UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

OLLNOVA TECHNOLOGIES LTD., Plaintiff, v. CARRIER GLOBAL CORPORATION, Defendant.	Case No. 9:22-cv-80388-DMM **JURY TRIAL DEMANDED**

PLAINTIFF OLLNOVA TECHNOLOGIES LTD.'S
REPLY CLAIM CONSTRUCTION BRIEF

ecobee Exhibit 1016
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I. INTRODUCTION

Plaintiff Ollnova Technologies Ltd. ("Ollnova") submits this reply claim construction brief in response to Defendant Carrier Global Corp.'s ("Carrier") responsive claim construction and indefiniteness brief (Dkt. No. 67, "Resp.").

II. DISPUTED TERMS

A. Terms for construction

i. "to selectively operate the transceiver", '887 Patent, Claim 1

It is Carrier's burden to demonstrate why the Court should depart from the plain and ordinary meaning of the term "to selectively operate the transceiver" and define the term to include extraneous limitations not otherwise found in the claims. *See Aventis Pharm. Inc. v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013) ("There is a heavy presumption that claim terms are to be given their ordinary and customary meaning.").[1] As the Federal Circuit has instructed, courts "depart from the plain and ordinary meaning of claim terms based on the specification in only two instances: lexicography and disavowal." *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). "The standards for finding lexicography and disavowal are exacting." *Id.* "To act as its own lexicographer, a patentee must clearly set forth a definition of the disputed claim term other than its plain and ordinary meaning" and must "clearly express an intent to redefine the term." *Id.* "Disavowal requires that the specification [or prosecution history] make[] clear that the invention does not include a particular feature, or is clearly limited to a particular form of the invention." *Id.* at 1372 (citations omitted). Here, Carrier cannot identify any lexicography or disavowal that would support limiting the plain and ordinary meaning of the term to mean "[t]o communicate information during the transmission period in response to a triggering event."

[1] All emphasis added unless stated otherwise.

Carrier purports that its definition is somehow the "plain and ordinary meaning" of the term. Resp. at 4. But Carrier is seeking a construction to limit and change the meaning of the term.[2] For example, Carrier's proposed construction eliminates the use of the word "selectively" and it is improper to render words of a claim superfluous. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) ("It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous."). Carrier's construction also removes the word "transceiver," which improperly suggests that the "controller" is communicating information instead of the transceiver, which is an improper re-write of the claim and confusing to the jury. *See* Dkt. No. 59-6 ("Madisetti Decl.") ¶ 49.

Carrier's proposed construction is also problematic because it seeks to limit the meaning of the term to an exemplary embodiment of the '887 Patent, while simultaneously excluding other preferred embodiments. Madisetti Decl. ¶¶ 46-48. Specifically, Carrier's proposed construction seeks to require that information be communicated in response "to a triggering event." Resp. 4-5. Carrier's definition is cherry-picked from a single sentence in the '887 Patent specification: "the transceiver *may* communicate the information during the transmission period in response to a triggering event...." '887 Patent at 10:63-65. But the '887 Patent expressly contemplates that the transceiver may communicate information *in the absence of a triggering event*—such as "in response to a number of successive transmission periods in which information was <u>not</u> transmitted." '887 Patent at 11:11-13.

Carrier also fails to cite anything in the intrinsic record (*i.e.*, the '887 Patent or prosecution history) that equates the '887 Patent's other examples about when the transceiver may selectively

[2] Carrier casts all of its proposed constructions as somehow advocating for the "plain and ordinary meaning" of the terms in an attempt to justify its request that the Court import limitations from the specification into the claims in contravention of Federal Circuit precedent.

communicate information (such as by means of an "external control signal" or "counter") with the recited "triggering event." '887 Patent at 11:41-50. Indeed, the '887 Patent discusses that a counter "may count a number of successive polling periods 336 for which a flag *or triggering event has not been set*…." *Id.* at 11:47-53. To that end, Carrier is wrong that the '887 Patent contemplates that a "counter" is a "triggering event"—to the contrary, the '887 Patent contemplates the use of a counter when a "triggering event **has not been set**." *Id.* Ultimately, because Carrier seeks to improperly limit Claim 1 of the '887 Patent to require a "triggering event" (*i.e.*, one of the exemplary embodiments), while also excluding other embodiments (such as the absence of an event, a "counter", or "external control signal"), the Court should reject Carrier's proposed construction.[3] *See Kara Tech. Inc. v. Stamps.com Inc.*, 582 F.3d 1341, 1348 (Fed. Cir. 2009) ("The patentee is entitled to the full scope of his claims, and [the Court] will not limit him to his preferred embodiment or import a limitation from the specification into the claims.").

ii. "wherein transmission of the most recent reading of the indicator stored in the memory during the period of the transmission interval is suspended in response to detecting a change in the sensed condition within the predetermined range.", '887 Patent Claim 1

