffice to differentiate the two types of networks.

B. “802.11x”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
Indefinite; <i>alternatively</i> , all amendments to 802.11 as of March 14, 2006	Plain and ordinary meaning

In arguing that “802.11x” is indefinite, Dell and its expert both assert that the term “had no plain and ordinary meaning on March 14, 2006.” ECF 32 at 17. This assertion is belied by contemporaneous evidence, however, which demonstrates that the term was being used by those of ordinary skill from at least 2001, as shown in U.S. Patent No. 6,712,698. *See* Ex. 3 (Sharony Decl.) at ¶ 29. Thus, the term was already in use nearly five years prior to the filing date of the

first utility application in the Ozmo patent family. In fact, a search of U.S. patents and published applications filed prior to March 14, 2006 including the term “802.11x” yielded at least 138 hits.⁵ *See id.* at ¶ 31. Moreover, no fewer than 60 of the issued patents in the set contain the term in the claims. *See id.* Thus, in contrast to the (contested) rejection of claims containing the term by the examiner of U.S. Pat. App. No. 13/340,465 cited by Dell (see ECF 32 at 18-19), other USPTO examiners indisputably allowed claims containing the term to issue.⁶ Thus, contrary to Dell’s assertion, “802.11x” had a known meaning by March 14, 2006: it was simply shorthand to refer to the family of 802.11 specifications. *See Ex. 3 (Sharony Decl.)* at ¶¶ 26-30.

Dell’s indefiniteness argument is further undermined by its own alternative construction, which demonstrates that the term is actually amenable to construction. *See Sonrai Memory Ltd. v. Kingston Tech. Co., Inc.*, No. 6:21-cv-01284, 2022 WL 3640302 at *5-*6 (W.D. Tex. Aug. 23, 2022) (finding “Defendants’ argument that the term is indefinite is undercut by Defendants’ proposed construction, which indicates that a POSITA would understand the meaning of this claim term with reasonable certainty.”).

Because Dell has not (and cannot) prove that “802.11x” is indefinite, the remaining issue is what construction, if any, is required for “802.11x.” *See Sonix Tech. Co., Ltd. v. Publications Int’l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017). The cases to which Dell cites in support of its

⁵ This number is likely an undercount, as it was the number of search results that could be verified as containing the term by the time this brief was filed. It also excludes foreign patents, foreign published applications, and other printed publications that contain the term. *See, e.g., Ex. 3 (Sharony Decl.)* at ¶ 30, demonstrating at least one academic paper also contained the term prior to March 14, 2006.

⁶ Contrary to Dell’s assertion regarding the prosecution of U.S. Pat. App. No. 13/340,465, the applicant did not acquiesce to the examiner’s rejection, but instead disputed the examiner’s reasoning, stating that “Applicant submits that the fact that a particular element may evolve over time does not render recitation of that element indefinite. It may change from time to time, but it is definite at any given time.” ECF 32-6 at 12.

alternative proposed construction are inapposite. In all of the cases Dell cites for the proposition that “802.11x” should be construed as only those lettered standards existing at the time of filing (i.e., excluding, for example, 802.11n), the courts took note of whether “the patentee acted as its own lexicographer or tried to redefine the term.” *See, e.g., Fundamental Innovation Sys. Int’l LLC v. Samsung Elecs. Co.*, No. 2:17-cv-145, 2018 WL 647734 at *7, *16 (E.D. Tex. Jan. 31, 2018). Given that “802.11x” is shown to have had a plain and ordinary meaning at the time of the invention, the plain and ordinary meaning should control in the absence of a clear and manifest definition deviating from that meaning. *In re American Acad. Of Science Tech Center*, 367 F.3d at 1365. The only intrinsic evidence is the two instances in which the patentee included the phrase in the specification: “802.11x (x=a, b, g, n, etc.).” *See* Ex. 5 (’814 patent) at col. 1, ln. 41; col. 11, lns. 42-43. But this is merely consistent with the use of the term at the time, i.e., referring to the family of 802.11 specifications. *See* Ex. 3 (Sharony Decl.) at ¶¶ 26-30. The patentee clearly did not redefine the term then in use.

