

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

STELLAR, LLC,

Plaintiff,

v.

MOTOROLA SOLUTIONS, INC. and
WATCHGUARD VIDEO, INC.,

Defendants.

Civil Action No. 4:23-cv-750

JURY TRIAL DEMANDED

PLAINTIFF'S OPENING CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Pursuant to the Court’s Scheduling Order (Dkt. 21), Plaintiff Stellar, LLC (“Stellar” or “Plaintiff”) respectfully submits this opening claim construction brief. At issue is whether certain claim terms proposed by Defendants Motorola Solutions, Inc. (“MSI”) and Watchguard Video, Inc., (“Watchguard”) (collectively “Defendants”) for U.S. Patent Nos. 8,310,540 (“the ’540 patent”), 8,928,752 (“the ’752 patent”), 10,523,901 (“the ’901 patent”), and 10,965,910 (“the ’910 patent”) (collectively the “Asserted Patents”)¹ invoke the application of 35 U.S.C. § 112, ¶ 6 as “means-plus-function” claims and whether the preamble to claim 1 of the ’540 patent is limiting such that it renders the asserted claim indefinite.

Stellar disagrees that any of the disputed terms in this case invoke the application of § 112, ¶ 6 because they are not written in means-plus-function format, and they recite sufficient structure to a person of ordinary skill in the art. However, if Court finds that § 112, ¶ 6 should apply to any claim, Stellar sets forth herein the function and structure applicable to those claims.

II. LEGAL STANDARDS

The construction of patent claims is a matter of law. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995); *Enserion, LLC v. Orthofix, Inc.*, Civil Action No. 4:20-cv-108, 2021 U.S. Dist. LEXIS 40293, at *4 (E.D. Tex. Mar. 4, 2021). Claim construction is intended to resolve the meanings and technical scope of terms of asserted patent claims. *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997); *Enserion*, at *4. When the scope of a claim term is in dispute, “it is the court’s duty to resolve it.” *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008); *Enserion*, at *4.

¹ U.S. Patent Nos. 7,593,034, 8,692,882, 9,485,471, and 9,912,914 are also asserted but the parties have not identified or have resolved any claim construction disputes related to these patents.

“It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)); see also, *Enserion*, at *4. The Court determines a patented invention’s intended scope by examining the patent’s intrinsic evidence. *Id.* at 1313-14; *Bell Atl. Network Servs., Inc. v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001); *Enserion*, at *4-5. A patent’s claims, the rest of the specification, and the prosecution history constitute the intrinsic evidence. *Phillips*, 415 F.3d at 1312-13; *Bell Atl. Network Servs.*, 262 F.3d at 1267; *Enserion*, at *5. Claim terms are afforded their ordinary and customary meaning as understood by one of ordinary skill in the art at the time of the invention. *Phillips*, 415 F.3d at 1312-13; *Alloc, Inc. v. ITC*, 342 F.3d 1361, 1368 (Fed. Cir. 2003); *Enserion*, at *5.

Title 35 U.S.C. § 112(f) (formerly § 112, ¶ 6) provides: “An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.” “In exchange for using this form of claiming, the patent specification must disclose with sufficient particularity the corresponding structure for performing the claimed function and clearly link that structure to the function.” *Triton Tech of Tex., LLC v. Nintendo of Am., Inc.*, 753 F.3d 1375, 1378 (Fed. Cir. 2014).

Regarding an assertion that a claim must be construed pursuant to 35 U.S.C. § 112, ¶ 6² as a “means-plus-function” claim, the Federal Circuit has long held that the absence of the word “means” in a claim creates a rebuttable presumption against the application of § 112, ¶ 6.

² Upon the implementation of the Leahy-Smith America Invents Act (AIA) on September 16, 2011, the original 35 U.S.C. §112, paragraph 6, became identified as 35 U.S.C. §112(f). The relevant paragraph of §112 was unchanged by the AIA. The asserted claims predate the AIA.

Zeroclick, LLC v. Apple Inc., 891 F.3d 1003, 1007 (Fed. Cir. 2018) (“[t]o determine whether § 112, para. 6 applies to a claim limitation, our precedent has long recognized the importance of the presence or absence of the word ‘means.’ The failure to use the word “means” creates a rebuttable presumption that § 112, ¶ 6 does not apply.”) (internal quotations and citations omitted). Further, the Federal Circuit has said that “[t]he standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015) (internal quotations and citations omitted).

Generally, the preamble does not limit the claims. *Am. Med. Sys. v. Biolitec, Inc.*, 618 F.3d 1354, 1358 (Fed. Cir. 2010). A preamble is limiting if it recites essential structure or steps, or if it is necessary to give life, meaning, and vitality to the claim. *Catalina Mktg. Int’l v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). Where the preamble forms the antecedent basis for terms in the body of the claims, the preamble may be limiting. *Global Equity Mgmt. (SA) Pty. Ltd. v. Expedia, Inc.*, No. 2:16-cv-00095-RWS-RSP, 2016 U.S. Dist. LEXIS 177218, at *54-55 (E.D. Tex. Dec. 22, 2016) (citing *Pacing Techs., LLC v. Garmin Int’l, Inc.*, 778 F.3d 1021, 1024 (Fed. Cir. 2015) (“when limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention”)). Where the deletion of the preamble phrase in question does not affect the structure or steps of the claimed invention, the phrase is not limiting. *Am. Med. Sys.*, 618 F.3d at 1358-59.

III. ARGUMENT

A. Disputed Claim Terms

1. “a computer processor configured to:” terms – ’901 patent, claim 1; ’910 patent, claim 1

Claim Term	Stellar’s Construction	Defendants’ Construction
“a computer processor configured to: record the sensor data in the first memory” ’901 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: recording the sensor data in the first memory Structure: - FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:18-3:19, 4:67-5:3, 6:5-21; - A component of a recording device including software or hardware that accomplishes the functions described	Governed by 112, ¶ 6. Function: record the sensor data in the first memory Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 4:67-5:2, 5:38-50, Fig. 3, 7:48-59, Fig. 4A, 7:60-65. <u>Other Intrinsic Evidence:</u> ’540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] in response to a first trigger signal, designate for saving a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the portion of the sensor data occupies a portion of the first memory that is less than the entirety of the first memory and corresponds to a	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: designating for saving in response to a first trigger signal a first portion of sensor data captured prior to occurrence of the first trigger signal, wherein the saved sensor data includes data captured prior to the first trigger signal and occupies less than the entirety of the first memory Structure:	Governed by 112, ¶ 6. Function: in response to a first trigger signal, designate for saving a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the portion of the sensor data occupies a portion of the first memory that is less than the entirety of the first memory and corresponds to a length of time prior to the first trigger signal Structure: hardware and/or software programmed to perform the circular buffer algorithm

length of time prior to the first trigger signal” ’901 patent, claim 1	- FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:18-3:19, 4:67-5:3, 6:5-21; - A component of a recording device including software or hardware that accomplishes the functions described	disclosed at 2:33-39, 2:46-64, 4:67-5:2, 5:38-50, Fig. 4B, 8:9-37, Fig. 4C, 8:52-67, 9:62-10:5. <u>Other Intrinsic Evidence:</u> ’540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] contiguously continuing to record the sensor data in the first memory while the first portion of the sensor data is designated for saving” ’901 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: contiguously continuing to record the sensor data in the first memory while the first portion of the sensor data is designated for saving Structure: - FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:18-3:19, 4:67-5:3, 6:5-21; - A component of a recording device including software or hardware that accomplishes the functions described	Governed by 112, ¶ 6. Function: contiguously continuing to record the sensor data in the first memory while the first portion of the sensor data is designated for saving Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 2:46-64, 4:67-5:2, 5:38-50, Fig. 3, 7:48-59, Fig. 4D, 9:21-26, Fig. 4B, 8:9-37, Fig. 4C, 8:52-67, 9:62-10:5. <u>Other Intrinsic Evidence:</u> ’540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] in response to a subsequent second trigger signal, designate for saving a second portion where in the second portion occupies less than the remaining entirety of	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: designating for saving in response to a second trigger signal a second portion of sensor data captured prior to occurrence of the second trigger	Governed by 112, ¶ 6. Function: in response to a subsequent second trigger signal, designate for saving a second portion where in the second portion occupies less than the remaining entirety of the first memory not designated for saving and corresponds to a length of

the first memory not designated for saving and corresponds to a length of time prior to the second trigger signal” ’901 patent, claim 1	signal, wherein the saved sensor data includes data captured prior to the second trigger signal and occupies less than the remaining entirety of the first memory not previously designated for saving Structure: • FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; • 2:18-3:19, 4:67-5:3, 6:5-21; • A component of a recording device including software or hardware that accomplishes the functions described.	time prior to the second trigger signal Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 2:46-64, 4:67-5:2, 5:38-50, Fig. 4E, 9:48-50, 9:62-10:5. <u>Other Intrinsic Evidence:</u> ’540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] automatically overwrite portions of the sensor data that were recorded in the first memory that were not designated for saving” ’901 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: automatically overwriting portions of the recorded sensor data not previously designated for saving Structure: • FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; • 2:18-3:19, 4:67-5:3, 6:5-21; • A component of a recording device including software or hardware that accomplishes the functions described.	Governed by 112, ¶ 6. Function: automatically overwrite portions of the sensor data that were recorded in the first memory that were not designated for saving Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 4:67-5:2, 5:38-50, Fig. 3, 7:48-59, Fig. 4A, 7:60-65. <u>Other Intrinsic Evidence:</u> ’540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth

“a computer processor configured to: record sensor data obtained by the sensor in the at least one memory” ’910 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: recording sensor data in the at least one memory Structure: - FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:21-3:21, 5:1-6, 6:6-22; - A component of a recording device including software or hardware that accomplishes the functions described	Governed by 112, ¶ 6. Function: record sensor data obtained by the sensor in the at least one memory Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 5:3-5, 5:40-52, Fig. 3, 7:48-59, Fig. 4A, 7:60-65. <u>Other Intrinsic Evidence:</u> ‘540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] in response to a first trigger signal, designate for write-protecting a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the first portion of the sensor data occupies a portion of the at least one memory that is less than the entirety of the at least one memory and corresponds to a length of time prior to the first trigger signal” ’910 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: designating a portion of the memory for write-protecting including at least a portion captured prior to the trigger signal and a portion and which is less than the entirety of the at least one memory Structure: - FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:21-3:21, 5:1-6, 6:6-22; - A component of a recording device including software or hardware that accomplishes the functions described.	Governed by 112, ¶ 6. Function: in response to a first trigger signal, designate for write-protecting a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the first portion of the sensor data occupies a portion of the at least one memory that is less than the entirety of the at least one memory and corresponds to a length of time prior to the first trigger signal Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 2:49-67, 5:3-5, 5:40-52, Fig. 4B, 8:10-40, Fig. 4C, 8:55-9:3, 9:65-10:8. <u>Other Intrinsic Evidence:</u> ‘540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u>

		Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] continuing to record the sensor data in the at least one memory while the first portion of the sensor data is designated for write-protecting” ’910 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: continuing to record additional data while designating a portion of the memory for write-protecting Structure: - FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:21-3:21, 5:1-6, 6:6-22; - A component of a recording device including software or hardware that accomplishes the functions described.	Governed by 112, ¶ 6. Function: continuing to record the sensor data in the at least one memory while the first portion of the sensor data is designated for write-protecting Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 2:49-67, 5:3-5, 5:40-52, Fig. 3, 7:48-59, Fig. 4D, 9:24-29, Fig. 4B, 8:10-40, Fig. 4C, 8:55-9:3, 9:65-10:8. <u>Other Intrinsic Evidence:</u> ‘540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] in response to a subsequent second trigger signal, designate for write-protecting a second portion wherein the second portion occupies less than the remaining entirety of the at least one memory not designated for write-protecting and corresponds to a length of time prior to the second trigger signal” ’910 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: designating for write protection an additional portion of the remaining memory not previously designated for write-protecting Structure: - FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:21-3:21, 5:1-6, 6:6-22; - A component of a recording device including software or hardware that	Governed by 112, ¶ 6. Function: in response to a subsequent second trigger signal, designate for write-protecting a second portion wherein the second portion occupies less than the remaining entirety of the at least one memory not designated for write-protecting and corresponds to a length of time prior to the second trigger signal Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 2:49-67, 5:3-5, 5:40-52, Fig. 4E, 9:51-53, 9:65-10:8. <u>Other Intrinsic Evidence:</u>

	accomplishes the functions described.	‘540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[a computer processor configured to:] upon reaching at least one of the first portion and the second portion while continuing to record the sensor data in the at least one memory, excluding from overwriting the at least one of the first portion and second portion” ’910 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: excluding from overwriting the at least one of the first portion and second portion, upon reaching a protected portion in the at least one memory Structure: - FIGS 1, 3, and 4A-H including corresponding descriptions in the specification and equivalents thereof; 2:21-3:21, 5:1-6, 6:6-22; - A component of a recording device including software or hardware that accomplishes the functions described.	Governed by 112, ¶ 6. Function: upon reaching at least one of the first portion and the second portion while continuing to record the sensor data in the at least one memory, excluding from overwriting the at least one of the first portion and second portion Structure: hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 5:3-5, 5:40-52, Fig. 3, 7:48-59, Fig. 4A, 7:62-65, Fig. 4G, 9:56-60. <u>Other Intrinsic Evidence:</u> ‘540 patent at 5:20-21; 5:28-33. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth

Defendants assert that for each claim element preceded by “a computer processor configured to:” that element is governed by 35 U.S.C. § 112, ¶ 6. Defendants further assert that the function is the claim element and then proceed to identify the allegedly corresponding structure as “hardware and/or software programmed to perform the circular buffer algorithm disclosed at” specific points in the associated patent specification. Defendants’ assertion that the “computer processor configured to” terms invoke § 112, ¶ 6 is incorrect for a number of reasons. The disputed terms do not use the word “means” creating a rebuttable presumption that § 112, ¶ 6 does not apply. Further, the term “computer processor” connotes structure in the relevant arts. Finally, the Asserted Claims of the ’901 and ’910 patents recite the objectives and operations of

the computer processor in the “computer processor configured for” terms and, thus, make apparent (even to a layperson) the structural arrangement of the computer processor from the recited objectives and operations.

As a threshold matter, none of the disputed claim elements recite “means for.” Accordingly, there is a presumption that § 112, ¶ 6 is not invoked. *Personalized Media Commc’ns, LLC v. Int’l Trade Comm’n*, 161 F.3d 696, 704 (Fed. Cir. 1998) (analyzing 112 ¶ 6). Again, as noted above, the “failure to use the word means” creates a rebuttable presumption that § 112, ¶ 6 does not apply. *Zeroclick*, 891 F.3d at 1007; *SEVEN Networks, LLC v. Apple, Inc.*, No. 19-CV-115-JRG, 2020 U.S. Dist. LEXIS 55476, at *139 (E.D. Tex. Mar. 31, 2020); (citing *Williamson*, 792 F.3d at 134849). Defendants bear the burden of overcoming this presumption, but their cited evidence fails to meet this burden.