Carrier cannot overcome its burden to show why the plain and ordinary meaning of the disputed phrase requires construction. Specifically, Carrier does not identify any lexicography or disavowal that supports requiring that the most recent reading of the indicator be "identified as pending but not transmitted" in response to detecting a change in the sensed condition. *See Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1369 (Fed. Cir. 2012) ("Absent disclaimer or

[3] Carrier is also wrong that Ollnova's response to a hypothetical posed in connection with a challenge to the '887 Patent based on patent eligibility is somehow contradictory and/or supports Carrier's unduly narrow construction. Resp. at 5. Carrier cites to a brief where Ollnova did not opine on issues of claim construction. And there are no statements by Ollnova that some "triggering event" is needed for selective communication by the transceiver.

lexicography, the plain meaning of the claim controls."). Again, Carrier attempts to limit the plain and ordinary meaning of a term based on a single sentence in the '887 Patent specification: "[s]imilarly, the processor 214 may control the transceiver 216 to suspend the transmission of information, notwithstanding a flag being set identifying a transmission may be pending." '887 Patent at 11:8-11. But the '887 Patent contemplates a variety of ways that information may be suspended from transmission without requiring that the information first be "pending transmission"—for example, through the use of a "counter" or an "externally received control signal." Madisetti Decl. ¶¶ 52, 53. These other examples described in the '887 Patent regarding the suspension of transmission of information are not tied to the concept that the information first be "identified as pending transmission," as required by Carrier's construction. Accordingly, Carrier's proposed construction should be rejected.

iii. "multi-sensor package", '282 Patent, Claims 1, 7, 13, 20

Carrier is wrong that Ollnova's construction somehow "reads out any requirement that the package be 'multi' sensor." Resp. at 12. To the contrary, Ollnova's already agreed-upon construction requires "a single packaged sensor device, not a group of individual sensors"—which necessarily means that there is more than one sensor in the "package." Indeed, it is unclear what a sensor "package" could be if it did not contain multiple sensors (*i.e.*, a "multi-sensor"). Ex. 6 (Madisetti Depo.) at 308:15 – 315:14.

Carrier's insistence that its definition "is based word-for-word on the '282 Patent applicant's own … description of why the multi-sensor package was distinguishable from the prior art" is unpersuasive. Resp. at 12. Notably, the concept that the multi-sensor package be "configured to detect values and variables related to multiple sensed properties" is *already written into the claims*:

> 1. An automation component configured for wireless communication within a building automation system, the automation component comprising:
>
> a **multi-sensor package** configured <u>to detect a plurality of variables and generate sensor data for each detected variable</u>….

To that end, Carrier's proposed construction improperly renders the '282 Patent claim limitations superfluous and redundant. *See Intel Corp.*, 21 F.4th at 810. In order to promote consistency across cases and because Carrier's proposed construction renders certain claim limitations superfluous, the Court should reject Carrier's proposed construction.

iv. "sensor package", '282 Patent, Claims 1, 2, 7, 8, 13, 14

Carrier's proposed construction for the term "sensor package" is based on the faulty assumption that "sensor package" refers to something different than the claimed "multi-sensor package." But the '282 Patent claims do not use the term "sensor package" differently from "multi-sensor package." Madisetti Decl. ¶ 89. Rather, after the '282 Patent claims recite "***a*** multi-sensor package," the claims then refer to the "multi-sensor package" as "<u>the</u> sensor package"—meaning the earlier recited "multi-sensor package." Dkt. No. 59 ("Br.") at 11-12. As such, the '282 Patent claims do not treat the "multi-sensor package" differently from the "sensor package"—the terms mean the same thing.[4] Madisetti Decl. ¶ 89.

Carrier's reliance on the prosecution history only underscores that the term "sensor package" refers to the "multi-sensor package." Resp. at 14. Carrier notes that the Applicant argued the singular term "<u>sensor</u>" was different from the claimed "multi-sensor" term. *See* Resp. at 14. Here, the claims do not recite a singular "sensor"—they first recite "a multi-sensor package" and

[4] Carrier's reliance on *Bd. Of Regents* is misplaced. Resp. 14. Unlike here, that case concerned two distinct claim elements ("each pre-programmed code" and "the matched one or more pre-programmed codes") and how those claim elements interacted with one another. *See Bd. of Regents of the Univ. of Texas Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008).

then refer to the "multi-sensor package" as "the sensor package." To that end, Carrier seeks to improperly use the applicant's statements about a singular "sensor" to implicate a "sensor package." But a "sensor *package*" clearly refers to more than one sensor.