Where, as here, the patentee has explicitly referred to “the development of the new 802.11n specification,” included “n” in “802.11x (x=a, b, g, n, etc.)[,],” and refers to the “expanding” of the 802.11x standard, the 802.11 standards that may be encompassed by “802.11x” should not necessarily be limited to those standards or specifications existing at the time of filing. Here the 802.11x technology that is material to the claim is not something that has meaningfully changed over time—the claims rely on an 802.11 specification as a reference from which the overlay protocol that is partially compliant is designed. Thus, claim elements like that which appears in claim 1 of the ’934 patent: i.e., “wherein the WLAN protocol is an 802.11x protocol that uses a frame defined by the 802.11x protocol, and the WPAN protocol uses a WPAN-adapted frame in which at least one field of the frame defined by the 802.11x protocol is adapted to support the

WPAN power-saving protocol” (’934 patent, cl. 1) is sufficiently definite with respect to any published, final version of an 802.11 standard. *See Uniloc USA, Inc. v. Apple, Inc.*, No. 19-cv-01692, 2021 WL 432183 at *8 (N.D. Cal. Jan. 15, 2021) (deciding that “[r]ather than focus on Bluetooth version numbers, the Court finds that the better approach is to look to the functionality described or defined in the Bluetooth Core Specification versions in question—namely, whether aspects of the Bluetooth technology that are material to the claimed invention have changed in any meaningful way over time. If there has been a meaningful change, then the construction of the disputed claim terms should reflect only the functionality material to the patent, as it existed at the time of the claimed invention, is encompassed by the claims.”)

Accordingly, “802.11x” should be construed according to its commonly understood meaning, and as supported by the specification, as referring generally to any of the IEEE 802.11 classes of standards, without being so limited to only those standards in existence at the time of the invention. *PM Holdings, LLC*, 2022 WL 123072 at *5 (finding the term “IBC Class B standards” was not indefinite simply because the standard is subject to later revision or amendment).

C. “Overlay protocol”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
A second protocol that has elements that are reuses of elements of a first protocol to provide one or more advantages	A protocol governing a second network, which protocol has aspects in common with a first network protocol to reduce interference such that the second and first networks can co-exist

This term was construed by this Court in the Acer case. *See* Ex. 2 (ECF 36) at 23-26. There, this Court agreed with Ozmo’s proposed construction and adopted it. *See id.* at 26. Ozmo proposes that same construction in this case and agrees with the Court’s supporting reasoning, including the extensive citations to the intrinsic evidence included therein. *See id.*

Dell first tries to challenge the Court's construction by citing *Sinorgchem v. Int'l Trade Com'n* (511 F.3d 1132, 1138 (Fed Cir. 2007)) as controlling authority. Dell avers that Vleugels I includes an "express definition" of overlay protocol, that definition should control, and the inquiry should end there. ECF 32 at 22-23. Dell's reliance on *Sinorgchem* is misplaced as it actually supports Ozmo's position.

In *Sinorgchem*, the ITC agreed that the patentee had expressly defined the disputed term in the specification but then proceeded to alter that definition because, in its analysis, certain parts of the definition should be excluded because one was "merely an example that did not apply to all situations..." and another was inconsistent with an example labeled as a preferred embodiment. *Id.* at 1137-38. The Federal Circuit rejected the ITC's reasoning as incorrect because "vague language cannot override the express definitional language." *Id.* at 1138 ("Where, as here, multiple embodiments are disclosed, we have previously interpreted claims to exclude embodiments where those embodiments are inconsistent with unambiguous language in the patent's specification or prosecution history.").

Dell is committing the same error here that the ITC committed in *Sinorgchem*; it has taken what it declares to be an express definition and immediately proceeded to modify it because it includes "non-limiting" (i.e., *non-definitional*) examples. ECF 32 at 22. Like the ITC in *Sinorgchem*, Dell cannot have it both ways; it cannot declare a passage in the specification to be an "express definition" and then proceed to modify it because it contains ambiguity. *Sinorgchem*, 511 F.3d at 1138. For this reason alone, Dell's proposed construction should be rejected.