Additionally, the “computer processor configured to” elements are not means-plus-function elements. Even a layperson understands this term as a definite structure. Courts in this district have repeatedly rejected the argument that the term “processor” is a means-plus-function term. *SEVEN Networks*, 2020 U.S. Dist. LEXIS 55476, at *137-149; *Cypress Lake Software, Inc. v. Samsung Elecs. Am., Inc.*, 382 F. Supp. 3d 586, 665-667 (E.D. Tex. May 10, 2019) (“processor configured for . . .” not 112(6)); *Realtime Data, LLC v. Rackspace US, Inc.*, No. 6:16-CV-00961 RWS-JDL, 2017 U.S. Dist. LEXIS 92131, at *44-47 (E.D. Tex. Jun. 14, 2017) (“processor” not means-plus-function term); *SyncPoint Imaging, LLC v. Nintendo of Am. Inc.*, 2016 U.S. Dist. LEXIS 677, at *51-62 (E.D. Tex. Jan. 5, 2016) (“a processor . . . for processing” not 112 ¶6).³

³ See also *Optis Cellular Tech., LLC v. Kyocera Corp.*, 2017 U.S. Dist. LEXIS 18191, at *23-26 (E.D. Tex. Feb. 8, 2017) (“processor” term not 112(6)); *Panoptis Patent Mgmt., LLC v. Blackberry Ltd.*, 2017 U.S. Dist. LEXIS 16650, at *18-19 (E.D. Tex. Feb. 7, 2017) (same); *Cellular Commc’ns. Equip. LLC v. AT&T*, 2016 U.S. Dist. LEXIS 174666, at *14-17 (E.D. Tex. Dec. 18, 2016) (same); *Advanced Mktg. Sys., LLC v. CVS Pharm., Inc.*, 2016 U.S. Dist. LEXIS 58472, at

Specifically, Courts in this district have found that the term “processor” has structural meaning in the relevant arts. Defendants have taken the position that a POSITA at the relevant time would have had (i) a bachelor’s degree in electrical engineering, computer science, or computer engineering, or undergraduate training in an equivalent field, and (ii) at least two years of experience in electronics technology. In *SyncPoint*, the parties agreed that a POSITA would have a similar background, namely a bachelor’s degree in electrical engineering, computer engineering, or computer science, or the equivalent thereof, and two or more years of experience designing computer systems. *SyncPoint*, 2016 U.S. Dist. LEXIS 677, at * 17.

The court in *SyncPoint* relied on technical dictionaries as evidence of the understandings of persons of skill in the technical arts. *SyncPoint*, 2016 U.S. Dist. LEXIS 677, at * 58. In *SyncPoint*, the court found the term “processor” to connote structure, relying on a technical dictionary that defined processor as “in a computer a functional unit that interprets and executes instructions. A processor consists of at least an instruction control unit and an arithmetic and logic unit” and “the central processing unit of a computer.” *SyncPoint*, 2016 U.S. Dist. LEXIS 677, at *59-60 (citing *IBM Dictionary of Computing* and *Webster’s New World Dictionary of Computing Terms*) (internal quotations omitted). In *SEVEN Networks*, the court also found technical dictionaries provide “evidence that the term ‘processor’ has structural meaning in the relevant arts.” *SEVEN Networks*, 2020 U.S. Dist. LEXIS 55476, at *142.

Defendants similarly rely on technical dictionaries. Indeed, Defendants’ own expert cites *Chambers Dictionary of Science and Technology* (2007) which defines “central processor” as “[t]he main part of a computer consisting of an arithmetic logic unit and a control unit.” (See Ex. 1 at ¶ 44, Ex. 2 at MOTOROLA_014779.) Adding the term “computer” to the term “processor”

*19-20 (E.D. Tex. May 3, 2016) (same); *Smartflash LLC v. Apple Inc.*, 2015 U.S. Dist. LEXIS 91669, at *3 (E.D. Tex. Jul. 7, 2015) (“processor” not 112, ¶ 6).

further serves to focus on the relevant technical art. Notably, the Federal Circuit has stated that the term “central processing unit” would be understood as a reference to structure. *Samsung Elecs. Am., Inc. v. Prisia Eng’g Corp.*, 948 F.3d 1342, 1354 (Fed. Cir. 2020). When assessed in the light of the presumption that flows from the drafter’s choice not to employ the word “means,” this confirms the common understanding of the term computer processor as being definite structure.

Additionally, this structure-connoting term, when combined with a description of the operation and objectives of the recited computer processor, conveys sufficient structural meaning, again indicating that § 112, ¶ 6 does not apply. *SyncPoint*, 2016 U.S. Dist. LEXIS 677, at * 59 (quoting *Linear Technology Corp. v. Impala Linear*, 379 F.3d 1311, 1319-21 (Fed. Cir. 2004)).

Finally, the claims and specifications of the ’901 and ’910 patents confirm that the recited “computer processor configured to” elements disclose structure. For example, claim 1 of the ’910 patent (shown below) discloses various structural components that interact with each other: (1) a sensor to capture sensor data, (2) at least one memory coupled to the sensor to store the sensor data, and (3) a computer processor configured to write-protect and store the sensor data in a particular manner while continuing to record sensor data in the memory.

’910 patent, claim 1. A recording system for saving a sequence of clips comprising:

at least one memory communicatively coupled with a sensor; and

a computer processor configured to:

record sensor data obtained by the sensor in the at least one memory;

in response to a first trigger signal, designate for write-protecting a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the first portion of the sensor data occupies a portion of the at least one memory that

is less than the entirety of the at least one memory and corresponds to a length of time prior to the first trigger signal;

continuing to record the sensor data in the at least one memory while the first portion of the sensor data is designated for write-protecting;

in response to a subsequent second trigger signal, designate for write-protecting a second portion wherein the second portion occupies less than the remaining entirety of the at least one memory not designated for write-protecting and corresponds to a length of time prior to the second trigger signal; and

upon reaching at least one of the first portion and the second portion while continuing to record the sensor data in the at least one memory, excluding from overwriting the at least one of the first portion and second portion.

Similarly, claim 1 of the '901 patent discloses various structural components that interact with each other: (1) eyeglasses having a sensor, (2) a first memory coupled to the sensor, and (3) a computer processor configured to write-protect and store the sensor data in a particular manner while continuing to record sensor data in the memory.

'901 patent, claim 1. A recording system for saving a sequence of clips comprising:

a pair of eyeglasses having a sensor that captures sensor data;

a first memory communicatively coupled with the sensor; and

a computer processor configured to:

record the sensor data in the first memory;

in response to a first trigger signal, designate for saving a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the portion of the sensor data occupies a portion of the first memory that is less than the entirety of the first memory and corresponds to a length of time prior to the first trigger signal;

contiguously continuing to record the sensor data in the first memory while the first portion of the sensor data is designated for saving;

in response to a subsequent second trigger signal, designate for saving a second portion where in the second portion occupies less

than the remaining entirety of the first memory not designated for saving and corresponds to a length of time prior to the second trigger signal; and

automatically overwrite portions of the sensor data that were recorded in the first memory that were not designated for saving.

Courts in this district have confirmed that § 112, ¶ 6 does not apply where the claim language provides a description of how the computer processor is specifically programmed to operate. *Cypress Lake*, 382 F.3d at 665. For example, in claim 1 of the '901 patent, the computer processor is programmed to record sensor data into the first memory. Claim 1 further recites that, in response to a first trigger signal, the computer processor is programmed to designate for saving in response to a first trigger signal a first portion of sensor data captured prior to occurrence of the first trigger signal, wherein the saved sensor data includes data captured prior to the first trigger signal and occupies less than the entirety of the first memory. Claim 1 goes on to state that the computer processor is programmed to contiguously continue to record the sensor data in the first memory while the first portion of the sensor data is designated for saving. Claim 1 further recites that the computer processor is programmed to, in response to a second trigger signal, designate for saving a second portion of sensor data captured prior to occurrence of the second trigger signal, wherein the saved sensor data includes data captured prior to the second trigger signal and occupies less than the remaining entirety of the first memory not previously designated for saving. Finally, claim 1 recites that the computer processor is programmed to automatically overwrite portions of the recorded sensor data not previously designated for saving.

As the claim elements illustrate, claim 1 describes the structural interactions between the processor and other components. The sensor captures data and the memory stores the captured data that is designated for saving in a particular manner as described in the claim. “Thus, a POSITA would understand that the claim language recites sufficient structure, and that the term

[computer processor configured to] is not used as a generic term or black box recitations of structure or abstractions.” *Cypress Lake*, 382 F. Supp. 3d at 665 (citing *Zeroclick*, 891 F.3d at 1007-09). The same reasoning applies to claim 1 of the ’910 patent.

Just as in *SynPoint* and *Cypress Lake*, a POSITA would likely have understood the structural arrangements of the computer processor elements in light of the objectives and operations recited in the Asserted Claims of the ’901 and ’910 patents. Accordingly, the “computer processor configured to” elements are not subject to § 112, ¶ 6.

To the extent the Court finds that the “computer processor configured to:” terms invoke the application of § 112, ¶ 6, Stellar has identified the function and corresponding structure from the specification in the table above.

2. “hardware that executes an instruction set” terms: ’752 patent, claim 1

Claim Term	Stellar’s Construction	Defendants’ Construction
“hardware that executes an instruction set that utilizes an area of the memory as a circular buffer” ’752 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: utilizing an area of the memory as a circular buffer Structure: - FIGS 3A-H, 4 and 5 including corresponding descriptions in the specification and equivalents thereof; 2:25-44, 4:64-5:4, 5:35-61, Abstract; - Any recording device including a processor that runs software to accomplish the described function	Governed by 112, ¶ 6. Function: utilizes an area of the memory as a circular buffer Structure: hardware and software programmed to perform the circular buffer algorithm disclosed at 2:36-39, 4:67-5:1, Figs. 3A-3H, 3:13-4:45, Fig. 5 (Step 51), 5:35-40. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth

“[hardware that executes an instruction set that] records the first data stream in the buffer” ’752 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: recording the first data stream in the circular buffer Structure: - FIGS 3A-H, 4 and 5 including corresponding descriptions in the specification and equivalents thereof; 2:25-44, 4:64-5:4, 5:35-61, Abstract; - Any recording device including a processor that runs software to accomplish the described function	Governed by 112, ¶ 6. Function: records the first data stream in the buffer Structure: hardware and software programmed to perform the circular buffer algorithm disclosed at 2:36-39, 4:67-5:1, 5:12-14, Fig. 3A, 3:13-16, Fig. 5 (Step 52), 5:48. <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth
“[hardware that executes an instruction set that] responds to a first signal by protecting a recently used segment of the buffer storing at least a portion of the first data stream corresponding to a duration of time prior to the first signal, while at the same time continuously recording the first data stream as the second data stream in an unprotected segment of the buffer, without overwriting the protected segment” ’752 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: responding to a first signal by protecting a segment of the buffer corresponding to a duration of time prior to the first signal, while at the same time continuously recording the first data stream as the second data stream in an unprotected segment Structure: - FIGS 3A-H, 4 and 5 including corresponding descriptions in the specification and equivalents thereof; 2:25-44, 4:64-5:4, 5:35-61, Abstract; - Any recording device including a processor that runs software to	Governed by 112, ¶ 6. Indefinite because no corresponding structure for performing the claimed function disclosed in the specification. Function: responding to a first signal by protecting a segment of the buffer corresponding to a duration of time prior to the first signal, while at the same time continuously recording the first data stream as the second data stream in an unprotected segment Structure: Not disclosed in specification <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth

	accomplish the described function	
“[hardware that executes an instruction set that] responds to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal” ’752 patent, claim 1	No construction necessary; not subject to 112, ¶ 6; should the Court conclude that the term is subject to 112, ¶ 6: Function: responding to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal Structure: • FIGS 3A-H, 4 and 5 including corresponding descriptions in the specification and equivalents thereof; • 2:25-44, 4:64-5:4, 5:35-61, Abstract; • Any recording device including a processor that runs software to accomplish the described function	Governed by 112, ¶ 6. Indefinite because no corresponding structure for performing the claimed function disclosed in the specification. Function: responding to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal Structure: Not disclosed in specification <u>Extrinsic Evidence:</u> Expert declaration of Dr. Kevin Almeroth

Defendants assert that the claim elements preceded by “hardware that executes an instruction set” in the ’752 patent are governed by § 112, ¶ 6. They further assert that the function is the claim element and, for all but two elements, the terms are indefinite because the specification does not disclose clearly linked, sufficient structure for performing the specified function. For the same reasons as set forth above in Section III.A.1 regarding the “computer processor configured to:” Defendants’ assertion that the “hardware that executes an instruction set” terms invoke § 112, ¶ 6 is incorrect.

First, the disputed terms do not use the terms “means” creating a rebuttable presumption that § 112, ¶ 6 does not apply.” *Personalized Media*, 161 F.3d at 704, *Williamson*, 792 F.3d at 1348-49, *Zeroclick*, 891 F.3d at 1007; *SEVEN Networks*, 2020 U.S. Dist. LEXIS 55476, at * 139.

Defendants’ expert concedes that a POSITA would understand “hardware that executes an instruction set” to mean a general-purpose computer or processor. (Ex. 1 at ¶ 44.) Stellar agrees that this term would be understood by a POSITA to refer to a processor. As discussed above, courts in this district have routinely rejected the argument that the term “processor” is a means plus function term. *See* Section III.A.1, above. Instead, numerous courts have determined that the terms “processor” and “central processing unit” would be understood to refer to structure. *Samsung*, 948 F.3d at 1354; *SEVEN Networks*, 2020 U.S. Dist. LEXIS 55476, at * 145; *Cypress Lake*, 382 F. Supp. 3d at 664-67; *SyncPoint*, 2016 U.S. Dist. LEXIS 677, at *59.

When understood to refer to a processor and combined with a description of the operation and objectives of the recited processor, the term conveys sufficient structural meaning to a POSITA and § 112, ¶ 6 does not apply. *SyncPoint*, 2016 U.S. Dist. LEXIS 677, at * 59 (quoting *Linear Tech.*, 379 F.3d 1311, 1319-21(Fed. Cir. 2004)).

The claims and specification of the ’752 patent confirm that the recited “hardware that executes an instruction set” elements disclose structure. For example, claim 1 of the ’752 patent (shown below) discloses various structural components that interact with each other: (1) a camera to convert images into first and second data streams, (2) a memory to store the converted images, and (3) hardware that executes an instruction set (processor) utilizes an area of the memory as a circular buffer, records the first data stream in the buffer and responds to a first signal by protecting and store a segment of the first data stream in a particular manner while continuing to record the second in the memory without overwriting the protected segment.