Additionally, Carrier's reliance on the prosecution history is inherently contradictory. Carrier argues that the Applicant's statement regarding a singular "sensor" means that the claimed "multi-sensor package" must have a different meaning from the claims' later use of the phrase "sensor package." Resp. at 14. But adopting Carrier's construction would walk the claim directly into the very prior art that the Applicant sought to distinguish. For example, the Applicant argued that the '282 Patent contemplates "a multi-sensor package is configured to detect values and variables related to multiple sensed properties." Ex. 7 (Dec. 12, 2011 Applicant Statements) at 9 (emphasis in original). The Applicant argued that the claimed "multi-sensor" package was *different* from the prior art because "[f]rom the disclosure of *Petite*, it is clear that the sensor 310 is configured to provide a variety of output formats related to a single sensed property …." *Id.* (emphasis in original). As such, it would not make any sense to import a definition to the term "sensor package" that imports the very concepts from the prior art that the Applicant expressly sought to distinguish. Carrier's proposed construction should be rejected.

v. "sensor control information", '282 Patent, Claims 1, 5

Carrier cannot identify any lexicography or disavowal that justifies limiting the plain and ordinary meaning of the term "sensor control information" to Carrier's narrow construction. *See Thorner*, 669 F.3d at 1365-67. Notably, Carrier does not dispute that it seeks to limit the term to the exemplary embodiment found in Figure 6 of the '282 Patent by adding in the requirement that the "sensor control information" be tied to a "scan cycle." Resp. at 15. But in doing so, Carrier commits the "cardinal sin" of importing limitations from the exemplary Figures into the claims.

See Phillips v. AWH Corp., 415 F.3d 1303, 1320 (Fed. Cir. 2005) (describing "reading a limitation from the written description into the claims" as "one of the cardinal sins of patent law") (internal quotation marks omitted). While Carrier maintains that a POSITA would only understand the term "in relation to the scan cycle," the Federal Circuit has "has expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment." *Hill-Rom Servs.*, 755 F.3d at 1371.

Carrier is also wrong that the term requires construction because "the term by itself does not indicate what type of information is sensor control information or what is controlled by that information." Resp. at 15. For example, the '282 Patent provides the following exemplary discussion: "[t]he sensor usage or control information relates to or identifies the sensor values and routines that are controlling and driving the receiving device." '282 Patent at 9:13-16. And, contrary to Carrier's proposed construction, nothing in the claims or specification requires the "sensor control information" to be tied to a "scan cycle." As such, the Court should reject Carrier's proposed construction.

vi. "change-of-value" terms, '371 Patent, Claims 1, 2, 4, 5, 6, 13, 14, 15

For the terms "change-of-value request," "change-of-value messages," and "change-of-value acknowledgement," Carrier does not dispute that it seeks to import limitations from a single sentence in the specification that is in the context of a single exemplary embodiment. Indeed, Carrier does not even attempt to argue that the specification provides a definition or disavowal for these terms. As such, the terms must be given their ordinary meaning because there is no lexicography or disavowal. *Thorner*, 669 F.3d at 1365-67. Moreover, the ordinary meaning of the terms and the relationship between the different terms is readily apparent in the context of the claim language itself. Madisetti Decl. ¶¶ 113-122. No further construction is necessary.

Carrier further fails to address the three points raised in Ollnova's Opening Brief showing why Carrier's constructions contradict the specification. Br. at 16. For example, Carrier does not (1) explain why it seeks to exclude the alternative of "direct[ing]" the described operation, or (2) explain why its constructions require actual values as opposed to an indication of whether the values have changed.

Because Carrier has no affirmative evidence that would support its unduly narrow constructions, Carrier instead incorrectly argues that Dr. Madisetti proposed constructions for the four terms. Resp. at 21. But Dr. Madisetti merely provided non-limiting examples of how the terms are used in the context of the claims and specification. Ex. 6 (Madisetti Depo.) at 155:18-25. Carrier's criticisms only further confirm that Carrier improperly seeks to import limitations from a single sentence in the specification. Resp. at 21. Carrier merely identifies limitations from a single sentence in the specification without any evidence or suggestion that the patentee limited the ordinary meaning of the terms. *See Apple Inc. v. Wi-LAN Inc.*, 25 F. 4th 960, 967 (Fed. Cir. 2022) ("Embodiments in the specification—even if there is only one embodiment—cannot limit the scope of the claims absent the patentee's words or expressions of manifest exclusion or restriction."). Carrier makes no effort to explain why the ordinary meaning of the terms requires "local detected values" or "beyond a pre-defined reporting limit"—these are nothing more than examples described in the context of one exemplary embodiment.[5]

[5] Carrier's argument that claim 4 allegedly contradicts Dr. Madisetti's statement that a "'change-of-value update' may be generated in response to the change-of-value request message" is illogical. Dkt. 67-6 at ¶ 83. Because claim 1 recites "generate a change-of-value update in response to the change-of-value request message," there cannot be any dispute that the "change-of-value update" recited in claim 1 may be generated in response to the change-of-value request message.