Furthermore, Dell's proposed construction ignores this Court's extensive reasoning in the Acer case. Noting the various references to and explanations of this term throughout the specification and in Vleugels I, the Court considered numerous citations from the common

specification of the patents-in-suit and Vlugels I to arrive at its construction. *See* Ex. 2 (ECF 36) at 23-26 (noting – and agreeing with – Ozmo’s assertion that the term is “discussed extensively in the intrinsic record.”). Given this reasoning and the Court’s conclusion, it is unreasonable to assert that the Court found “overlay protocol” to have been *expressly* defined. It is not, and Dell’s proposed construction highlights that fact.

Accordingly, this Court correctly construed “overlay protocol” in the Acer case and should adopt that construction here. Dell’s proposed construction should be rejected because it runs contrary to the intrinsic record and the law.

D. “At least partially disable the wireless connection” / “disable the second connection”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
“at least partially disable the wireless connection” means “at least partially do not maintain the wireless connection” and “disable the second connection” means “do not maintain the second connection”	Plain and ordinary meaning

The Court construed “at least partially disable the wireless connection” in the Acer case as plain and ordinary meaning, agreeing with Ozmo that that meaning is “readily understood.” Ex. 2 (ECF 36) at 34-35. Here, for the same reasons given in the Acer case, and because the patentee provided no express definition in the intrinsic record for the term, “disable the second connection” is also readily understood and should carry its plain and ordinary meaning.

Dell’s proposed construction of these terms to require “not maintain[ing] the [] connection,” improperly imports an extraneous limitation into the claims. Moreover, the specifications of neither the patents-in-suit nor Vleugels I associate “disabling” a coordination or wireless connection with “not maintaining” the coordination or connection. *See, e.g.*, Ex. 5 (’814

patent) at col. 12, lns. 13-18 (“To conserve power at the WPAN device and the computing device, they can agree on an inactivity time and disable at least a part of a coordination function of the computing device following a start of the inactivity time, wherein disabling is such that less power per unit time is consumed by the network circuit relative to power consumed when not disabled.”). Nowhere in the passage is it described or even suggested to “not maintain” a wireless connection. Dell’s proposition that “it is clear that the parties dispute whether these terms encompass an ‘inactivity period’ over a connection” (ECF 32 at 17) is similarly misplaced. Any dispute concerning whether these terms encompass an “inactivity period” does not arise from the specification or claims themselves, but only from Dell’s proposed construction. This would only serve to inject ambiguity into the claim. Swapping “disable” for “do not maintain” neither adds clarity, nor is it correct. A POSITA would read these limitations, in light of the specification, and understand that maintaining the connection may include maintaining the association and/or synchronization between the connected devices. *See, e.g.*, Ex. 5 (’814 patent) at col. 8, lns. 19-29 (“When connected to the WPAN coordinated by the [hub], a PS-STA is synchronized to the [hub] ...”).

These terms are readily understood by their plain and ordinary meanings. Thus, no additional construction is necessary.

E. “The disabling” / “the at least part is disabled”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
Indefinite	Plain and ordinary meaning

Dell’s terse indefiniteness argument with respect to these terms should be rejected *ab initio* because it does not come close to meeting the clear and convincing standard for rendering a patent invalid. The meaning of the claim itself is clear, and proper antecedent basis is readily apparent for this term. Claim 2 from the ’934 and ’504 patents both state: “wherein the disabling is such that

less power is consumed by the wireless radio circuit on the wireless connection when *the at least part* is disabled, then when the *at least part* is not disabled.” ECF 1-5 (’934 patent) at col. 15, lns. 60-63; ECF 1-6 (’504 patent) at col. 16, lns. 4-7 (emphasis added). The emphasized language above (i.e., *at least part*) finds antecedent basis from *one and only one* limitation in claim 1: “wherein the WPAN protocol provides for the first wireless device to disable *at least a part* of said coordination following a start of the inactivity time.” ECF 1-5 (’934 patent) at col. 15, lns. 57-59 (emphasis added). This limitation from claim 1 is clearly providing antecedent basis for claim 2. The other limitations cited by Dell do not. Thus, Dell’s indefiniteness argument must fail.