’752 patent, claim 1. A surveillance system comprising:

a camera that converts images into first and second data streams;
 a memory; and

hardware that executes an instruction set that utilizes an area of the memory as a circular buffer, records the first data stream in the buffer; responds to a first signal by protecting a recently used segment of the buffer storing at least a portion of the first data stream corresponding to a duration of time prior to the first signal, while at the same time continuously recording the first data stream as the second data stream in an unprotected segment of the buffer, without overwriting the protected segment; and responds to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal.

Courts in this district have confirmed that § 112, ¶ 6 does not apply where the claim language provides a description of how the computer processor is specifically programmed to operate. *Cypress Lake*, 382 F.3d at 665. For example, in claim 1 of the ‘752 patent, the “hardware [*i.e.*, processor] . . . executes an instruction set” such that it is programmed to record a first data stream into the circular buffer. Claim 1 further recites that, in response to a first trigger signal, the processor is programmed to protect a recently used segment of the buffer storing a portion of the first data stream recorded prior to the first signal. Claim 1 goes on to state that the processor is programmed to continuously record the first data stream as the second data stream in an unprotected segment of the buffer without overwriting the protected segment. Claim 1 further recites that the processor is programmed to respond to a second signal by increasing the duration of the protected segment of the buffer prior to the first signal.

As the claim elements illustrate, claim 1 describes the structural interactions between the processor and other components. The camera converts images into data stream and the memory stores the segments of the data streams that are protected in a particular manner as described in the claim. “Thus, a POSITA would understand that the claim language recites sufficient structure, and that the term [hardware that executes an instruction set] is not used as a generic term or black box recitations of structure or abstractions.” *Cypress Lake*, 382 F. Supp. 3d at 665

(citing *Zeroclick*, 891 F.3d at 1007-09). The same reasoning applies to claim 1 of the ‘752 patent.

As in *SyncPoint* and *Cypress Lake*, with the understanding that “hardware that executes an instruction set” refers to a processor, a POSITA would likely have understood the structural arrangements of the processor elements in light of the objectives and operations recited in the claim 1 of the ‘752 patent. Accordingly, the “computer processor configured to” elements are not subject to § 112, ¶ 6.

To the extent the Court finds that the “hardware that executes an instruction set” terms invoke the application of § 112, ¶ 6, Stellar has identified the function and corresponding structure from the specification in the table above.

3. ‘540 Patent, Claim 1

Claim Term	Stellar’s Construction	Defendants’ Construction
“A method of storing discrete segments of imaged data in a camera comprising” ’540 patent, claim 1	Preamble not limiting. No construction necessary for any of these terms. <u>Intrinsic evidence</u> 1:64-2:8; 2:64-3:24; 3:54-65; 6:15-21; FIGS 1-6; claims 1-4, 7.	Preamble is limiting. <u>Intrinsic evidence</u> Claims 1, 7
“A method of storing discrete segments of imaged data in a camera comprising: using a sensor in the camera to capture image data; providing a recorder coupled to the camera and having a memory; using multiple portions of the memory as a memory loop in which to record segments of the image data in	Not indefinite. Plain and ordinary meaning. It is not necessary for the Court to construe any of these terms.	Indefinite. <u>Intrinsic evidence</u> Claims 1, 7

approximately real time”		
’540 patent, claim 1		

Stellar’s current understanding is that Defendants assert that the preamble to the ’540 patent is limiting because the term “a camera” in the preamble provides the antecedent basis for “the camera” as used in the body of the claim. On the assumption that the preamble is limiting, then the use of “the camera” in the body of the claim renders the claim indefinite.

Nothing in the intrinsic record indicates that the term “*A method of storing discrete segments of imaged data in a camera, comprising*” is limiting. Instead, as Stellar contends, it is merely a statement of intended environment for the claimed inventions and not a positive limitation. The scope of the claim is reasonably ascertainable by those skilled in the art without reading the preamble phrase as a limitation.

Where the preamble forms the antecedent basis for terms in the body of the claims, the preamble *may be* limiting. *Global Equity Mgmt. (SA) Pty. Ltd. v. Expedia, Inc.*, No. 2:16-cv-00095-RWS-RSP, 2016 U.S. Dist. LEXIS 177218, at *54-55 (E.D. Tex. Dec. 22, 2016) (citing *Pacing Techs., LLC v. Garmin Int’l, Inc.*, 778 F.3d 1021, 1024 (Fed. Cir. 2015) (“when limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention”)).

Where the deletion of the preamble phrase in question does not affect the structure or steps of the claimed invention, the phrase is not limiting. *Am. Med. Sys.*, 618 F.3d at 1358-59. Thus, in at least some instances the preamble may not be limiting even where the preamble forms the antecedent basis for terms in the body of the claim. Such is the case with claim 1 of the ’540 patent (shown below).

1. A method of storing discrete segments of imaged data in a camera, comprising:

using a sensor in the camera to capture image data;

providing a recorder coupled to the camera and having a memory;

using multiple portions of the memory as a memory loop in which to record segments of the image data in approximately real time;

treating the memory loop as a single file;

protecting the multiple portions, within the single file, from being overwritten by subsequent recording in the memory loop; and

allowing the editing of the imaged data in protected multiple portions stored in the memory loop within the single file via a recorder control while recording additional segments of the image data in the memory loop within the single file.

The body of the claim recites “using a sensor in the camera to capture image data” and “providing a recorder coupled to the camera and having a memory.” The only reference to “camera” before these is the camera in the preamble. But the preamble, including its use of the term “a camera,” is a statement of intended environment and is used inferentially and not as positive limitation. *Global Equity*, 2016 U.S. Dist. LEXIS 177218, at *54-55. Accordingly, the preamble is not limiting.

Even assuming *arguendo* that the Court were to find the preamble limiting, which it is not, the disputed phrase is not indefinite. In multiple embodiments disclosed in the specification, the claimed inventions comprise multiple components within a camera. “Recorder 120 comprises imager lens 220, memory 140, control buttons 230, microprocessor 240, power source 250, microphone 260, hard drive 270, transmitter 280 and optional display screen (not shown) as shown in FIG. 2.” (’540 patent at 3:11-14.) “Recorder 120 can be any recording device that records video and/or audio data. ***Typically, the recorder is a high-performance digital video camera*** or camcorder but other formats, such as an analog recorder are contemplated. The recorder’s electronics preferably are all on a unitary printed circuit board.” (*Id.* at 3:15-20) (emphasis added). The disputed phrase provides in part “*a recorder coupled to the camera and having a memory.*” Since the memory is a component of the recorder, and the recorder is a

component of (or is) the camera in at least one embodiment, the memory is a component of the camera. ('540 patent at 6:15–21.) The specification makes clear that the recorder of the claimed invention can be a digital video camera that is comprised of multiple components to record segments of imaged data and save the data in a memory within the camera device itself. (*See, e.g., id.* at 3:15–48, 5:20–27.) The separate recitation of camera, recorder, and memory, as distinct components within the claim does not render the claim indefinite. The claim unambiguously recites a method wherein these components are configured to perform the method of “storing discrete segments of imaged data in a camera.”

Thus, even if the preamble were to be limiting, the language is definite, and the disputed phrase should still be given its plain and ordinary meaning. In sum, the claim language is clear to one skilled in the art on its face. The term is not indefinite, and no construction is necessary.

IV. CONCLUSION

For the reasons set forth above, Stellar requests that this Court find that none of the disputed terms invoke § 112, ¶ 6. Should the Court find that § 112, ¶ 6 applies, Stellar requests that the Court find that Stellar has set forth the function and structure applicable those claims. Stellar additionally requests the Court find that the preamble to claim 1 of the '540 patent is not limiting and that the claim is not indefinite.

Dated: May 17, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2024 I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/Robert Kiddie
Robert Kiddie

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

STELLAR, LLC,

Plaintiff,

v.

MOTOROLA SOLUTIONS, INC., and
WATCHGUARD VIDEO, INC.,

Defendants.

Civil Action No. 4:23-cv-750-SDJ

MOTOROLA SOLUTIONS, INC., and
WATCHGUARD VIDEO, INC.,

Counterclaim Plaintiffs,

v.

STELLAR, LLC,

Counterclaim Defendant.

DEFENDANTS' RESPONSIVE CLAIM CONSTRUCTION BRIEF

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Exhibit No.	Description
Ex. 1	Expert Declaration of Kevin C. Almeroth
Ex. 2	Exhibit A to Kevin C. Almeroth Declaration (Dr. Almeroth's CV)
Ex. 3	MOTOROLA 014777 – MOTOROLA 014780 (cited in Ex. 1)
Ex. 4	MOTOROLA 014781 – MOTOROLA 014783 (cited in Ex. 1)
Ex. 5	MOTOROLA 014784 – MOTOROLA 014786 (cited in Ex. 1)
Ex. 6	MOTOROLA 014787 – MOTOROLA 014789 (cited in Ex. 1)

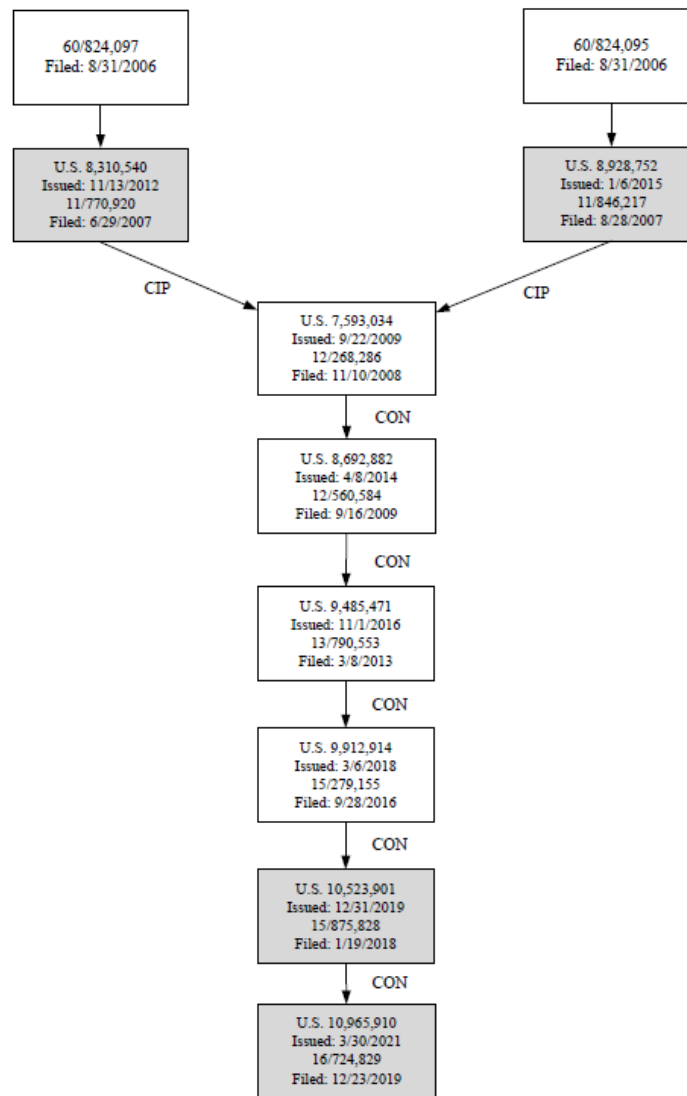
TABLE OF ABBREVIATIONS

Abbreviation	Description
Plaintiff	Plaintiff Stellar, LLC
Defendants	Defendants Motorola Solutions, Inc. and WatchGuard Video, Inc.
'034 patent	U.S. Patent No. 7,593,034
'540 patent	U.S. Patent No. 8,310,540
'882 patent	U.S. Patent No. 8,692,882
'752 patent	U.S. Patent No. 8,928,752
'471 patent	U.S. Patent No. 9,485,471
'914 patent	U.S. Patent No. 9,912,914
'901 patent	U.S. Patent No. 10,523,901
'910 patent	U.S. Patent No. 10,965,910
The asserted patents	Collectively, the '034 patent, the '540 patent, the '882 patent, the '752 patent, the '471 patent, the '914 patent, the '901 patent, and the '910 patent
POSITA	Person of Ordinary Skill in the Art

** Emphasis added unless indicated otherwise.*

I. INTRODUCTION

Plaintiff asserts eight related patents in this case. The asserted patents resulted from a series of continuation (CON) or continuation-in-part (CIP) applications claiming priority to a pair of provisional applications filed on August 31, 2006, as shown below.



The parties dispute the construction of certain claim terms in just four of the asserted patents, shaded in gray above: the '540 patent; the '752 patent; the '901 patent; and the '910 patent.

'540 patent: The parties dispute whether the preamble of '540 claim 1 is limiting, and whether the inherently contradictory phrasing of claim 1 renders the claim indefinite.

'752, '901, '910 patents: The claim construction disputes regarding these three patents exclusively relate to the special statutory rules for means-plus-function claiming under 35 U.S.C. § 112, ¶ 6. As a threshold issue, Defendants maintain that the “computer processor”/“hardware that executes an instruction set” claim terms in these three patents must be construed as statutorily required by § 112, ¶ 6; Plaintiff argues none of these claim terms are subject to the means-plus-function statute. If construed under § 112, ¶ 6, the parties dispute the proper identification of the corresponding structure in the patent specifications and, in some cases, the recited function. For two terms in '752 patent claim 1, Defendants maintain there is no corresponding structure disclosed in the specification for performing the claimed function and, consequently, claim 1 is indefinite.

II. THE PATENTS

While the patents at issue are related, there are three different patent specifications to consider: (A) the '540 specification, (B) the '752 specification, and (C) the common specification shared by the '901 and '910 patents.

A. The '540 Patent

The '540 patent resulted from an application filed on June 29, 2007. The '540 patent generally relates to the field of digital recording, particularly “storing discrete segments of imaged data in a camera by using a sensor in the camera to capture image data.” '540 patent at 2:64-66. In Figure 5, “camera 410 is connected to a recorder device 450” and “[r]ecorder device 450...houses the memory and the microprocessor used for the device.” '540 patent at 6:66, 7:15-16. Recorder device 450 “will automatically store all image data received by the viewfinder image lens.” '540 patent at 7:15-19.

B. The '752 Patent

The '752 patent resulted from an application filed on August 28, 2007. The '752 patent

generally relates to surveillance systems, particularly to surveillance systems that continuously record into a circular buffer. FIG 4 illustrates an exemplary system of the alleged invention, comprising in part a camera 42 that is coupled to a recorder 46, a signaling device 45, and an off-line docking station with a CD burner (collectively 47). '752 patent at 4:46-52. "FIGS 3A-3H depict schematics of memory usage in a device according to aspects of the present invention, progressively showing storage of multiple data streams." *Id.* at 3:3-5. "FIG. 5 shows a method 50 of recording multiple events without overwriting or offloading the memory, and including potentially lengthy portions of data streams prior to start signal events." *Id.* at 5:35-38.

C. The '901 and '910 Patents

The '901 and '910 patents resulted from a series of continuation applications tracing back to U.S. 7,593,034 ("the '034 patent"), filed on November 10, 2008. The '034 patent claimed priority as a continuation-in-part to both the '540 and the '752 patents discussed above. The '910 is a direct continuation of the '901, and the '901 and '910 patents therefore share a common specification.