Carrier's response regarding its exclusion of the "Push" embodiment further misses the mark. Resp. at 21-22. Ollnova's point was that the specification describes multiple embodiments, while Carrier seeks to import limitations from a single sentence in the context of only one of those embodiments. There is no suggestion in the specification that Carrier's limitations are required by the "Push" embodiment. Carrier provides no basis to cherry-pick limitations described with respect to one exemplary embodiment (*e.g.*, the Polled embodiment) when such limitations are plainly not required by other described embodiments (*e.g.*, the Push embodiment). *See Plantronics, Inc. v. Aliph, Inc.*, 724 F.3d 1343, 1349-50 (Fed. Cir. 2013) (proposed construction "would improperly limit the broadly drafted claims to one preferred embodiment (thereby excluding others) or would be the result of improperly importing a limitation from the specification into the claims.").

Finally, for the term "change-of-value update," Carrier does not even bother to cite any evidence or explain why the Court should import its proposed "queued" limitation from the specification. Because there are no definitions, disclaimers, or disavowals that would support Carrier's proposed constructions, they are improper and should be rejected.

B. Indefiniteness Terms[6]

i. "a most recent reading of the indicator…", '887 Patent, Claim 1

Carrier cannot meet its burden to prove indefiniteness by clear and convincing evidence. *See Sonix Tech. Co. v. Publ'ns Int'l, Ltd.*, 844 F.3d 1370, 1377 (Fed. Cir. 2017) ("Indefiniteness must be proven by clear and convincing evidence."). The phrase is readily understood in the context of the claim, as informed by the '887 Patent specification. Ex. 8, Madisetti Suppl. Decl.

[6] Carrier failed to identify these three terms in its preliminary claim constructions prior to Dr. Madisetti's expert declaration or Ollnova's opening claim construction brief.

¶¶ 7-12. For instance, the specification explains that "[t]he current reading of the indicator also may be compared to prior readings of the indicator to determine a change." '887 Patent at 3:11-12; *see also id.* at 9:51 – 10:3 ("[T]he processor 214 may poll or sample the signal from the sensor 209 to read the most current indicator of the sensed condition."), 10:12-56. To that end, a POSITA would understand that the '887 Patent uses the phrase under its plain and ordinary meaning to mean "most recent reading" as opposed to a "prior reading[]." Madisetti Suppl. Decl. ¶ 10.

Carrier's complaint that "there is no reasonable certainty to one of skill in the art if the claim requires transmitting one reading, a plurality of readings, or either of the forgoing" is meritless. It is axiomatic that "a" means "one or more" in patent claiming—meaning "***a*** most recent reading" can be one or more readings. *See Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1342 (Fed. Cir. 2008) ("That 'a' or 'an' can mean 'one or more' is best described as a rule, rather than merely as a presumption or even a convention."); Madisetti Suppl. Decl. ¶ 11. Carrier's insistence that the '887 Patent does not teach just how "recent" the "most recent" reading must be is also misplaced—"a patentee need not define his invention with mathematical precision in order to comply with the definiteness requirement." *Sonix Tech.*, 844 F.3d at 1377. Carrier's argument should be rejected.

ii. "processor in communication with the wireless communications component and the sensor package", '282 Patent, Claims 1, 7, 13

Carrier cannot meet its burden to prove indefiniteness by clear and convincing evidence. *See Sonix Tech.*, 844 F.3d at 1377. Carrier's argument that "the sensor package" is somehow indefinite for lacking an antecedent basis is unpersuasive. Resp. at 15. A POSITA would understand that "<u>the</u> sensor package" simply refers to the "multi-sensor package" recited earlier in the '282 Patent claims. Madisetti Decl. ¶ 89; Madisetti Suppl. Decl. ¶¶ 14-16; *see also, e.g.*, *Proveris Sci. Corp. v. Innovasystems, Inc.*, 739 F.3d 1367, 1373 (Fed. Cir. 2014) ("The phrase 'the

image data' clearly derives antecedent basis from the 'image data' that is defined in greater detail in the preamble…."); *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370-71 (Fed. Cir. 2006) (Whether a claim is indefinite for "lack of explicit antecedent basis … must be decided in context" and "an antecedent basis can be present by implication."). Because "the sensor package" clearly refers to the "multi-sensor package," Carrier's indefiniteness argument fails.

iii. "receive sensor control information related to sensor data in control at a second automation component", '282 Patent, Claims 1, 7, 13

Carrier cannot meet its burden that the disputed phrase is indefinite by clear and convincing evidence. *See Sonix Tech.*, 844 F.3d at 1377. Carrier complains that a POSITA does not understand "sensor control information," "sensor data in control," and how those terms are "related." Resp. at 16. But these terms are readily understood in the context of the claims from which they appear, as informed by the '282 Patent specification. Madisetti Suppl. Decl. ¶¶ 18-21.