Accordingly, because there is no invalidating antecedent basis issue with these terms, and because Dell has not provided any alternative construction, the Court should adopt Ozmo’s proposed construction that the terms bear their plain and ordinary meanings.

F. “Logic” terms

Dell alleges that each of the “logic” terms in dispute that do not include the word “means” should nevertheless be construed as means-plus-function limitations under 35 U.S.C. § 112, ¶ 6. Ozmo disagrees.

Because the claim language does not include “means,” § 112, ¶ 6 presumably does not apply. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015); *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1007 (Fed. Cir. 2018); *Dyfan, LLC v. Target Corp.*, 28 F.4th 1360, 1365 (Fed. Cir. 2022). To rebut that presumption, Dell must demonstrate the claim term fails to recite sufficiently definite structure or else recites function without reciting sufficient structure for performing that function. The court must first “construe the limitation to determine whether it connotes sufficiently definite structure to a person of ordinary skill in the art.” *Williamson*, 792 F.3d at 1349.

At the outset, the authority Dell cites for treating “logic” as if it read “means” is *Egenera, Inc. v. Cisco Sys., Inc.*, 972 F.3d 1367 (Fed. Cir. 2020), where “logic,” was found to be a means-plus-function limitation. ECF 32 at 28. Though Dell acknowledges that *Egenera*’s application is not absolute, Dell continues to assert that each of the “logic” terms in dispute invoke § 112, ¶ 6. *Id.* at 28-29. Dell’s attempt to distinguish this district’s finding in *Sonrai*, which demonstrates that *Egenera*’s decision was case specific, is unavailing for certain of the “logic” terms in dispute, discussed in further detail below, because those terms describe “the claim limitation’s operation, such as its input, output, or connections[.]” in a manner that provides sufficiently definite structure such that § 112, ¶ 6 is inapplicable. *Id.* at 29. *See also Sonrai Memory Ltd. v. Oracle Corp.*, No. 1:22-cv-94, 2022 WL 800730 at *9 (W.D. Tex. Mar. 16, 2022).

Dell argues that the prosecution history of the ’814 patent and the ’991 patent support its argument as to the “logic” terms because “the Examiner specifically identified various logic-based terms in claim 1 [of the ’814 patent] as invoking § 112(f) interpretation[.]” ECF 32 at 29. But, as can be seen from the quoted excerpt of the Office Action, the “logic for” provisions cited therein are *not* the “logic” terms presently in dispute. *Id.* In fact, that the “data forwarding” logic term was *not* flagged by the Examiner as invoking § 112, ¶ 6, should additionally favor keeping intact the presumption against application of § 112, ¶ 6. *Dyfan*, 28 F.4th at 1366.

1. “Logic to coordinate a mutually agreeable inactivity period”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
Means-plus-function	Means-plus-function
<u>Function</u> : coordinate a mutually agreeable inactivity period	<u>Function</u> : coordinate a mutually agreeable inactivity period
<u>Structure</u> : none / indefinite	<u>Structure</u> : processing unit 28 executing algorithms at ’814 patent, 12:13-13:14, and equivalents

The parties agree that this term is subject to § 112, ¶ 6 and that “mutually agreeable” means “jointly determined.” The parties dispute the corresponding structure for that function as Dell incorrectly argues a lack of disclosed structure should render the term indefinite. ECF 32 at 31-32. This position, again, runs counter to the Court’s correct reasoning in the Acer case.

This Court construed “mutually agreeable” in the Acer case. Ex. 2 (ECF 36) at 31-32. In so doing, the Court examined “whether these terms encompass a scenario where one device communicates a parameter, such as network inactivity time, that is then accepted by a receiving device.” *Id.* Finding “that this scenario is encompassed by the claim terms and ultimately the construction, ‘jointly determine[,]’” this Court further explained:

In other words, if one device communicates a parameter that is accepted by a receiving device, then it is the case that the parameter has been jointly determined, i.e., proposed and accepted. Such mutual action between devices is expressly contemplated by the common specification.

Id. (citing ’814 patent, col. 12, lns. 36-38 (“The duration field might have been passed during the pairing state, so that the PER and COORD both know and agree on its value.”), col. 11, lns. 57-58 (“This can be dealt with using mutually agreeable inactivity periods.”)). This construction dooms Dell’s invalidity arguments.