The '901 and '910 patents relate generally to surveillance systems and particularly to surveillance systems that continuously record into a circular buffer. FIG 1 illustrates an exemplary system comprising in part a camera 120 that is coupled to a recorder 160, a signaling device 150, and a remote memory 170. '901 patent at 3:52-4:3. Recorder 160 is described as "any recording device that records video and/or audio/video data, including conventional recorders," and "preferably includes a processor 162 with software or hardware that accomplishes the functions described herein." *Id.* at 4:65-5:2. FIG 3 illustrates a "diagram representation" of the circular buffer, with an unprotected segment 320 and a write-protected segment 330. *Id.* at 7:48-50. According to the '901 and '910 patents, a "recording facility 163 continuously records the data stream 310 into circular buffer 167"; the recording facility "records over unprotected segment 320"

while “skipping over protected segments 330.” *Id.* at 7:52-56. FIGS 4A-4H “show an alternative diagram representation of a circular buffer 300 as it is being used.” *Id.* at 7:60-61.

III. CLAIM CONSTRUCTION PRINCIPLES

A. Claim Construction

Patent claims are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art (“POSITA”) at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). The intrinsic evidence pertinent to the meaning of a claim term includes the claims themselves, the specification, and the prosecution history. *Id.* at 1314. Courts also may receive and rely on extrinsic evidence “in order to aid the court in coming to a correct conclusion as to the true meaning of the language employed in the patent.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995). Extrinsic evidence “consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.” *Id.* Technical experts may assist the Court in applying to the patent “the same understanding as that of persons knowledgeable in the field of the invention.” *Merck & Co., Inc. v. Teva Pharms. USA, Inc.*, 347 F.3d 1367, 1370 (Fed. Cir. 2003).

B. Indefiniteness Under 35 U.S.C. § 112(b)

A patent specification must “conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as [the] invention.” 35 U.S.C. § 112, ¶ 2. If the patent claims “fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention,” then the claims are indefinite. *Nautilus, Inc. v. Biosign Instruments, Inc.*, 572 U.S. 898, 901 (2014).

C. The Required Statutory Construction of Means-Plus-Function Claim Terms

35 U.S.C. § 112, ¶ 6 provides that “[a]n element in a claim for a combination may be

expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof.” But the statute mandates that such a claim limitation “shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.” *Id.* Accordingly, when construing means-plus-function limitations, a court “must turn to the written description of the patent to find the structure that corresponds to the means recited in the [limitations].” *B. Braun Med., Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed. Cir. 1997).

While a claim term that does not use the word “means” triggers a rebuttable presumption that § 112, ¶ 6 does not apply, this presumption is not a “strong” or “heightened” one. *Williamson v. Citrix Online LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). In *Williamson*, the Federal Circuit lowered the presumption to address the “proliferation” of functional claiming using words other than “means,” and the court expressly overruled the prior “strict requirement of ‘a showing that the limitation essentially is devoid of anything that can be construed as structure.’” *Id.* After *Williamson*, the presumption is overcome by demonstrating that the claim term fails to recite sufficiently definite structure or recites function without reciting sufficient structure for performing that function. *Id.*

D. Construction of Computer-Implemented Means-Plus-Function Claim Terms

“In cases involving a computer-implemented invention in which the inventor has invoked means-plus-function claiming, [the Federal Circuit] has consistently required that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor.” *Aristocrat Techs. Australia Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008).

As the Federal Circuit explained in *Aristocrat*:

For a patentee to claim a means for performing a particular function and then to disclose only a general purpose computer as the structure designed to perform that function amounts to pure functional claiming. Because general purpose computers

can be programmed to perform very different tasks in very different ways, simply disclosing a computer as the structure designated to perform a particular function does not limit the scope of the claim to ‘the corresponding structure, material, or acts’ that perform the function, as required by section 112[¶6].

Id. For a computer-implemented means-plus-function limitation, the corresponding structure is not a generic microprocessor or general purpose computer “but rather the special purpose computer programmed to perform the disclosed algorithm.” *WMS Gaming, Inc. v. Int’l Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999); *Harris Corp. v. Ericsson Inc.*, 417 F.3d 1241, 1253 (Fed. Cir. 2005).

IV. POSITA – LEVEL OF ORDINARY SKILL IN THE ART

Defendants maintain a POSITA at the pertinent time would have had (i) a bachelor’s degree in electrical engineering, computer science, or computer engineering, or undergraduate training in an equivalent field, and (ii) at least two years of experience in electronics technology; additional graduate education could substitute for professional experience, and significant work experience could substitute for formal education. *See* Ex. 1 (Almeroth Declaration) ¶¶ 34-38, 79-81; *see also* Ex. 2 (Exhibit A to Almeroth Declaration).

Plaintiff’s opening brief does not propose, and does not even mention, the qualifications of a POSITA, nor does Plaintiff make any argument regarding the level of skill in the art. Plaintiff should not be permitted to make new arguments for the first time in reply. *Intellectual Ventures II LLC v. Sprint Spectrum, L.P.*, 2019 WL 2959568, at *3 (E.D. Tex. Apr. 18, 2019) (“[A]rguments raised for the first time in a reply brief are waived ‘as a matter of litigation fairness and procedure.’”).

V. THE DISPUTED TERMS IN THE ’540 PATENT

The parties have two disputes regarding ’540 claim 1: (A) whether the preamble is limiting; and (B) whether claim 1 is indefinite because it is internally inconsistent.

A. “A method of storing discrete segments of imaged data in a camera, comprising”

Claim	Plaintiff's Construction	Defendants' Construction
'540 patent, claim 1	No construction necessary.	Preamble is limiting.

The preamble of claim 1 is limiting because: (1) it provides antecedent basis for terms in the body of the claims; and (2) it does not merely state an intended use, but rather provides that the camera is *where* the discrete segments of imaged data are stored. A preamble is limiting “if it recites essential structure or steps, or if it is ‘necessary to give life, meaning, and vitality’ to the claim.” *Bio-Rad Lab ’ys, Inc. v. 10X Genomics Inc.*, 967 F.3d 1353, 1369 (Fed. Cir. 2020) (quoting *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999)). “The fact that the [terms] provide antecedent basis for these terms in the body of the claim is a strong indication that the preamble acts ‘as a necessary component of the claimed invention.’” *Bio-Rad Lab ’ys, Inc.*, 967 F.3d at 1361 (Fed. Cir. 2020) (citation omitted) (finding “a method for conducting a reaction in plugs in a microfluidic system” limiting where “reaction” and “microfluidic system” in preamble provide antecedent basis); *see also Pacing Techs., LLC v. Garmin Int’l, Inc.*, 778 F.3d 1021, 1024 (Fed. Cir. 2015) (finding “a repetitive motion pacing system for pacing a user” limiting where “repetitive motion pacing system” and “user” in preamble provide antecedent basis).

Here, the preamble is limiting because it provides the antecedent basis for at least the following claim language in the body of the claim: “using a sensor in *the camera* to capture image data” and “using multiple portions of the memory as a memory loop in which to record *segments of the image data*.” The preamble also is the antecedent basis of “in response to a start signal from a user of *the camera*” in claim 7. The preamble provides the only antecedent basis and thus the context is essential to understand the meaning of “camera” and “segments of the image data.” Therefore the preamble is limiting. *Bio-Rad Lab ’ys, Inc.*, 967 F.3d at 137; *Seachange Int’l, Inc.*

v. C-COR, Inc., 413 F.3d 1361, 1376 (Fed. Cir. 2005) (“The preamble provides the only antecedent basis and thus the context essential to understand the meaning of ‘processor system’; therefore, the preamble, including the phrase ‘distributed computer system,’ limits the scope of the claimed invention.”). Also, the phrase “storing discrete segments of imaged data in a camera” is “necessary to give life, meaning, and vitality” to the claim because “a camera” defines *which* camera the claim body refers to, and “in a camera” defines *where* the “discrete segments of imaged data” are stored. Thus, “storing discrete segments of imaged data in a camera” serves to limit the claim scope. *See Proveris Sci. Corp. v. Innovasystems, Inc.*, 739 F.3d 1367, 1373 (Fed. Cir. 2014) (finding limiting the phrase “the image data,” which derived antecedent basis from “image data” that was defined in greater detail in the preamble).

Plaintiff argues that the recitation of “a camera” in the preamble is merely a statement of the intended environment and therefore is nonlimiting. Dkt. 36 at 22. However, the preamble provides necessary context for the usage of the camera and imaged data in the claim, as explained above. And unlike *Am. Medical Systems*, the preamble provides the context that the imaged data of the claim is stored in a camera of the claim and is not merely duplicative of the limitations in the body of the claim. *See Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1360 (Fed. Cir. 2010). *Global Equity* is similarly distinguishable because although the preamble provided antecedent basis for a term recited in the body of the claim (*i.e.*, “computer”), the use of the term was “a statement of intended environment that was introduced inferentially.” *Glob. Equity Mgmt. (SA) Pty. Ltd. v. Expedia, Inc.*, 2016 WL 7416132, *13 (E.D. Tex. Dec. 22, 2016) (stating the intended use was “for displaying m[e]ans for allocating a computer device’s resources to multiple operating system environments, partitioned on individual virtual cabinets, on said computer device.”). Further, Plaintiff is wrong when it asserts that deleting the preamble phrase does not

affect the structure or steps of the claim (Dkt. 36 at 21). The preamble details where the discrete segments of imaged data are stored—*i.e.*, in a camera. The preamble therefore provides essential structure that is necessary to understand the limitations in the body of the claim.

B. “A method of storing discrete segments of imaged data in a camera, comprising: using a sensor in the camera to capture image data; providing a recorder coupled to the camera and having a memory; using multiple portions of the memory as a memory loop in which to record segments of the image data in approximately real time”

Claim	Plaintiff’s Construction	Defendants’ Construction
’540 patent, claim 1	Plain and ordinary meaning and it is not necessary for the Court to construe the term.	Indefinite.

Claim 1 of the ’540 patent is indefinite because the claim is internally inconsistent. The claim states that the discrete segments of imaged data (red) are stored in a camera (green) while also stating that the same imaged data (red) is recorded in a recorder (purple) coupled to the camera (green)—it cannot be both. ’540 patent at claim 1. The relevant portion of claim 1 is below:

1. A method of storing discrete segments of imaged data in a camera, comprising: using a sensor in the camera to capture image data; providing a recorder coupled to the camera and having a memory; using multiple portions of the memory as a memory loop in which to record segments of the image data in approximately real time

Because the claim is inconsistent on where the imaged data is stored, “a person of ordinary skill in the art would be unable to determine the scope of the claims.” *Competitive Techs., Inc. v. Fujitsu Ltd.*, 185 F. App’x 958, 965-66 (Fed. Cir. 2006). In *Competitive Techs.*, the Court found that because the “address means” limitation of the claim requires “ISA structures” and the “sustain means” limitation of that same claim requires the exclusion of “ISA structures,” the claim was internally inconsistent and therefore indefinite. *Id.* Similarly, in *Fundamental Innovation Sys. Int’l LLC*, the Court found a claim that required both that (1) the power pass through the battery charge controller and (2) that the power does *not* pass through the battery charge controller,

internally inconsistent and therefore indefinite. *Fundamental Innovation Sys. Int'l v. Samsung Elecs. Co.*, 2018 WL 647734, at *40 (E.D. Tex. Jan. 31, 2018); *see also WSOU Invs. LLC v. Google LLC*, 2023 WL 6210607, at *7-8 (Fed. Cir. Sept. 25, 2023) (finding “second part in between the first part and the second part” is self-contradictory and indefinite) (“*WSOU I*”).

Plaintiff argues that the recorder can be a component of the camera.¹ Dkt. 36 at 22-23. This would require that a subcomponent (*i.e.*, the recorder) is “coupled to” the component as a whole (*i.e.*, the camera). In *Cutsforth, Inc. v. Motivepower, Inc.*, the Federal Circuit found that the claims “require[d] a ‘brush catch’ to be a physical structure that is separate from, and not a sub-component of, the claimed ‘beam’” because “[i]t goes beyond the plain meaning of ‘coupled’ to say that a sub-component (*e.g.*, an engine in a car) is ‘coupled to’ the component as a whole (*e.g.*, the car).” 643 F. App’x 1008, 1012 (Fed. Cir. 2016). Despite Plaintiff’s argument that there are embodiments in the specification where the invention comprises multiple components within a camera, the specification also discloses the recorder and camera as distinct components. *See* ’540 at FIG 5; 6:66-67 (“In preferred embodiments, camera 410 is connected to a recorder device 450 as shown in FIG. 5.”). Furthermore, Plaintiff’s specification citation continues by stating that the recorder has “audio and video input analog signal (from a source such as video camera or broadcast media),” which implies that there is a separate camera attached to the recorder. ’540 at 3:20-22. The presence of both embodiments in “the written description does not show a ‘clear intent’ to depart from the claim’s plain language.” *See Comcast Cable Commc’ns, LLC v. Promptu Sys.*

¹ Plaintiff also argues that the recorder can be the same structure as the camera (Dkt. 36 at 22-23), but fails to explain how a structure can be “coupled” to itself. *See Barrday, Inc. v. Lincoln Fabrics Inc.*, 2023 WL 7871688, at *4 (Fed. Cir. Nov. 16, 2023).

Corp., 838 F. App’x 551, 553 (Fed. Cir. 2021) (finding “a speech recognition system” and “a wireline node” must be distinct components where claim recited “a speech recognition system coupled to a wireline node” and there were embodiments describing both that the speech recognition system was “in” a wireline node and where the speech recognition system was “near” a wireline node). Under the plain meaning of “coupled to” the recorder cannot be “coupled to” the camera if the recorder is a subcomponent of said camera. And, therefore, the claim is internally inconsistent—requiring both that the imaged data are stored in a camera and that the same imaged data are recorded in a recorder coupled to the camera—and indefinite.

VI. MEANS-PLUS-FUNCTION DISPUTES IN THE ’901, ’910, AND ’752 PATENTS

Defendants first address the threshold issue to explain why § 112, ¶ 6 applies to the disputed terms in the ’901, ’910, and ’752 patents. Then, per the statute and governing Federal Circuit case law, Defendants identify for the Court the claimed function and the corresponding structure (if any) that performs the recited function in each claim term.

A. The Disputed Claim Terms Are Written In Means-Plus-Function Format And § 112, ¶ 6 Applies

The means-plus-function disputes fall into two categories: (1) the “computer processor” claim terms in the ’901 and ’910 patents; and (2) the “hardware that executes an instruction set” claim terms in the ’752 patent. Each of these terms is written in means-plus-function format and must be construed under § 112, ¶ 6.

1. The “Computer Processor Configured To” Terms In The ’901 And ’910 Patents Are Means-Plus-Function Limitations

Asserted claim 1 of both the ’901 and ’910 patents recite a “computer processor” limitation written in means-plus-function format under § 112, ¶ 6. Each claim recites a “computer processor configured to,” followed by a series of purely functional phrases, defining what the “computer processor” must be “configured to” perform.