Claim 1 of the '282 Patent recites that the "automation component … *receive* sensor control information…." Carrier advocates for a construction of "sensor control information," which evidences that a POSITA understands the meaning of the term with reasonable certainty. And, in any event, the '282 Patent teaches that "sensor control information" "relates to or identifies the sensor values and routines that are controlling and driving the receiving device." '282 Patent at 9:13-16. As such, the claims merely require that the claimed "automation component" <u>receive</u> "sensor control information."

Additionally, the "received" "sensor control information" relates to "sensor data in control at a second automation component …." A POSITA would understand the meaning of this aspect of the claim with reasonable certainty. Madisetti Suppl. Decl. ¶ 20. Notably, the '282 Patent teaches that other components (such as a field panel) may interact with the "automation component" as a "second automation component." *See, e.g.*, '282 Patent at 9:9-13; 9:23-31; 9:59

– 10:5. The ’282 Patent also teaches that “sensor data” may be in “control” at another (*i.e.*, “second”) automation component. *See id.* at 9:23-26 (“the automation component 200 may communicate the flagged sensor data corresponding to the primary sensor and/or sensor value in control of, and provided by, the field panel 120.”). Because a POSITA would understand the meaning of the disputed phrase with reasonable certainty, Carrier’s indefiniteness challenge fails.

C. Means-plus-function terms

i. “wireless automation device” / “automation component”, ’887 Patent Claim 1; ’282 Patent, Claims 1-11, 13, 17, 19, 20; ’371 Patent, Claims 1-6, 13-16

As a threshold matter, Carrier fails to establish that the preambles are limiting. Carrier’s citations of Ollnova’s statements in the co-pending litigation are inapposite—that prior briefing did not address whether the preambles are limiting. Indeed, even the reference to “building automation system” in the preamble of the ’282 patent is not sufficient to establish that the preamble is limiting. *See, e.g.*, *RFCyber Corp. v. Google LLC, et al.*, No. 2:20-cv-274-JRG, 2021 WL 5357465, at *22 (E.D. Tex. Nov. 17, 2021) (holding that a preamble was not limiting despite the fact that it recited a term that provided antecedent basis for the term recited in the body of the claim) (citing *TomTom Inc. v. Adolph*, 790 F.3d 1315, 1323 (Fed. Cir. 2015) (“that [a] phrase in the preamble ... provides a necessary structure for [the] claim ... does not necessarily convert the entire preamble into a limitation, particularly one that only states the intended use of the invention.”)).

Moreover, because the terms at issue here are part of the preamble, they do not invoke the means-plus-function grammatical structure of “means for [recited function].” Carrier fails to cite any authority holding that such a term in the preamble can invoke § 112, ¶ 6. Ollnova is not aware of any precedent that would support a means-plus-function holding for terms in a preamble like

those at issue here. Relatedly, Carrier's identification of the alleged function is further erroneous because there is no recited function in the preamble—Carrier makes up the alleged function by citing the specification. *See In re Teles AG Informationstechnologien*, 747 F.3d 1357, 1367-68 (Fed. Cir. 2014) ("[T]he [means-plus-function] statute does not permit limitation of a means-plus-function claim by adopting a function different from that explicitly recited in the claim.").

In light of the patent specifications, Carrier's own patents, and Dr. Madisetti's declaration, Ollnova established that the terms "wireless automation device" and "automation component" connote at least some structure to a person of ordinary skill in the art. Br. at 20-21. As such, Carrier fails to provide any evidence to satisfy its burden to overcome the presumption that § 112, ¶ 6 does not apply. *See Dyfan, LLC v. Target Corp.*, 28 F.4th 1360, 1366 (Fed. Cir. 2022) ("In cases where it is clear that a claim term itself connotes some structure to a person of ordinary skill in the art, the presumption that § 112, ¶ 6 does not apply is determinative in the absence of more compelling evidence of the understanding of one of ordinary skill in the art."). Aside from conclusory statements that a POSITA would allegedly not understand the terms to recite sufficiently definite structure, Carrier fails to even address the overwhelming evidence cited by Ollnova. And even assuming Carrier could show that the term "amounts to nothing more than a general-purpose computer" (Resp. at 11), Carrier's argument would still fail because the Federal Circuit holds that a term that serves as a stand-in for a "general purpose computer" should not be construed as means-plus-function. *See Samsung Elecs. Am., Inc. v. Prisua Eng'g Corp.*, 948 F.3d 1342, 1354 (Fed. Cir. 2020) (holding that the term "digital processing unit" was not a means-plus-function limitation because the term "clearly serves as a stand-in for a 'general purpose computer' or a 'central processing unit,' each of which would be understood as a reference to structure in this case"). Thus, the Court should reject Carrier's erroneous means-plus-function arguments.