Dell first argues that the “first algorithm identified by Ozmo is merely a statement that a single coordinator and a single peripheral can agree on the inactivity period” “is not an algorithm for performing the claimed function, but merely the result.” ECF 32 at 32 (referring to the ’814 patent at col. 12, lns. 13-18). First, this cited portion of the specification does more than just state a result, it continues to specify that the computing device can “disable at least a part of a coordination function ... such that less power per unit time is consumed by the network circuit relative to power consumed when not disabled.” Ex. 5 (’814 patent) at col. 12, lns. 13-18. This paragraph provides structure “by describing the claim limitation’s operation, such as its ...

connection[.]” *See Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1299 (Fed. Cir. 2014). Second, this cited portion serves to highlight that this part of the specification clearly links or associates the recited structure to the function, i.e., coordination of a mutually agreeable inactivity period, such that it is, indeed, corresponding structure. *See Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1210 (Fed. Cir. 2003).

Dell’s issues with the “second algorithm identified by Ozmo (’814 patent, 12:19-58)” and the “third algorithm identified by Ozmo (12:59-13:9)” (ECF 32 at 33) are based solely upon their mistaken position, explained above, that the peripherals must actively participate in the agreement with the COORD, contrary to this Court’s previous construction of “mutually agreeable.” This argument is thus without merit.

With respect to the “fourth algorithm identified by Ozmo (13:10-14),” Dell alleges that this “merely discloses ... a status, not an algorithm.” *Id.* But again, “[s]tructure may also be provided by describing the claim limitation’s operation, such as its input, output, or connections.” *Apple*, 757 F.3d at 1299. That is the case here. Moreover, Dell’s conclusion that “[t]here is no disclosure that the pairing and connection states ... have anything to do with determining inactivity periods, jointly or otherwise” is erroneous. This Court noted in its Claim Construction Order in the Acer case that “mutual action between devices is expressly contemplated by the common specification.” *See* Ex. 5 (’814 patent) at col. 12, lns. 36-38 (“The duration field might have been passed during the pairing state, so that the PER and COORD both know and agree on its value.”). Ex. 2 (ECF 36) at 33. Thus, the devices going through the pairing and connection states is relevant to determining inactivity periods, and hence this term.

Where, as here, the specification links sufficient structure to coordinate a mutually agreeable inactivity period, the Court should find that the term is definite and adopt Ozmo's proposed corresponding structure and equivalents.

2. "Logic for data forwarding between an originating node that is a node in of one of the first and second networks and a destination node that is a node in of the other of the first and second networks, the logic for data forwarding including logic for processing a data packet from the originating node to identify an address of the destination node in the data packet and using that address to transmit data into the second network"

Dell's Proposed Construction	Ozmo's Proposed Construction
Means-plus-function <u>Function</u>: data forwarding between an originating node that is a node in of one of the first and second networks and a destination node that is a node in of the other of the first and second networks, the logic for data forwarding including logic for processing a data packet from the originating node to identify an address of the destination node in the data packet and using that address to transmit data into the second network <u>Structure</u>: processing unit 28 executing an algorithm to read the IP address on incoming packets and forward the packets to that IP address	Not means-plus-function Plain and ordinary meaning

Construction of this claim limitation is subject to the presumption that § 112, ¶ 6 does not apply, because the limitation does not include the word "means." *See Apple*, 757 F.3d at 1297. Here, that presumption is not rebutted because the claim limitation itself, "read in light of the remaining claim language, specification, prosecution history, and relevant extrinsic evidence, has sufficiently definite structure to a person of ordinary skill in the art." *Id.* at 1298. "[T]he patent need only disclose sufficient structure for a person of skill in the field to provide an operative software program for the specified function." *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1385 (Fed. Cir. 2011).