While a claim term that does not use the word “means” triggers a rebuttable presumption that § 112, ¶ 6 does not apply, this presumption can be overcome and is not a “strong” one. *Williamson*, 792 F.3d at 1349; *Egenera, Inc. v. Cisco Sys., Inc.*, 972 F.3d 1367, 1374 (Fed. Cir. 2020). The presumption stands or falls according to whether a POSITA would understand the claim with the functional language, in the context of the entire specification, to denote sufficiently definite structure for performing the function. *Williamson*, 792 F.3d at 1349.

In a recent case that is instructive here (and not cited by Plaintiff), the Federal Circuit affirmed the district court’s holding that the rebuttable presumption under § 112, ¶ 6 was overcome for patent claims reciting a “processor configured to” perform certain functions. *WSOU Invs. LLC v. Google LLC*, 2023 WL 6889033, at *3-4 (Fed. Cir. Oct. 19, 2023) (“*WSOU II*”). In *WSOU II*, the Federal Circuit agreed with the district court’s assessment that the specification described the claimed “processor” as “referring to hardware, software, or essentially anything else that could perform the claimed functions,” and that “the language of the patent leads to the conclusion that ‘processors’ is meant to generically be anything that manipulates data.” *Id.* The Federal Circuit’s analysis provides a roadmap for the Court’s evaluation of the “computer processor” claim terms in this case:

[i.] [A]s the district court correctly noted, the specification treats the word “processor” so broadly as to generically be any structure that manipulates data. The specification states that “[i]mplementation of the processor 4 can be in hardware alone . . . , have certain aspects in software including firmware alone or can be a combination of hardware and software (including firmware),” and that the “processor 4 may be implemented using instructions that enable hardware functionality, for example, by using executable computer program instructions in a general-purpose or special-purpose processing unit that may be stored on a computer readable storage medium . . . to be executed by such a processing unit[.]” In other words, the specification teaches that the processor could be software, hardware, or a combination of the two.

[ii.] Other references to the “processor” in the specification describe it only in terms of its function, i.e., what it does—stating the processor “is configured to” accomplish various goals.

[iii.] In the context of this claim, this specification, and this specific invention, “processor” is so generically and functionally described as to fail to convey a sufficiently definite meaning as a name for a structure. *See Williamson*, 792 F.3d at 1349. We therefore agree with the district court’s determination that this claim limitation is written in means-plus-function format and is thus subject to the requirements of § 112 ¶ 6.

WSOU II, 2023 WL 6889033, at *4 (patent citations omitted).

[i.] Here, just as in *WSOU II*, the common ’901/’910 specification (which incorporates the parent ’540 specification by reference) describes the “processor” so broadly as to generically be any structure that manipulates data. In fact, Plaintiff’s specification explicitly says just that: “Microprocessor 240 is any component of recorder 120 which manipulates data.” ’540 patent at 5:20-21. The specification further states that “[r]ecorder 160 preferably includes a processor 162 with software or hardware that accomplishes the functions described herein,” ’901 patent at 4:67-5:2, and that, “[p]referably, the recorder’s electronics are preferably all on a unitary printed circuit board with different functions, or facilities, encoded on a programmable chip or disk,” *id.* at 5:40-42. FIG 1 depicts the processor 162 as a black box. The specification discloses that, “[w]hile the different facilities are preferably part of a single hardware or software program, the facilities could be split into different components as necessary.” *Id.* at 5:48-50. In other words, the specification here teaches that the processor could be software, hardware, or a combination of software or hardware.

[ii.] Other references to the “processor” in the specification describe it only in terms of its function, *i.e.*, what it does—stating the processor “is programmed to” accomplish various goals. *See, e.g.*, ’540 patent at 5:28-30 (“In a preferred embodiment of the present invention, the microprocessor is programmed to allow editing function upon receiving image data or protected data.”), 5:30-33 (“Similarly, the microprocessor is programmed to determine which portion of the loop protected data has been used and which portion is still available for further use.”). The ’540

specification also generically discloses, without specifics, that “[i]t is generally contemplated that the microprocessor and the memory may vary considerably and that a particular configuration of such elements will predominantly depend on the type of computations employed” *Id.* at 5:39-42.

[iii.] The intrinsic evidence here demonstrates that the “computer processor” claim terms fail to connote sufficient structure “configured to” perform the recited functions. As in *WSOU II*, in the context of the claims, the specifications, and the alleged invention, the “[computer] ‘processor’ is so generically and functionally described as to fail to convey a sufficiently definite meaning as a name for a structure.” 2023 WL 6889033, at *4; *see also Diebold Nixdorf v. Int’l Trade Comm’n*, 899 F.3d 1291, 1299-1300 (Fed. Cir. 2018) (“[I]n appropriate cases, a party advocating that a claim limitation that does not recite the word ‘means’ is subject to § 112, para. 6 can overcome the presumption against its application solely by reference to evidence intrinsic to the patent.”).

In addition to the intrinsic evidence, Defendants have submitted a declaration from Dr. Kevin Almeroth, which is the only extrinsic evidence of record demonstrating—and confirming—how a POSITA would understand the “computer processor” claim limitations. *See* Ex. 1. Plaintiff, by contrast, identified no extrinsic evidence supporting its position that § 112, ¶ 6 does not apply, as it was required to do by the Local Patent Rules. *See* Dkt. 34; LPR 4-2(b) & 4-3(a)(2).

Dr. Almeroth, who is a Professor Emeritus in the Department of Computer Science at the University of California, Santa Barbara, has worked in this field for over 30 years, including conducting research involving the use circular buffers for storing and managing video data since at least the mid-1990s. Ex. 1 ¶¶ 6-11. Dr. Almeroth studied the patent claims, the patent specifications, and the prosecution file histories (*see* Ex. 1 ¶¶ 13, 73-78), and he evaluated how a POSITA in the field would have understood the “computer processor configured to” claim terms

in view of those intrinsic sources. As Dr. Almeroth explains, the “computer processor” terms recited in the ’901 and ’910 patent claims do not connote specific structure to a POSITA for performing the recited functions. *See* Ex. 1 ¶¶ 73-85. Instead the claimed “computer processor” is described in the specifications only in terms of its function, and as being implemented by any generic structure (software, hardware, or combination of software/hardware) that manipulates data. Ex. 1 ¶¶ 82-85. Dr. Almeroth’s testimony confirms that a POSITA would understand the “computer processor” claim terms do not convey a sufficiently definite structure for performing the recited functions, and § 112, ¶ 6 therefore applies here. *See Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1374 (Fed. Cir. 2003) (“[A] proper determination of whether the claim limitations should be construed as means-plus-function limitations requires an understanding of one of ordinary skill in the art. In this situation, it is appropriate to look to extrinsic evidence, including but not limited to dictionaries and expert testimony to assist the trier of fact in understanding the evidence.”).

Plaintiff contends that § 112, ¶ 6 does not apply where the “operation and objectives” of the processor are recited or “where the claim language provides a description of how the computer processor is specifically programmed to operate.” Dkt. 36 at 12-14. But those arguments improperly conflate the claimed “functions” the computer processor is recited as performing into *de facto* “structure” for the computer processor. In *WSOU II*, for example, the claims arguably recited operations and objectives and the steps the processor was “configured to” perform (*see* ’045 claim 1), yet the Federal Circuit held that § 112, ¶ 6 nevertheless applied. 2023 WL 6889033, at *1. And while Plaintiff argues the claims “describe[] the structural interactions between the processor and other components” (Dkt. 36 at 14-15), the claims do not actually specify how these “interactions” are performed, such as how data is “protected” or “designated for saving.” *See*

Williamson, 792 F.3d at 1351 (“While portions of the claim do describe certain inputs and outputs at a very high level (e.g., communications between the presenter and audience member computer systems), the claim does not describe how the ‘distributed learning control module’ interacts with other components in the distributed learning control server in a way that might inform the structural character of the limitation-in-question or otherwise impart structure to the ‘distributed learning control module’ as recited in the claim.”); cf. *Aristocrat Techs. Australia Pty Ltd. v. Multimedia Games, Inc.*, 266 F. App’x 942, 945 (Fed. Cir. 2008) (“[A] combination of memory and programming does not adequately describe a microprocessor or other structure for performing the claimed functions ... controlling the operation of the display means, responding to the initiation means, selecting and displaying a new result, etc.”).

Finally, Plaintiff’s Opening Brief (Dkt. 36 at 10-11) correctly notes that other courts have addressed “processor” terms in the means-plus-function context. But Plaintiff does not tell the complete story. As the Federal Circuit put it in *WSOU II* (uncited by Plaintiff): “[T]here is no categorical rule regarding whether the term ‘processor’ connotes sufficient structure to avoid interpretation in means-plus-function format.” 2023 WL 6889033, at *3 (“As we have explained, however, the applicability of § 112 ¶ 6 depends on the specific context of the patent at issue.”). “Instead, each claim term must be construed on its own in light of the intrinsic and extrinsic evidence of record.” *Id.* Indeed, other decisions in this District (likewise uncited by Plaintiff) have construed “processor” claim terms as being governed by § 112, ¶ 6, and reflect the patent-specific and claim-term-specific approach mandated by the Federal Circuit. See, e.g., *St. Isidore Rsch. v. Comerica Inc.*, 2016 WL 4988246, at *14 (E.D. Tex. Sept. 19, 2016) (“In the context of the ‘processor configured to...’ terms, however, each processor is defined only by the function that it performs. As such, the Defendants have rebutted the presumption that § 112, ¶ 6 does not

apply to the term ‘processor’ in these claims.”); *see also Pers. Audio, LLC v. Apple, Inc.*, 2011 WL 11757163, at *20-22 (E.D. Tex. Jan. 31, 2011) (“[T]he word ‘processor’ is not sufficient structure for performing the claimed functions. *** Accordingly, the court construes the ‘processor’ terms in the [asserted] patent as means-plus-function limitations subject to 35 U.S.C. Section 112 ¶ 6.”).

In **this** case, for **these** patents, the “computer processor” claim terms “must be construed on [their] own in light of the intrinsic and extrinsic evidence of record,” and the evidence here shows that these terms should be construed under § 112, ¶ 6. *WSOU II*, 2023 WL 6889033, at *3.

2. The “Hardware That Executes An Instruction Set” Claim Terms In The ’752 Patent Are Means-Plus-Function Limitations

Claim 1 of the ’752 patent recites “hardware that executes an instruction set,” followed by a series of purely functional phrases. The “hardware that executes an instruction set” phrase “does not provide any indication of structure because it sets forth the same black box recitation of structure for providing the same specified function as if the term ‘means’ had been used.” *Williamson*, 792 F.3d at 1349. Like the “computer processor” terms discussed above, these limitations are governed by § 112, ¶ 6.

While ’752 claim 1 does not use the word “means,” the presumption is rebutted here because the claimed “hardware that executes an instruction set” fails to recite sufficiently definite structure for performing the claimed functions. *Williamson*, 792 F.3d at 1348; *WSOU II*, 2023 WL 6889033, at *3-4. The term “hardware that executes an instruction set” appears only once in the ’752 specification at 2:25-27, and that brief passage says nothing about the structural implementation of the “hardware” or the “instruction set.” The specification later discloses that the “Recorder 46 preferably include a processor 46A that runs software to accomplish the functions described herein ...” *Id.* at 4:67-5:1. FIG 4 illustrates the processor 46A as a black box. Thus, the only “hardware that executes an instruction set” disclosed in the specification is a generic

“processor” that runs “software.” Plaintiff appears to agree that “this term would be understood to refer to a processor” (Dkt. 36 at 18), but ignores the remaining claim language requiring not just hardware, but also necessarily software (“that executes an instruction set”). The full term “hardware that executes an instruction set” indicates that the “hardware” must be specially adapted, configured, or programmed with an “instruction set” to perform the recited functions. *See Nazomi Communications, Inc. v. Nokia Corp.*, 739 F.3d 1339, 1340 (Fed Cir. 2014) (“Software refers to instructions that tell the device hardware what to do. The hardware then follows these instructions (‘executes’ the software).”).

The extrinsic evidence confirms that the term “hardware that executes an instruction set” was not a known, specific structure to a POSITA, but instead acts a placeholder term to mean anything implemented in hardware that can be programmed with software to perform the various recited functions. Defendants have submitted multiple dictionary definitions reflecting the meaning of the term “hardware” in the field. *See* Exs. 3-6. As just one example, the *Chambers Dictionary of Science and Technology* (2007) defines “hardware” as a “[g]eneral term for all mechanical, electrical and electronic components of a computer system including peripherals.” Ex. 3. Dr. Almeroth’s testimony additionally confirms that a POSITA would have recognized “[t]here is no widely adopted or generally understood definition for the term ‘hardware that executes an instruction set,’” and “this is not a known, specific structure, but instead refers to a general-purpose computer or processor.” Ex. 1 ¶¶ 40-42, 44-46, 60. And, as Dr. Almeroth explains, “the term ‘that executes an instruction set that’ in conjunction with the term ‘hardware’ connotes to a POSITA that the hardware must be specially programmed or otherwise adapted to perform a claimed function.” Ex. 1 ¶ 42. Plaintiff has submitted no rebuttal to any of this extrinsic evidence. *See* Dkt. 34.

After equating the claimed “hardware that executes an instruction set” in ’752 claim 1 to a “processor,” Plaintiff then repeats its same arguments about why § 112, ¶ 6 does not apply, including because the claim recites the “operation and objectives” and a “description of how the processor is specifically programmed to operate.” Dkt. 36 at 18-20. But, again, those arguments improperly attempt to turn the claimed “functions” that the “hardware that executes an instruction set” is recited as performing into *de facto* “structure.” And while Plaintiff similarly argues that ’752 claim 1 “discloses various structural components that interact with each other” (Dkt. 36 at 18-19), the claim itself does not specify how the “hardware” actually performs any such “interactions,” and says nothing of how the “instruction set” is to be “execute[d]” to perform the specific functions. *See Williamson*, 792 F.3d at 1351.

B. Function & Corresponding Structure: The “Computer Processor Configured To” Terms In The ’901 And ’910 Patents

Construing a means-plus-function limitation involves two steps. “The first step in construing [a means-plus-function] limitation is a determination of the function of the means-plus-function limitation.” *Medtronic, Inc. v. Advanced Cardiovascular Sys., Inc.*, 248 F.3d 1303, 1311 (Fed. Cir. 2001). Once a court has determined the limitation’s function, “the next step is to determine the corresponding structure disclosed in the specification and equivalents thereof.” *Id.* The focus of the “corresponding structure” inquiry is not merely whether a structure is capable of performing the recited function, but rather whether the corresponding structure is “clearly linked or associated with the [recited] function,” when viewed through the eyes of a POSITA. *Id.* The requirement that structure must be clearly linked or associated with the claimed function is the *quid pro quo* for the convenience of claiming in functional terms. *Med. Instr. & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1219 (Fed. Cir. 2003).