ii. "transceiver", '887 Patent, Claim 1

Contrary to Carrier's conclusory arguments, the term "transceiver" is "the name of a device well known in the field of communications" and is not means-plus-function. *See, e.g.*, *TQ Delta, LLC v. Comcast Cable Commc'ns, LLC*, No. 1:15-CV-00611-RGA, 2016 WL 7013481, at *10 (D. Del. Nov. 30, 2016) (holding "[t]ransceiver is not a generic term like module or device" but "[r]ather, transceiver is the name of a device well known in the field of communications."); *see also Huawei Techs. Co. Ltd. v. T-Mobile US, Inc.*, No. 2:16-cv-57, 2017 WL 2691227, at *25-27 (E.D. Tex. June 22, 2017) (finding that "transmitter configured to send" was not means-plus-function). And Carrier is wrong to suggest that the dictionary definitions are unhelpful. *See, e.g.*, *Pelican Int'l Inc. v. Hobie Cat Comp.*, No. 20-cv-2390-BAS-MSB, 2022 WL 298959, at *8 (S.D. Cal. Feb. 1, 2022) ("[T]he Federal Circuit has repeatedly condoned the use of dictionaries to determine if a disputed term has achieved recognition as a noun denoting structure, even [where] the noun is derived from the function performed.") (citations omitted).

Carrier misrepresents the Federal Circuit's holding in *HTC*. Resp. at 3 ("exemplary terms the Federal Circuit has found invoked means-plus-function are 'processor,' 'transceiver,'") (citing *HTC Corp. v. IPCom GmbH & Co., KG*, 667 F.3d 1270 (Fed. Cir. 2012)). To the contrary, the Federal Circuit <u>did not</u> find that either the term "processor" or "transceiver" invoked means-plus-function. Rather, *HTC* addressed the term "arrangement for reactivating," which the parties agreed was a means-plus-function limitation. *HTC*, 667 F. 3d at 1278. Because the parties agreed the term was means-plus-function, the court performed the second step of the means-plus-function analysis to identify the corresponding structure disclosed in the specification. *Id*. at 1278-80. As such, *HTC* is inapposite here because it did not consider whether the claim terms "processor" or "transceiver" are means-plus-function at step one of the analysis. Moreover, even Carrier's

misrepresentation of *HTC* supports Ollnova's position to the extent that the Federal Circuit found that the term "transceiver" amounts to a "general-purpose computer," which the Federal Circuit holds is not a means-plus-function term. *See Prisua*, 948 F.3d at 1354 (holding that the term "digital processing unit" was not a means-plus-function limitation because the term "clearly serves as a stand-in for a 'general purpose computer' or a 'central processing unit,' each of which would be understood as a reference to structure in this case").

Again, Carrier fails to even address the overwhelming evidence cited by Ollnova, and its means-plus-function argument should be rejected.

iii. "controller", '887 Patent, Claim 1

In light of the patent specification, dictionary definitions, Carrier's own patents, and Dr. Madisetti's declaration, Ollnova established that the term "controller" connotes at least some structure to a person of ordinary skill in the art. Dkt. 59 at 21-22. As such, Carrier fails to provide any evidence to satisfy its burden to overcome the presumption that § 112, ¶ 6 does not apply. *See Dyfan*, 28 F.4th at 1366. Aside from conclusory statements that a POSITA would allegedly not understand the term to recite sufficiently definite structure, Carrier fails to address the overwhelming evidence cited by Ollnova. Nor can Carrier distinguish the numerous cases holding that "controller" is not a means-plus-function term. Br. at 21-22.

iv. "wireless device", '371 Patent, Claims 2, 3, 14

Carrier's arguments are directly refuted by the Federal Circuit. In *Skky*, the Federal Circuit found that the term "wireless device" is "used in common parlance . . . to designate structure." *Skky, Inc. v. MindGeek, s.a.r.l.*, 859 F.3d 1014, 1020 (Fed. Cir. 2017). In fact, the court held that the term "wireless device" connoted sufficient structure to overcome the presumption that the term at issue, "wireless device <u>means</u>," was means-plus-function. *Id*. at 1019-21. Consequently, Carrier

cannot meet its burden to overcome the presumption that the term "wireless device"—which does not include the word "means"—is not means-plus-function. And even assuming Carrier could show that the term "connotes nothing more than a general-purpose computer" (Resp. at 25), Carrier's argument would still fail because the Federal Circuit holds that a term that serves as a stand-in for a "general purpose computer" should not be construed as means-plus-function. *See Prisua*, 948 F.3d at 1354.

D. "Wherein" clause terms

Carrier's attempt to challenge nine "wherein" clause terms from the '282 Patent and six "wherein" clause terms from the '371 Patent fails. Resp. 17-20, 22-24. None of the challenged claim limitations recite the word "means" and, accordingly, there is a presumption that the limitations are not means-plus-function. *See Dyfan*, 28 F.4th at 1367 ("we presume that a claim limitation is not drafted in means-plus-function format in the absence of the term 'means'"). Carrier cannot overcome the presumption here.