The parties agree on the construction of “data forwarding logic” as it appears in other claims. Dell argues that this is irrelevant, largely relying on the prosecution history to argue that the applicant’s later addition of claim 19 “intentionally chose to use the ‘logic for’ format that the applicant knew would invoke § 112(f).” ECF 32 at 35. First, Dell improperly purports to know what the applicant knew or did not know at the time, rather than referring to the prosecution history itself for factual basis. And in fact, referral to the prosecution history of related U.S. Patent No. 8,165,102⁷ destroys Dell’s clairvoyant assertion. In that case, this *very term* had been included in a claim (claim 19) of the application that issued as the ’102 patent. Ex. 4 (’102 patent PH, 2012-01-23 Amendment) at page 6 of 12. In summarizing an examiner interview in an amendment, the applicant expressly noted that “Applicant proposed amendments to further clarify that claims 1 and **19** are read outside of 35 USC §112, ¶6, ...” *Id.* at page 9 of 12 (emphasis added). The PTO’s response to this amendment was a Notice of Allowance. Ex. 6 (2012-03-13 Notice of Allowance). Thus, the patentee *expressly* understood this term to “read outside of 35 USC §112, ¶6,” and the PTO did nothing to dispel that understanding.

Here, like in *Sonrai*, the “logic for data forwarding” describes the claim limitation’s operation in a manner that provides sufficiently definite structure to a POSITA to avoid § 112, ¶ 6. *Sonrai*, 2022 WL 800730 at *9. For example, in addition to the “logic for data forwarding term,” this “logic” is recited in other claim elements, disclosing that “data forwarding logic” is “implemented in the network-enabled hub using hardware and/or software.” Ex. 5 (’814 patent) at col. 15, lns. 4-5. Further, “[t]he claims themselves connote sufficient structure by describing how the “logic for” terms operate within the claimed invention to achieve their objectives.” *Sonrai*,

⁷ The ’102 patent, which is not asserted in this case, claims priority to the same application as the ’814 patent-in-suit.

2022 WL 800730 at *9. For instance, claim 19 recites logic that forwards data between an originating node that is a node in one of the first and second networks, and a destination node that is a node in the other of the first and second networks, by processing a data packet received from the originating node to identify an address of the destination node, and using that address to transmit data into the second network. This connotes structure. *Apple*, 757 F.3d at 1299. It is also why the patentee understood the same term to fall outside of § 112, ¶ 6 in the '102 patent.

Thus, because the parties agree that “data forwarding” is understood by its plain and ordinary meaning to a POSITA, in the context of the '991 patent, it logically follows that a POSITA would find sufficient description of the logic’s operation in the claim itself to connote sufficient structure. For this reason, Dell cannot rebut the presumption that § 112, ¶ 6 applies, and Ozmo’s proposal that this term be construed according to its plain and ordinary meaning should be adopted.

3. “Logic for uniquely identifying the destination node from data received from the originating node such that the network-enabled hub can use that data to transmit data into the second wireless network”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
Means-plus-function <u>Function</u>: uniquely identifying the destination node from data received from the originating node such that the network-enabled hub can use that data to transmit data into the second wireless network <u>Structure</u>: processing unit 28 executing an algorithm to read the IP address on incoming packets and forward the packets to that IP address	Means-plus-function <u>Function</u>: uniquely identifying the destination node from data received from the originating node such that the network-enabled hub can use that data to transmit data into the second wireless network <u>Structure</u>: processing unit 28 and algorithms at '814 patent, 7:52-8:15, and equivalents

The parties’ dispute regarding this term is limited to the corresponding structure beyond processing unit 28. Dell’s proposed structure is incorrect because it limits the algorithm to reading an IP address only. Ozmo does not disagree that an IP address may be one way to uniquely identify

the destination node. Rather, Ozmo's proposed corresponding structure accounts for equivalents of an IP address, as well as providing the corresponding structure for the remaining function that the hub "can use that data to transmit data into the second wireless network."