Where, as here, “there are multiple claimed functions, ... the patentee must disclose

adequate corresponding structure to perform all of the claimed functions.” *Williamson*, 792 F.3d at 1351-52. In claim 1 of both the ’901 and ’910 patents, the means-plus-function language is similar, and can be generally mapped as shown below:

	’901 patent, claim 1	’910 patent, claim 1
(1) computer processor configured to	record the sensor data in the first memory	record sensor data obtained by the sensor in the at least one memory
(2) computer processor configured to ...	in response to a first trigger signal, designate for saving a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the portion of the sensor data occupies a portion of the first memory that is less than the entirety of the first memory and corresponds to a length of time prior to the first trigger signal	in response to a first trigger signal, designate for write-protecting a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the first portion of the sensor data occupies a portion of the at least one memory that is less than the entirety of the at least one memory and corresponds to a length of time prior to the first trigger signal
(3) computer processor configured to ...	contiguously continuing to record the sensor data in the first memory while the first portion of the sensor data is designated for saving	continuing to record the sensor data in the at least one memory while the first portion of the sensor data is designated for write-protecting
(4) computer processor configured to ...	in response to a subsequent second trigger signal, designate for saving a second portion wherein the second portion occupies less than the remaining entirety of the first memory not designated for saving and corresponds to a length of time prior to the second trigger signal	in response to a subsequent second trigger signal, designate for write-protecting a second portion wherein the second portion occupies less than the remaining entirety of the at least one memory not designated for write-protecting and corresponds to a length of time prior to the second trigger signal
(5) computer processor configured to ...	automatically overwrite portions of the sensor data that were recorded in the first memory that were not designated for saving	
(6) computer processor configured to ...		upon reaching at least one of the first portion and the second portion while continuing to record the sensor data in the at least one

	'901 patent, claim 1	'910 patent, claim 1
		memory, excluding from overwriting the at least one of the first portion and second portion

For each disputed “computer processor” claim term, Defendants identify below the claimed function and the corresponding structure disclosed in the specification for performing the function.

1. “computer processor configured to: record (the) sensor data ...”

	'901 patent, claim 1	'910 patent, claim 1
(1) computer processor configured to	record the sensor data in the first memory	record sensor data obtained by the sensor in the at least one memory
<i>Function</i>	record the sensor data in the first memory	record sensor data obtained by the sensor in the at least one memory
<i>Corresponding Structure</i>	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 4:67-5:2, 5:38-50, Fig. 3, 7:48-59, Fig. 4A, 7:60-65	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 5:3-5, 5:40-52, Fig. 3, 7:48-59, Fig. 4A, 7:60-65

Function: For the '901 patent, the parties agree on the function. For the '910 patent, the parties disagree, but only Defendants' proposal properly tracks the claim language and should therefore be adopted. “[A] court may not construe a means-plus-function limitation ‘by adopting a function different from that explicitly recited in the claim.’” *JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1331 (Fed. Cir. 2005). Plaintiff’s proposal—“recording sensor data in the at least one memory”—omits the requirement that the sensor data be “obtained by the sensor,” and therefore should be rejected.

Structure: The parties disagree as to the corresponding structure. Defendants’ constructions follow the Federal Circuit’s mandate in *WMS Gaming*: “In a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.” 184 F.3d at 1349. The

algorithm may be expressed as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.” *Williamson*, 792 F.3d at 1348.

The specification discloses that “[r]ecorder 160 preferably includes a processor 162 with software or hardware that accomplishes the functions described herein,” ’901 patent at 4:67-5:2, and the recorder’s electronics are “encoded on a programmable chip or disk,” *id.* at 5:40-42. The claimed “computer processor,” therefore, is implemented in hardware and/or software. The specification further discloses a circular buffer, which “is preferably organized into a series of memory segments that loops back on itself and is organized into both available segments and write-protected segments” and which “allows a recording facility to record the data stream available in portions of the circular buffer while skipping over write-protected matter.” ’901 patent at 2:33-39. The corresponding structure for the “computer processor” that “records the sensor data” in memory is “hardware and/or software programmed to perform the circular buffer algorithm” disclosed in the specification. The corresponding disclosure of the circular buffer algorithm includes FIG 3, which is a diagram representation of the circular buffer, and FIG 4A, which illustrates specifically the step of “the recording facility” “record[ing] data stream ‘A’ into circular buffer 400,” *id.* at 7:62-63. Dr. Almeroth closely reviewed the specification and confirmed this is the corresponding structure that a POSITA would identify. *See* Ex. 1 ¶¶ 82-86.

Plaintiff’s proposed corresponding structure for these terms is not clearly linked to performing the specific recited functions, as made plain by Plaintiff proposing the exact same overbroad portions of the specification as corresponding structure for each of the five disputed terms of the ’901 patent, as well as the exact same overbroad portions of the specification as corresponding structure for each of the five disputed terms of the ’910 patent. Dkt. 36 at 4-9. Plaintiff proposes as structure all of FIGS 1, 3, and 4A-4H (and corresponding descriptions in the

specification) without identifying, for instance, any particular elements of FIG 1 nor any particular representation of the circular buffer among any of FIGS 4A through 4H. Plaintiff also identifies portions of the specification, such as 2:18-3:19 of the '901 patent (2:21-3:21 of the '910 patent), that are not clearly linked (or even related) to the specific claimed functions. *See Medtronic*, 248 F.3d at 1311 (“[S]tructure disclosed in the specification is ‘corresponding’ structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim.”). Plaintiff’s omnibus and overbroad identification of purportedly corresponding structure should be rejected. *See Bell N. Rsch., LLC v. Coolpad Techs., Inc.*, 2019 WL 3766688, at *6 (S.D. Cal. Aug. 9, 2019) (declining to “scour” plaintiff’s “absurdly overinclusive designation” to “locate, or otherwise ascertain from the blanket proffer made by Plaintiff what structure” is disclosed to provide the recited function).

2. “computer processor configured to: in response to a first trigger signal, designate for [saving / write-protecting] a first portion of the sensor data that was captured prior to occurrence of the first trigger signal ...”

	'901 patent, claim 1	'910 patent, claim 1
(2) computer processor configured to	in response to a first trigger signal, designate for saving a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the portion of the sensor data occupies a portion of the first memory that is less than the entirety of the first memory and corresponds to a length of time prior to the first trigger signal	in response to a first trigger signal, designate for write-protecting a first portion of the sensor data that was captured prior to occurrence of the first trigger signal, wherein the first portion of the sensor data occupies a portion of the at least one memory that is less than the entirety of the at least one memory and corresponds to a length of time prior to the first trigger signal
<i>Function</i>	in response to a first trigger signal, designate for saving a first portion of the sensor data that was captured prior to occurrence of the first trigger	in response to a first trigger signal, designate for write-protecting a first portion of the sensor data that was captured prior to occurrence of the first

	'901 patent, claim 1	'910 patent, claim 1
	signal, wherein the portion of the sensor data occupies a portion of the first memory that is less than the entirety of the first memory and corresponds to a length of time prior to the first trigger signal	trigger signal, wherein the first portion of the sensor data occupies a portion of the at least one memory that is less than the entirety of the at least one memory and corresponds to a length of time prior to the first trigger signal
<i>Corresponding Structure</i>	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 2:46-64, 4:67-5:2, 5:38-50, Fig. 4B, 8:9-37, Fig. 4C, 8:52-67, 9:62-10:5	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 2:49-67, 5:3-5, 5:40-52, Fig. 4B, 8:10-40, Fig. 4C, 8:55-9:3, 9:65-10:8

Function: The parties disagree on the specified function for each of these § 112, ¶ 6 terms, but again only Defendants' proposal properly tracks the literal claim language. *See JWW Enterprises*, 424 F.3d at 1331. Plaintiff's proposal for the '901 patent improperly re-writes the claim language, and Plaintiff's proposal for the '910 patent omits at least the requirements (1) "in response to a first trigger signal" and (2) "wherein the first portion of the sensor data ... corresponds to a length of time prior to the first trigger signal."

Structure: The parties disagree about the corresponding structure. As previously explained, each "computer processor" term should be construed as "hardware and/or software programmed to perform the circular buffer algorithm disclosed" in the portions of the specification corresponding to the specific claimed functions. Here, those portions include FIG 4B, which illustrates "protect[ing] a recent period of data stream 'A' as a function of a start signal," '901 patent at 8:9-11, and FIG 4C, which illustrates the moment where "the protecting facility has received a 'stop' signal some time after receiving the start signal, thereby lengthening the protected portion of the 'A' data stream," *id.* at 8:52-54. This also includes the disclosure of "indexing" to achieve "protecting" data: the specification discloses that "segments of recorded data are 'write-

protected’ by being indexed in an electronic index,” *id.* at 9:62-63, which “is preferably a hash table or a clustered index,” *id.* at 10:3-5. The un rebutted testimony of Dr. Almeroth confirms that this is the corresponding structure for these terms, as understood by a POSITA. *See* Ex. 1 ¶ 86.

Plaintiff’s proposal is both overbroad and underinclusive, and is therefore not clearly linked to the claimed function. Plaintiff’s proposal is overbroad because Plaintiff proposes as structure all of FIGS 1, 3, and 4A-4H (and corresponding descriptions in the specification) without identifying, for instance, any particular elements of FIG 1 nor any particular representation of the circular buffer among FIGS 4A-4H. Plaintiff also identifies portions of the specification, such as 2:18-3:19, that, when read in full, are untethered to the specific claimed functions. Plaintiff’s proposal is underinclusive because it omits disclosure of indexing—how sensor data is “designate[d]” for “saving” or “write-protecting.”

3. “computer processor configured to: (contiguously) continuing to record the sensor data ...”

	’901 patent, claim 1	’910 patent, claim 1
(3) computer processor configured to	contiguously continuing to record the sensor data in the first memory while the first portion of the sensor data is designated for saving	continuing to record the sensor data in the at least one memory while the first portion of the sensor data is designated for write-protecting
<i>Function</i>	contiguously continuing to record the sensor data in the first memory while the first portion of the sensor data is designated for saving	continuing to record the sensor data in the at least one memory while the first portion of the sensor data is designated for write-protecting
<i>Corresponding Structure</i>	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 2:46-64, 4:67-5:2, 5:38-50, Fig. 3, 7:48-59, Fig. 4D, 9:21-26, Fig. 4B, 8:9-37, Fig. 4C, 8:52-67, 9:62-10:5	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 2:49-67, 5:3-5, 5:40-52, Fig. 3, 7:48-59, Fig. 4D, 9:24-29, Fig. 4B, 8:10-40, Fig. 4C, 8:55-9:3, 9:65-10:8

Function: For the ’901 patent, the parties agree on the function. For the ’910 patent, the

parties disagree, but only Defendants' proposal properly corresponds to the literal claim language. Plaintiff's proposal omits the following bolded requirements from the literal claim language: "continuing to record the **sensor data in the at least one memory** while **the first portion of the sensor data** is designated for write-protecting," and therefore should be rejected.

Structure: The parties dispute the corresponding structure. Again, per *WMS Gaming*, these "computer processor" terms should be construed as "hardware and/or software programmed to perform the circular buffer algorithm disclosed" in the portions of the specification corresponding to the claimed functions in these parallel limitations. Here, this includes FIG 4B, which illustrates "protect[ing] a recent period of data stream 'A' as a function of a start signal," '901 patent at 8:9-11, FIG 4C, which illustrates the moment where "the protecting facility has received a 'stop' signal some time after receiving the start signal, thereby lengthening the protected portion of the 'A' data stream," *id.* at 8:52-54, and FIG 4D, which illustrates "continu[ing] to store a 'B' data stream into circular buffer 400" after "the system has finished protecting the desired portion of the 'A' data stream," *id.* at 9:21-23. This also includes the disclosure of "indexing" to achieve "protecting" data. *See id.* at 9:62-63, 10:3-5. Dr. Almeroth confirms that a POSITA would have understood this to be the corresponding structure. *See Ex. 1* ¶ 86.

Plaintiff's proposal, again, is both overbroad and underinclusive and not clearly linked to the claimed function as required by law. Plaintiff proposes as structure all of FIGS 1, 3, and 4A-4H (and corresponding descriptions in the specification) without identifying, for instance, any particular elements of FIG 1 nor any particular representation of the circular buffer among FIGS 4A-4H. Plaintiff also identifies portions of the specification, such as 2:18-3:19 of the '901 patent (2:21-3:21 of the '910 patent) that are untethered to the claimed function in this limitation. Plaintiff's proposal is underinclusive because it omits disclosure of indexing—how sensor data is

“designated for saving.”

4. **“computer processor configured to: in response to a subsequent second trigger signal, designate for [saving / write-protecting] a second portion ...”**

	'901 patent, claim 1	'910 patent, claim 1
(4) computer processor configured to	in response to a subsequent second trigger signal, designate for saving a second portion where in the second portion occupies less than the remaining entirety of the first memory not designated for saving and corresponds to a length of time prior to the second trigger signal	in response to a subsequent second trigger signal, designate for write-protecting a second portion wherein the second portion occupies less than the remaining entirety of the at least one memory not designated for write-protecting and corresponds to a length of time prior to the second trigger signal
<i>Function</i>	in response to a subsequent second trigger signal, designate for saving a second portion where in the second portion occupies less than the remaining entirety of the first memory not designated for saving and corresponds to a length of time prior to the second trigger signal	in response to a subsequent second trigger signal, designate for write-protecting a second portion wherein the second portion occupies less than the remaining entirety of the at least one memory not designated for write-protecting and corresponds to a length of time prior to the second trigger signal
<i>Corresponding Structure</i>	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 2:46-64, 4:67-5:2, 5:38-50, Fig. 4E, 9:48-50, 9:62-10:5	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 2:49-67, 5:3-5, 5:40-52, Fig. 4E, 9:51-53, 9:65-10:8

Function: For both patents, the parties disagree regarding the function, but only Defendants' proposals properly track the literal claim language. For the '901 patent, Plaintiff's proposal includes language that does not appear in the claim, including at least the following bolded language: **“designating for saving in response to a second trigger signal a second portion of sensor data captured prior to occurrence of the second trigger signal, wherein the saved sensor data includes data captured prior to the second trigger signal and occupies less than**

the remaining entirety of the first memory not previously designated for saving,” and should therefore be rejected. For the ’910 patent, Plaintiff’s proposal omits at least the requirements (1) “in response to a subsequent second trigger signal” and (2) “wherein the second portion ... corresponds to a length of time prior to the second trigger signal.”

Structure: The parties disagree. For these two parallel “computer processor” limitations, in accordance with *WMS Gaming*, the proper construction is “hardware and/or software programmed to perform the circular buffer algorithm disclosed” in the portions of the specification corresponding to the claimed functions. This includes FIG 4E, which illustrates the moment “the system has again received a start signal, and has again protected a fixed or variable historical time period.” ’901 patent at 9:48-50. This also includes the disclosure of “indexing” to achieve “protecting” data. *See id.* at 9:62-63, 10:3-5. Dr. Almeroth confirms this would be the corresponding structure identified by a POSITA. *See* Ex. 1 ¶ 86.