As the Federal Circuit has instructed, "the mere fact that the disputed limitations incorporate functional language does not automatically convert the words into means for performing such functions." *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1008 (Fed. Cir. 2018). Here, all of the challenged claim terms recite functionality of the "computer readable instructions" that are "executable by the **processor**." As such, Carrier is simply challenging functionality executed by the recited "processor," which refers to a well-known class of structures. Madisetti Decl. ¶¶ 135-37. And, as here, "when the structure-connoting term ... is coupled with a description of the [term's] operations, sufficient structural meaning generally will be conveyed to persons of ordinary skill in the art, and § 112 ¶ 6 presumptively will not apply." *Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1320 (Fed. Cir. 2004); *see also Intelligent Agency, LLC v. 7-Eleven,*

Inc., No. 4:20-CV-0185-ALM, 2022 WL 760203, at *21 (E.D. Tex. Mar. 11, 2022) (rejecting means-plus-function argument where "disputed Term Nos. 9-12 describe the specific processes carried out by the 'set of instructions' that are stored in the 'non-transitory computer-readable medium.' In other words, the claim language provides a description of how the computer-readable medium is specifically programmed to operate."); *Collaborative Agreements, LLC v. Adobe Sys. Inc.*, No. A-14-CV-356-LY, 2015 WL 2250391, at *15 (W.D. Tex. May 12, 2015) ("The court construes 'a non-transitory computer readable medium encoded with a computer program communicably coupled to the processors ...' to not invoke 35 U.S.C. § 112 ¶ 6.").

Carrier fails to present evidence from a person of ordinary skill in the art that the term "processor" does not connote a class of well-known structures in order to overcome the presumption that the disputed limitations are not subject to means-plus-function. *See VDPP LLC v. Vizio, Inc.*, No. 2021-2040, 2022 WL 885771, at *3 (Fed. Cir. Mar. 25, 2022); *see also Dyfan*, 28 F.4th at 1367 (same). Notwithstanding the fact that Carrier's expert declaration was untimely and should be stricken, Carrier's expert never disputes that a "processor" connotes a well-known class of structures in the art. *See* Dkt. No. 67-6 (Striegel Decl.) at ¶¶ 73-80, 94-101. Rather, Dr. Striegel simply concludes that "the specification does not provide any sufficiently definite structure for a processor" and that the processor "amounts to nothing more than a general-purpose computer." *Id.* at ¶¶ 78, 100. But that is not the pertinent analysis—"[w]hether the specifications disclose adequate corresponding structures for the claimed functions is a question we review at step two of the § 112(f) analysis." *VDPP*, 2022 WL 885771, at *3. Rather, "[t]he first step is to determine whether a claim limitation is drafted in means-plus-function format, which requires us to construe the limitation to determine whether it connotes sufficiently definite structure to a person of ordinary skill in the art." *Dyfan*, 28 F.4th at 1365.

Here, there is no dispute that the '282 and '371 Patents' recitation of a "processor" connotes a well-known class of structures. Madisetti Decl. ¶¶ 136-37. For example, the '282 and '371 Patents identify "processors" as well-known structures in the art:

> The automation component 200 in this exemplary embodiment may include a processor 202 such as an INTEL® PENTIUM, an AMD® ATHLON™, an Atmel® ATMega, or other 8, 12, 16, 24, 32 or 64 bit classes of processors in communication with a memory 204 or storage medium.

'282 Patent at 5:57-62, '371 Patent at 5:57-62; *see also Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1008 (Fed. Cir. 2018) (holding disputed terms were "specific references to conventional ... code, <u>existing in prior art at the time of the inventions</u>."). Relatedly, courts have repeatedly held that "processors" are a well-known class of structures that do not invoke means-plus-function. *See, e.g.*, Br. at 22-23; *see also XR Commc'ns, LLC v. D-Link Sys., Inc.*, No. CV-17-00596-DOC-JDE, 2022 WL 2291747, at *3 (C.D. Cal. Apr. 18, 2022) (holding "processor" terms were not means-plus-function); *Clear Imaging Research, LLC v. Samsung Elecs. Co.*, No. 2:19-cv-00326-JRG, 2020 WL 6384731 at *8 (E.D. Tex. Oct. 30, 2020) ("[T]he term 'processor' is accorded its customary meaning of a class of structures on which software can run."); *Fisher-Rosemount Sys., Inc. v. ABB Ltd.*, No. 4:18-CV-00178, 2019 WL 6830806, at *16 (S.D. Tex. Dec. 12, 2019) ("The term processor is 'not used as generic terms or black box recitations of structure or abstractions, but rather as [a] specific reference[ ]' to processors that are known in the art."). Further, even if Carrier is right that "the processor amounts to nothing more than a general-purpose computer," the Federal Circuit has held that a term that "serves as a stand-in for a 'general purpose computer' … would be understood as a reference to structure …." *Prisua*, 948 F.3d at 1342.[7]

[7] As explained above, Carrier's reliance on *HTC* is misplaced because there the parties agreed that the term "arrangement for reactivating" was a means-plus-function limitation—the issue was not whether a claim term reciting a "processor" was means-plus-function. 667 F.3d at 1278.