Dell's reliance on the '814 patent at col. 4, lns. 1-11 actually supports Ozmo's proposed structure, not Dell's. That citation, appearing in the "Brief Summary of the Invention" is clearly a brief summary of the proposed algorithm that Ozmo cites. *Compare*, Ex. 5 ('814 patent) at col. 4, lns. 1-11, *with, id.* at col. 7, ln. 52 through col. 8, ln. 15. Dell's argument that Ozmo's cited portions do not provide "an algorithm for the hub transmitting data into the second wireless network as claimed" (ECF 32 at 38) is simply incorrect. (emphasis in original). This particular limitation in claim 11, which depends from claim 1, refers back to the "data forwarding logic" of claim 1. Ex. 5 ('814 patent) at cl. 11. Logically following therefrom, the originating node is a node in one of the first and second networks, and the destination node is a node in the other of the first and second networks, and the network-enabled hub is the device serving as a sort of "go-between" for the originating and destination nodes. *Id.* at cl. 1. The algorithm which Ozmo cites as the proper structure for the claimed function is clearly directed to information being exchanged between a first node in a first network and a second node in a second network, polling information to obtain data via the network-enabled hub (the Wi-Fi-enabled power outlet in this particular embodiment). These steps sufficiently inform a POSITA how to accomplish the recited function, without limiting the identifying information of the destination node to an IP address. As such, Dell's proposed structure should be rejected as improperly limiting the scope of the claim, and Ozmo's proposal should be adopted.

4. "Wherein the network-enabled hub and the device include logic, in one or both of the network-enabled hub and the device, for initiating device discovery by sending broadcast discovery requests on a pre-defined channel"

Dell's Proposed Construction	Ozmo's Proposed Construction
Indefinite	Not means-plus-function Plain and ordinary meaning Alternatively, if MPF: <u>Function</u>: initiating device discovery by sending broadcast discovery requests on a pre-defined channel <u>Structure</u>: processing unit 28/24, including algorithms at '814 patent, 13:16-14:27, and equivalents

There are no contradictions in the language of this term. The second clause simply modifies the first by further specifying exactly where the logic “for initiating device discovery ...” resides; it resides “in one or both of the network-enabled hub and the device.” Removal of the second clause would require the logic to reside in both the network-enabled hub and the device. The second clause expands the scope of the claim to allow the logic to reside in the network-enabled hub, the device, or both.

This language is not only not indefinite, it is a straightforward exercise in English grammar. Ozmo submits that it is straightforward enough to bear its plain and ordinary meaning, because a lay juror can be expected to understand it without further construction.

This claim limitation is also not subject to § 112, ¶ 6, because the claim does not use the term “means,” and the limitation itself includes sufficient structure; namely, that the “logic ... for initiating device discovery” is accomplished “by sending broadcast discovery requests on a pre-defined channel. As explained in Section III.F.2, above, a POSITA would read this entire limitation, in light of the specification, and understand the claim to “connote sufficient structure by describing how the “logic” term operates within the claimed invention to achieve their objectives.” *Sonrai*, 2022 WL 800730 at *9.

If the Court is inclined to construe this term as invoking § 112, ¶ 6, then Ozmo’s alternate proposed structure should be adopted, as that is the portion of the specification that explains how information is exchanged during device discovery, accounting for when discovery is initiated by the COORD (the claimed “network-enabled hub”) and when initiated by the PER (the claimed “device”). Dell’s reliance on *Noah* is inapposite. There, the claim had two distinct functional requirements contained therein: “(1) providing access to the file; and (2) once access is provided, enabling the performance of delineated operations.” *Noah Sys., Inc. v. Intuit Inc.*, 675 F.3d 1302, 1314. The court then went on to state, “[a]ny algorithm must, therefore, address both aspects of this functional language.” *Id.* Here, there is only one function, it’s simply that the function may be accomplished by either one, or both, of the network-enabled hub and the device.

The claim is sufficiently definite to a POSITA and recites sufficient structure therein to avoid application of § 112, ¶ 6, and therefore requires no construction beyond its plain and ordinary meaning. However, if this Court concludes that § 112, ¶ 6 applies, Ozmo’s proposed structure should be adopted because it describes, in detail, how device discovery may be initiated by either the hub or the device.