Plaintiff’s proposal is again overbroad because Plaintiff points to all of FIGS 1, 3, and 4A-4H (and corresponding descriptions in the specification) as corresponding structure without identifying, for instance, any particular elements of FIG 1 or any of the particular circular buffer representations among FIGS 4A-4H. Plaintiff also identifies portions of the specification, such as 2:18-3:19 of the ’901 patent (2:21-3:21 of the ’910 patent), that are unconnected to the specific claimed functions. Plaintiff’s proposal is underinclusive because it omits disclosure of indexing.

5. “computer processor configured to: automatically overwrite portions of the sensor data ...”

	’901 patent, claim 1	’910 patent, claim 1
(5) computer processor configured to	automatically overwrite portions of the sensor data that were recorded in the first memory that were not designated for saving	N/A

	'901 patent, claim 1	'910 patent, claim 1
<i>Function</i>	automatically overwrite portions of the sensor data that were recorded in the first memory that were not designated for saving	N/A
<i>Corresponding Structure</i>	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:33-39, 4:67-5:2, 5:38-50, Fig. 3, 7:48-59, Fig. 4A, 7:60-65	N/A

Function: The parties disagree regarding the function for this § 112, ¶ 6 term, but only Defendants' proposal follows the literal claim language. Plaintiff's proposal omits the requirement that the sensor data be recorded "**in the first memory**," and therefore should be rejected.

Structure: This "computer processor" term should be construed as "hardware and/or software programmed to perform the circular buffer algorithm disclosed" in the portions of the specification corresponding to the claimed functions in this limitation. The corresponding structure here includes FIG 3, which is a diagram representation of the circular buffer, and FIG 4A, which illustrates specifically the step of "the recording facility" "record[ing] data stream 'A' into circular buffer 400," *id.* at 7:62-63. Dr. Almeroth confirms this is the corresponding structure a POSITA would recognize. *See* Ex. 1 ¶ 86.

Plaintiff's proposal again is not clearly linked to the claimed function, instead pointing indiscriminately to all of FIGS 1, 3, and 4A-4H (and corresponding descriptions in the specification). Plaintiff also identifies portions of the specification, such as 2:18-3:19, that are unrelated to the specific claimed function.

6. "computer processor configured to: ... exclud[e] from overwriting ..."

	'901 patent, claim 1	'910 patent, claim 1
(6) computer processor configured to	N/A	upon reaching at least one of the first portion and the second portion while continuing to record the sensor data in the at least one memory, excluding

	'901 patent, claim 1	'910 patent, claim 1
		from overwriting the at least one of the first portion and second portion
<i>Function</i>	N/A	upon reaching at least one of the first portion and the second portion while continuing to record the sensor data in the at least one memory, excluding from overwriting the at least one of the first portion and second portion
<i>Corresponding Structure</i>	N/A	hardware and/or software programmed to perform the circular buffer algorithm disclosed at 2:36-42, 5:3-5, 5:40-52, Fig. 3, 7:48-59, Fig. 4A, 7:62-65, Fig. 4G, 9:56-60

Function: Defendants' proposed function properly tracks the literal claim language, whereas Plaintiff's does not. Plaintiff's proposal omits the following bolded requirements from the claim language: "upon reaching **at least one of the first portion and the second portion while continuing to record the sensor data in the at least one memory.**"

Structure: Under *WMS Gaming*, this final "computer processor" term should be construed as "hardware and/or software programmed to perform the circular buffer algorithm disclosed" in the portions of the specification corresponding to the claimed functions in this limitation. For this term, this includes FIG 4A, which illustrates specifically the step of "the recording facility" "record[ing] data stream 'A' into circular buffer 400," '901 patent at 7:62-63, and FIG 4G, which illustrates the moment "the system has continued to record data, which is now depicted as data stream 'C' because it follows data stream 'B'" and which is "particularly significant in that recordation of the 'C' data stream skips over the protected portion of the 'A' data stream," *id.* at 9:56-60. This is the corresponding structure that a POSITA would identify, as Dr. Almeroth confirms. *See* Ex. 1 ¶ 86.

As with the other "computer processor" terms discussed above, Plaintiff's omnibus proposal—including all of FIGS 1, 3, and 4A-4H (and corresponding descriptions in the

specification) and other portions of the specification, such as 2:21-3:21—is not clearly linked to the claimed function as the governing statute and Federal Circuit case law require.

C. Function & Corresponding Structure: The “Hardware That Executes An Instruction Set” Terms In The ’752 patent

The means-plus-function language in claim 1 of the ’752 patent can be generally mapped as shown below:

	’752 patent, claim 1
(1) hardware that executes an instruction set that	utilizes an area of the memory as a circular buffer
(2) hardware that executes an instruction set that ...	records the first data stream in the buffer
(3) hardware that executes an instruction set that ...	responds to a first signal by protecting a recently used segment of the buffer storing at least a portion of the first data stream corresponding to a duration of time prior to the first signal, while at the same time continuously recording the first data stream as the second data stream in an unprotected segment of the buffer, without overwriting the protected segment
(4) hardware that executes an instruction set that ...	responds to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal

For each disputed “hardware” claim term, Defendants identify below the claimed function and the corresponding structure (if any) disclosed in the specification for performing the function.

1. “hardware that executes an instruction set that utilizes an area of the memory as a circular buffer”

	’752 patent, claim 1
(1) hardware that executes an instruction set that	utilizes an area of the memory as a circular buffer
<i>Function</i>	utilizes an area of the memory as a circular buffer
<i>Corresponding Structure</i>	hardware and software programmed to perform the circular buffer algorithm disclosed at 2:36-39, 4:67-5:1, Figs. 3A-3H, 3:13-4:45, Fig. 5 (Step 51), 5:35-40

Function: The parties agree on the function.

Structure: The parties dispute the corresponding structure. Initially, “hardware that executes an instruction set that” is a recitation of **both** hardware **and** software, as Defendants’

construction captures. Indeed, the '752 specification discloses that the “Recorder 46 preferably include a processor 46A that runs software to accomplish the functions described herein ...” *Id.* at 4:67-5:1. And the manner in which data is recorded into the claimed “circular buffer” is disclosed in FIGS 3A-3H and FIG 5 and constitutes circular buffer algorithms. The corresponding structure, therefore, for the “hardware that executes an instruction set that” terms is “hardware and software programmed to perform the circular buffer algorithm” disclosed in the portions of the specification corresponding to the claimed function for this limitation. *WMS Gaming*, 184 F.3d at 1349. Here, this includes FIGS 3A-3H and step 51 of FIG 5, which describes a step of “utilizing an area of a memory as a circular buffer.” The un rebutted testimony of Dr. Almeroth confirms a POSITA would understand this to be the corresponding structure for “utiliz[ing] an area of the memory as a circular buffer.” *See* Ex. 1 ¶ 72.

Like with the '901 and '910 patents, Plaintiff proposes the exact same overbroad portions of the specification as corresponding structure for each of the four disputed '752 patent claim terms. Dkt. 36 at 15-17. Here, Plaintiff proposes as structure all of FIGS 4 and 5 (and corresponding descriptions in the specification) without identifying any particular elements of FIG 4 nor any particular steps illustrated in FIG 5. Plaintiff also identifies portions of the specification, such as 2:25-44, 5:35-61, and the full Abstract that are unrelated to the specific function of “utiliz[ing] an area of the memory as a circular buffer.” For these reasons, Plaintiff’s structure is overbroad and not clearly linked to the claimed function.

2. “[hardware that executes an instruction set that] records the first data stream in the buffer”

	'752 patent, claim 1
(2) hardware that executes an instruction set that	records the first data stream in the buffer
<i>Function</i>	records the first data stream in the [circular] buffer

	'752 patent, claim 1
<i>Corresponding Structure</i>	hardware and software programmed to perform the circular buffer algorithm disclosed at 2:36-39, 4:67-5:1, 5:12-14, Fig. 3A, 3:13-16, Fig. 5 (Step 52), 5:48

Function: The parties agree on the function.

Structure: The parties do not agree about the corresponding structure.

Under *WMS Gaming*, the corresponding structure for this “hardware that executes an instruction set that” term is “hardware and software programmed to perform the circular buffer algorithm” disclosed in the portions of the specification corresponding to this particular claimed function. Here, this includes FIG 3A, which illustrates “stor[ing] data from data stream ‘A’” in a memory 30, ’752 patent at 3:13-14, and step 52 of FIG 5, which describes a step of “recording a first data stream in the buffer.” Dr. Almeroth confirms this is the corresponding structure for “record[ing] the first data stream in the [circular] buffer,” as viewed by a POSITA. *See* Ex. 1 ¶ 72.

Plaintiff’s proposal, again, is overbroad and not clearly linked to the claimed function. Plaintiff proposes as structure all of FIGS 3A-3H, 4 and 5 (and corresponding descriptions in the specification) without identifying any particular elements or steps that are linked to the claimed function. Plaintiff also includes portions of the specification, such as 2:25-44, 5:35-61, and the full Abstract that are untethered to the specific claimed function.

3. **“[hardware that executes an instruction set that] responds to a first signal by protecting a recently used segment of the buffer storing at least a portion of the first data stream corresponding to a duration of time prior to the first signal ...”**

	'752 patent, claim 1
(3) hardware that executes an instruction set that	responds to a first signal by protecting a recently used segment of the buffer storing at least a portion of the first data stream corresponding to a duration of time prior to the first signal, while at the same time continuously recording the first data stream as the second data stream in an unprotected segment of the buffer, without overwriting the protected segment

	'752 patent, claim 1
<i>Function</i>	responding to a first signal by protecting a segment of the buffer corresponding to a duration of time prior to the first signal, while at the same time continuously recording the first data stream as the second data stream in an unprotected segment
<i>Corresponding Structure</i>	None. No corresponding structure renders claim 1 indefinite.

Function: The parties agree on the function.

Structure: Defendants maintain that the specification fails to disclose sufficient corresponding structure for performing this function. The '752 patent specification, including the portions Plaintiff identifies, does not disclose any structure or algorithm to perform at least the function of “**protecting** a recently used segment of the buffer storing at least a portion of the first data stream corresponding to a duration of time prior to the first signal.” Rather, while the '752 patent depicts a recorder that “preferably include[s] a processor,” '752 patent at 4:67-5:1, none of FIGS 3A-3H nor FIGS 4 or 5 (nor any other portion of the specification) provide any disclosure of algorithms, routines, or instructions by which to perform the claimed functions and in particular the “protecting” function. Instead, these drawing figures and their corresponding descriptions at most merely parrot the language of the claims or indicate that data “is” or “has been protected” without any description or disclosure of how the “protecting” function is accomplished.

FIGS 3A-3H of the '752 patent “depict schematics of memory usage in a device according to aspects of the present invention, progressively showing storage of multiple data streams.” *Id.* at 3:3-5. Yet, FIGS 3A-3H (and the corresponding description at 3:13-4:45) do not describe or disclose how a data stream recorded into a recently used segment of the circular buffer is “protected” in response to a start signal—only that it “is” or “has been protected” in response to the start signal. *See id.* at 3:23-27, 4:35-36, 4:43-45. In FIG 5, and in the corresponding description at 5:35-61, the steps disclosed generally mirror the functions recited in claim 1, without more. FIG

5 shows a step of “responding to a start signal by protecting a recently used segment of the buffer” (step 53) and a step of “skipping over at least some of the protected segment during recordation of the second data stream” (step 55). But how the “protecting” function is accomplished is not described or disclosed.

Dr. Almeroth conducted a thorough review of the ’752 patent specification, including all of the portions identified by Plaintiff, and concluded that a POSITA would not find sufficient structure for performing the claimed “protecting” function. *See* Ex. 1 ¶¶ 48-56. Dr. Almeroth’s analysis confirmed that the ’752 patent specification does not disclose any algorithm, instructions, steps, processes, or other structure for performing the function of “protecting a recently used segment of the buffer storing at least a portion of the first data stream corresponding to a duration of time prior to the first signal.” Ex. 1 ¶ 55. Plaintiff offers no rebuttal to Dr. Almeroth’s testimony.

Where, as here, the specification fails entirely to disclose an algorithm for performing the claimed function, there is no corresponding structure and the claim is indefinite under § 112, ¶ 2. *Aristocrat*, 521 F.3d at 1331, 1337-38 (claims indefinite under Section 112 where “the patent does not disclose the required algorithm or algorithms, and a person of ordinary skill in the art would not recognize the patent as disclosing any algorithm at all”). “[T]he proper inquiry for purposes of section 112[¶ 6] analysis is to look at the disclosure of the patent and determine if one of skill in the art would have understood that disclosure to encompass software [to perform the function] and been able to implement such a program, not simply whether one of skill in the art would have been able to write such a software program.” *Id.* at 1337 (quoting *Elektro*, 344 F.3d at 1212). “It is ‘well settled that simply disclosing software ... without providing some detail about the means to accomplish the function[] is not enough.’” *Function Media, L.L.C. v. Google, Inc.*, 708 F.3d

1310, 1318 (Fed Cir. 2013). Rather, “Section 112(f) requires disclosure of “an algorithm—i.e., a step-by-step procedure—for performing the claimed function.” *Triton Tech of Tex., LLC v. Nintendo of Am., Inc.*, 753 F.3d 1375, 1378-79 (Fed. Cir. 2014).

Because nothing in the ’752 patent specification discloses or clearly links any specific, corresponding structure for performing the claimed function, including any description of algorithms, routines, or instructions by which to perform the claimed function, this claim term renders ’752 patent claim 1 indefinite.

4. “[hardware that executes an instruction set that] responds to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal.”

	’752 patent, claim 1
(4) hardware that executes an instruction set that	responds to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal
<i>Function</i>	responding to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal
<i>Corresponding Structure</i>	None. No corresponding structure renders claim 1 indefinite.

Function: The parties agree on the function.

Structure: Again for this term, the parties disagree whether the ’752 specification discloses sufficient corresponding structure for performing the claimed “**increasing the duration**” function. Defendants maintain that it does not, as confirmed by the un rebutted testimony of Dr. Almeroth. See Ex. 1 ¶¶ 62-71.

At 3:37-50, the specification describes how the “second signal” may be triggered, but does not disclose how, in response to the second signal, the claimed “hardware that executes an instruction set” performs the function of “increasing the duration of the protected segment of the buffer prior to the first signal.” While the specification contemplates an embodiment wherein a user may hit a “more time” button to lengthen the protected segment of the data stream prior to the

start signal, at 3:37-50, this portion of the specification discloses no algorithm for “respond[ing] to” the second signal, nor any disclosure of how the recited function of “increasing the duration of the protected segment of the buffer prior to the first signal” is performed. This part of the specification discloses, at most, only the second signal itself, and not how the system responds to that signal.