Additionally, even assuming that the "computer-readable instructions" are required to connote structure separate and apart from the "processor" through which they are implemented, courts have routinely found that "computer-readable instructions" themselves are not subject to means-plus-function treatment. *See, e.g.*, *Syncpoint Imaging, LLC v. Nintendo of Am. Inc.*, No. 2:15-CV-00247-JRG-RSP, 2016 WL 55118, at *23 (E.D. Tex. Jan. 5, 2016) ("[T]he Court determines that Defendants argument fails on its first point—§ 112, ¶ 6 does not apply. The 'instructions for...' language connotes sufficiently definite structure to one of ordinary skill in the art, therefore the statute does not apply."), *see also id.* at *24 (collecting cases). This is especially true here "because the claim 'recites the objectives and operations of the instructions.'" *WSOU Invs. LLC v. Oneplus Tech. (Shenzhen) Co.*, No. W-20-CV-00952-ADA, 2022 WL 3500120, at *14 (W.D. Tex. May 24, 2022) ("the undersigned agrees with Plaintiff that the term 'program of instructions' connotes sufficient structure"). Indeed, the Federal Circuit recently held that patent claims reciting "code" and "application"—which are analogous to the "computer readable instructions" here—were not means-plus-function. *See Dyfan*, 28 F.4th at 1369 ("we conclude that the 'code'/'application' limitations are not written in means-plus-function format because they would have connoted sufficiently definite structure to persons of ordinary skill in the art.").

Ultimately, because the challenged "wherein" clauses are directed to the claimed functionality of the "processor," which connotes sufficient structure, Carrier's means-plus-function challenges fail and there is no need to examine whether the '282 and '371 Patent "specifications adequately disclose structures for those functions." *VDPP*, 2022 WL 885771, at *3 ("because we conclude at step one that § 112(f) does not apply to the disputed limitations, we need not address whether, at step two, the specifications adequately disclose structures for those functions.").

E. Certificate of correction terms

Carrier fails to address Ollnova's request that the Court confirm the constructions from two certificates of correction issued by the USPTO to clarify two typographical errors in the '887 Patent. Because Carrier has failed to address these points, it has conceded the arguments and the Court should confirm the two certificates of correction. *See, e.g.*, *El Hassan v. Liberty Home Equity Sols., Inc.*, No. 17-22435-CIV, 2018 WL 3134418, at *5 (S.D. Fla. June 26, 2018) (explaining that a party "who, in her responsive brief, fails to address her obligation to object to a point raised by the [other party] implicitly concedes that point.") (citations omitted); *Anderson v. Branch Banking & Tr. Co.*, 119 F. Supp. 3d 1328, 1345 (S.D. Fla. 2015) ("To their detriment, Plaintiffs utterly fail to address their obligation to object, implicitly conceding the point.") (collecting cases).

Regardless, the typographical errors here are evident from the face of the '887 Patent and confirmed by the prosecution history. Br. at 24-25; Madisetti Decl. ¶¶ 78-82; *see also Pavo Sols. LLC v. Kingston Tech. Co.*, 35 F. 4th 1367, 1373 (Fed. Cir. 2022). It is appropriate for the Court to confirm the constructions as part of claim construction because the Federal Circuit has held that a "certificate of correction is only effective for causes of action arising after it was issued," while the Court can correct the errors retroactively. *H-W Tech., L.C. v. Overstock.com, Inc.*, 758 F.3d 1329, 1334 (Fed. Cir. 2014); *see Grp. One, Ltd. v. Hallmark Cards, Inc.*, 407 F.3d 1297, 1303 (Fed. Cir. 2005) ("we have held that in some circumstances the district court can correct errors retroactively").

III. CONCLUSION

For the forgoing reasons, Ollnova respectfully requests that the Court adopt its proposed construction for each of the disputed claim terms.

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Respectfully submitted,

By: */s/ Joshua D. Martin*

Joshua D. Martin
Johnson & Martin, P.A.
500 W. Cypress Creek Road
Suite 430
Fort Lauderdale, FL 33309
(954) 790-6699
Fax: (954) 206-0017
Email: josh.martin@johnsonmartinlaw.com

Brett E. Cooper (NY SBN 4011011)
bcooper@bc-lawgroup.com
Seth Hasenour (TX SBN 24059910)
shasenour@bc-lawgroup.com
Drew B. Hollander (NY SBN 5378096)
dhollander@bc-lawgroup.com

BC LAW GROUP, P.C.
200 Madison Avenue, 24th Floor
New York, NY 10016
Tel.: (212) 951-0100
Fax: (646) 293-2201

Attorneys for Plaintiff Ollnova Technologies Limited

CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on November 30, 2022 with a copy of this document via the Court's ECF system.

/s/ Joshua D. Martin
Joshua D. Martin