5. “Wherein the network-enabled hub and the device further include logic, in one or both of the network-enabled hub and the device, for indicating characteristics and/or state of the network-enabled hub and/or device”

Dell’s Proposed Construction	Ozmo’s Proposed Construction
Indefinite	Not means-plus-function Plain and ordinary meaning Alternatively, if MPF: <u>Function</u>: indicating characteristics and/or state of the network-enabled hub and/or device

Dell's Proposed Construction	Ozmo's Proposed Construction
	<u>Structure</u> : processing unit 28 and/or 24 and algorithms at '814 patent, 13:38-14:3, and equivalents

This term tracks the previous one, only substituting “for indicating characteristics and/or state of the network-enabled hub and/or device” for “for initiating device discovery by sending broadcast discovery requests on a pre-defined channel.” Thus, this term is not indefinite for the same reasons provided for that one above.

This term is also not subject to § 112, ¶ 6 because a POSITA would readily understand that “logic ... for indicating characteristics and/or state” is structure, especially in view of the specification. Such a person would understand that, like the previous term, “indicating characteristics and/or state” involves device discovery. These procedures involve exchanging data frames, which are *structures*. Thus, reading the common specification such a person would find the following passage at col. 13, lns. 46-58 of Ex. 5 (emphasis added):

In one embodiment the COORD acts as the initiator and sends an IEEE802.11 probe request *frame*.... More specifically, the SSID field in the frame body can be used as a frame type identifier and to send *additional information* to a follower.... The remainder of the bits can be reserved or used to communicate *additional information about the COORD* or the WLAN it is associated with the the PER (follower).

A POSITA reading this term in view of the above citation would recognize that the “additional information” may (and often does) include information such as *characteristics* or *state*. Thus, the “logic” in this claim comprises part(s) of a data frame, which is *structure*. *See, e.g., Massachusetts Inst. of Tech. v. Abacus Software*, 462 F.3d 1344, 1355-56 (Fed. Cir. 2006) (concluding “that the term ‘circuit,’ combined with a description of the function of the circuit, connoted sufficient structure to one of ordinary skill in the art to avoid 112 ¶ 6 treatment. ... The claim language ...

does not merely describe a circuit; it adds further structure by describing the operation of the circuit.”). Accordingly, this term should not be subject to § 112, ¶ 6.

If the Court is inclined to construe this term as invoking § 112, ¶ 6, then Ozmo’s alternate proposed structure should be adopted, as that is the portion of the specification that explains what information may be exchanged, accounting for information sent and/or received by and about the COORD (the claimed “network-enabled hub”) and information sent and/or received by and about the PER (the claimed “device”). Ozmo’s recited structure is clearly linked to the language of the claim limitation. *See, e.g.*, Ex. 5 (’814 patent) at col. 13, lns. 40-45 (“For example, if generated by the [hub], the broadcast discovery frame may optionally contain information on the WLAN *connectivity status* (infrastructure/ad-hoc/unconnected, operating channel, power-save, etc.). If generated by the [device], the broadcast discovery frame may optionally contain information about *the type* of [device].” (emphasis added)).

In contrast, Dell’s reliance on *Noah* is, again, inapposite. As with the immediately preceding term, there is only one function, it’s simply that the function may be accomplished by either one, or both, of the network-enabled hub and the device. Dell alleges that because “this claim requires that ‘the network-enabled hub and the device further include logic’ that Ozmo “cannot rely on a subset of the ‘logic’ it relies on for claim 9 as providing purported structure.” ECF 32 at 41. Conveniently, however, Dell provides no case law to support its proposition – likely because it cannot. The Federal Circuit has considered whether two means limitations can share the same algorithm where the recited functions are different, finding that “it is possible for one structure to perform more than one function.” *Via Vadis, LLC v. Blizzard Ent’t., Inc.*, 815 Fed.App’x. 539, 546 (Fed. Cir. 2020). Rather, with respect to these two claims, it makes sense that there is overlap in the corresponding “structure” given that the algorithm cited for the preceding

term relates to initiating device discovery, and that information exchanged during device discovery generally includes information about the devices.

IV. CONCLUSION

Ozmo's proposed constructions are true to the intrinsic evidence and in accordance with the law. Dell's proposed constructions relies on inaccurate – and sometimes untrue – arguments and should be rejected. For the reasons set forth above, Ozmo's proposed constructions should be adopted.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing document has been delivered to all counsel of record through the Court's CM/ECF service on this 21st day of April, 2023.

/s/ Karl Rupp