Additionally, FIG 3C does not illustrate the step of, in response to a second signal, “increasing the duration of the protected segment of the buffer prior to the first signal”; in FIG 3C, protection of the portion of the “A” data stream corresponding to a duration of time prior to the first signal (*i.e.*, the start signal) has already occurred, and the system in FIG 3C is continuing to protect data recorded into the buffer until reception of a “stop” signal. Thus, FIG 3C does not disclose any corresponding structure clearly linked to performing the function of “increasing the duration of the protected segment of the buffer prior to the first signal.”

Plaintiff also points generally to FIGS. 4 and 5. But FIG 4 shows only a generic, high-level view of the system, and does not illustrate or describe any of the particular memory management functions recited in claim 1. FIG 5 likewise does not illustrate or describe any step of “respond[ing] to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior to the first signal,” as recited in claim 1.

Dr. Almeroth comprehensively reviewed the '752 patent specification, including the excerpts identified by Plaintiff, and determined that a POSITA would not find sufficient structure for performing the claimed “increasing the duration” function. *See* Ex. 1 ¶¶ 57-71. Dr. Almeroth’s analysis confirmed that the '752 patent specification does not disclose any algorithm, instructions, steps, processes, or other structure for performing the function of “responding to a second signal received after the first signal by increasing the duration of the protected segment of the buffer prior

to the first signal.” *Id.*

Here again, because the specification fails to disclose corresponding algorithms, routines, or instructions by which to perform the claimed “increasing the duration” function, this claim term renders ’752 patent claim 1 indefinite. *See Function Media*, 708 F.3d at 1318.

Date: May 31, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2024, a copy of the foregoing document and any attachments thereto was filed electronically with the Clerk of Court via CM/ECF system, which sent notification to all counsel of record.

/s/ Christopher A. Buxton

Christopher A. Buxton

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

STELLAR, LLC,

Plaintiff,

v.

MOTOROLA SOLUTIONS, INC. and
WATCHGUARD VIDEO, INC.

Defendants.

Civil Action No. 4:23-cv-750

JURY TRIAL DEMANDED

PLAINTIFF STELLAR, LLC'S REPLY CLAIM CONSTRUCTION BRIEF

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I. ARGUMENT

Stellar submits this reply claim construction brief in response to the responsive claim construction brief filed by Motorola Solutions, Inc. and WatchGuard Video, Inc. (“Defendants”) on May 31, 2024. (Dkt. 37.)

A. U.S. Patent No. 8,310,540

1. “A method of storing discrete segments of imaged data in a camera, comprising”

Defendants assert that “[t]he preamble of claim 1 is limiting because: 1) it provides antecedent basis for terms in the body of the claims; and (2) it does not merely state an intended use, but rather provides that the camera is where the discrete segments of imaged data are stored” and that “unlike *Am. Medical Systems*, the preamble provides the context that the imaged data of the claim is stored in a camera of the claim and is not merely duplicative of the limitations in the body of the claim.” (Dkt. 37 at 7-8 (citing *Am. Med. Sys., Inc. v. Biolitec, Inc.*, 618 F.3d 1354, 1360 (Fed. Cir. 2010)).

But providing a recorder coupled to the camera and having a memory and using that memory to record segments of image data, makes clear that the image data is stored in the camera, specifically within memory of a recorder coupled to (i.e., within the single unit of) the camera. Storing of discrete segments of imaged data in a camera is therefore duplicative of providing a recorder coupled to the camera and having a memory and using that memory to record segments of image data as recited in the body of the claim:

1. A method of storing discrete segments of imaged data in a camera, comprising:
using a sensor in the camera to capture image data;
providing a recorder coupled to the camera and having a memory;
using multiple portions of the memory as a memory loop in which to record segments of the image data in approximately real time;

(Dkt. 1-3 ('540 patent), 8:19-26.) For similar reasons, Defendants fail to distinguish *Global Equity*. (Dkt. 37 at 8-9 (citing *Glob. Equity Mgmt. (SA) Pty. Ltd. v. Expedia, Inc.*, 2016 WL 7416132, *13 (E.D. Tex. Dec. 22, 2016)).)

Defendants have failed to show that the preamble recites essential structure or steps or is necessary to give life, meaning, and vitality to the claim. Instead, the preamble is duplicative of the limitations in the body of the claim. The Court should therefore find that the preamble is not limiting.

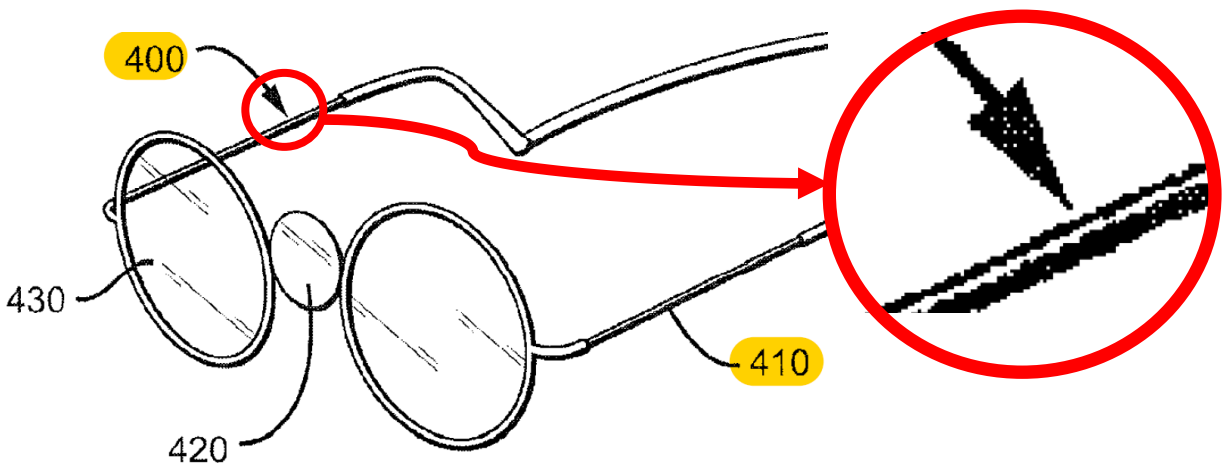
2. “A method of storing discrete segments of imaged data in a camera, comprising: using a sensor in the camera to capture image data; providing a recorder coupled to the camera and having a memory; using multiple portions of the memory as a memory loop in which to record segments of the image data in approximately real time”

Defendants’ indefiniteness argument defies common sense. A lay person would easily understand that “a recorder coupled to the camera and having a memory” refers to a camera having sub-components, including a recorder having a memory. Importantly, the specification itself contemplates the sub-components all residing in a single device. “Recorder 120 comprises imager lens 220, memory 140, control buttons 230, microprocessor 240, power source 250, microphone 260 hard drive 270, transmitter 280, and optional display screen (not shown) as shown in FIG. 2.” (Dkt. 1-3 at 3:11-14.) “Typically, the recorder is a high performance digital camera The recorder’s electronics preferably are all on a unitary printed circuit board.” (*Id.* at 3:16-20.) Accepting Defendants’ interpretation would exclude embodiments disclosed in the specification. “A claim construction that ‘excludes the preferred embodiment is rarely, if ever, correct and would require highly persuasive evidentiary support.’” *Synqor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365, 1378-79 (Fed. Cir. 2013).

Further, “because claim construction frequently poses difficult questions over which reasonable minds may disagree, proof of indefiniteness must meet an exacting standard.”

Haemonetics Corp. v. Baxter Healthcare Corp., 607 F.3d 776, 783 (Fed. Cir. 2010). The fact that the preamble refers to the memory storage capability of the overall camera without specifying that the memory storage capability resides within “a recorder” subcomponent of the camera does not change the definiteness of this claim. “A claim is not indefinite merely because parties disagree concerning its construction. An accused infringer must thus demonstrate by clear and convincing evidence that one of ordinary skill in the relevant art could not discern the boundaries of the claim based on the claim language, the specification, the prosecution history, and the knowledge in the relevant art.” *Id.* at 783 (internal quotations and citations omitted).

Defendants’ argument also ignores the patentee’s use of the word “coupled” within the specification. The argument hinges on Defendants’ assertion that the plain meaning of “coupled to” does not allow for a structure to be “‘coupled’ to itself”. They cite *Cutsforth, Inc. v. Motivepower, Inc.*, 643 F. App’x 1008, 1012 (Fed. Cir. 2016), to argue that the plain meaning of “couple to” indicates that one physical structure is “separate from” another physical structure. (Dkt. 37 at 10.) But this is not how the patentee uses “coupled”. For example, the ’540 patent recites: “This preferred embodiment is shown in FIGS. 3-7 and comprises a miniature solid state **recording device 400 coupled with a head-mounted camera 410.**” (Dkt. 1-3 at 6:15-17.) The following annotation of Figure 5 (with original numbers, lines and arrow from the patent) is an illustration of how these reference numbered items (recording device 400, and head-mounted camera 410) are part of the same structure—i.e., the camera recorder—yet are “coupled” with one another:



(Dkt. 1-3 at FIG. 5.)

The USPTO’s Manual of Patent Examining Procedures (“MPEP”) also supports Stellar’s position. According to the MPEP, “arrows [as shown above with recording device 400] may be used at the ends of lines . . . as follows: (1) On a lead line, **a freestanding arrow to indicate the entire section** towards which it points[.]” See MPEP, 37 C.F.R § 1.84(r). Where arrows are not used, lead lines are understood as “those lines between the reference characters and the details referred to. . . . They must originate in the immediate proximity of the reference character and extend to the feature indicated.” *Id.* at subsection (q). Here, the arrow used with “recording device 400” reveals that this element refers to **the entirety of the device**. By contrast, a lead line without an arrow is used to show the location of “head-mounted camera 410”, revealing something **less than the entirety of the device**. Thus, in this instance, Figure 5 and the associated written description reveals that the word “coupled” is used to designate a camera substructure as a component within an entire recording device.

Finally, Defendants’ reading of “coupled” ignores a commonly understood meaning of this term: “to come together to form a single unit.” See <https://www.merriam-webster.com/thesaurus/coupled>. As recited in claim 1, and consistent with the patentee’s use of “coupled” in the specification, the camera and recorder come together to form a single unit.

Nothing in Defendants’ arguments establishes by clear and convincing evidence that a POSITA could not discern the boundaries of the claim based on the claim language, the specification, the prosecution history, and the knowledge in the relevant art. *Haemonetics Corp.*, 607 F.3d at 783. Accordingly, the Court should reject Defendants’ indefiniteness claim.

B. Means-Plus-Function Disputes

Defendants assert, in conclusory fashion, that the “computer processor” claim terms in the ’901 and ’910 patents and the “hardware that executes an instruction set” claim terms in the ’752 patent are written in means-plus-function format and must be construed under § 112 ¶ 6. For the reasons set forth below, Defendants fail to rebut the presumption that § 112 ¶ 6 does not apply to the claims reciting the disputed terms.

1. The “computer processor” claims of the ’901 and ’910 Patents Are Not Means-Plus-Function

Because invoking § 112 ¶ 6 is a choice left to the claim drafter, in the absence of the term “means,” courts presume at the first step of the analysis that a claim limitation is not subject to § 112 ¶ 6. *Dyfan, LLC v. Target Corp.*, 28 F.4th 1360, 1365 (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.’” *Id.* at 1366 (citing *Apex Inc. v. Raritan Comput., Inc.*, 325 F.3d 1364, 1373-74 (Fed. Cir. 2003)). In *Apex*, the defendant “relied on district court decisions addressing the definition of ‘circuit means’; expert testimony that the term ‘circuit’ would have been ‘understood by one of ordinary skill in the art as a very broad term’; and the description of preferred embodiments in the specification to establish that ‘circuit’ did not connote sufficiently definite structure to a person of ordinary skill.” *Id.* at 1373-74. Relying on a dictionary definition for the disputed term, the Federal Circuit disagreed, finding

that the evidence was not enough to rebut the § 112 ¶ 6 presumption because it failed to show that a POSITA would believe it did not recite sufficiently definite structure. *Id.* at 1374.

That is where we find ourselves here. Relying primarily on *WSOU Invs. LLC v. Google LLC*, Nos. 2022-1063, 2022-1065, 2023 U.S. App. LEXIS 27763 (Fed. Cir. Oct. 19, 2023) (“*WSOU II*”), selected citations from the specification, and testimony from its expert, Defendants argue that the disputed terms of the ’901, ’910, and ’752 patents invoke § 112 ¶ 6.

In support, Defendants offer *WSOU II* as though this decision created a categorical rule that the term “processor” is used “so broadly as to generically be any structure that manipulates data,” and thus invokes § 112 ¶ 6. (Dkt. 37 at 12-13.) In reality, the Federal Circuit explained: “there is no categorical rule regarding whether the term ‘processor’ connotes sufficient structure to avoid interpretation in means-plus-function format. Indeed, district courts have found some uses of ‘processor’ connote sufficient structure while others do not.” *WSOU II*, 2023 U.S. App. LEXIS 27763, at *8. Moreover, the Court need look no further than the second portion of *WSOU II* itself to understand when the use of “processor” connotes sufficient structure, which Defendants neglect to mention. Finding structure through the recitation of claim terms like “computer program code,” “memory,” and “processor,” the Federal Circuit reversed the district court’s finding of § 112 ¶ 6 applicability:

The limitation at issue in the asserted claims of this patent is “at least one **memory** and the **computer** program code are configured, with the at least one **processor**, to cause the apparatus to” accomplish various functions. Like the previous claim limitation, this limitation receives the benefit of the presumption that it is not in means-plus-function format because it lacks the word “means.” Unlike the previous claim limitation, however, we conclude that Google has not rebutted the presumption. Google asserts that the collective “memory,” “computer program code,” and “processor” terms convey no “structural character” to a person of ordinary skill in the art and that they are understood “solely by the different functions they are assigned to perform.” We disagree.

In light of the intrinsic record in this case, we conclude that *a person of ordinary skill in the art would understand the structure of the claimed “computer program code,” “memory,” and “processor.”* First, ***the claim language itself provides structural guidance.*** For example, the claim limitation at issue requires “at least one memory including computer program code,” which is configured “with the at least one processor” to perform various tasks. WSOU asserts that a person of ordinary skill in the art reading the claim in light of the specification would understand that the recited computer program code is stored in a memory structure and running on the processor. We agree. **The disputed claim limitation recites multiple elements and their connections to one another. Though terms like “computer program code,” “memory,” and “processor” may be broad, the recited combination of these multiple broadly named structures informs the skilled artisan’s relative understanding of what each structure is and what it is not, as well as how the various structures relate to one another.**

WSOU II, 2023 U.S. App. LEXIS 27763, at *11-12 (internal citations omitted; emphasis added).

Similarly, as explained in Stellar’s Opening Brief (Dkt. 36), the claims at issue recite associated terms for the structure. For example, with respect to the ’901 and ’910 patents, the claims recite:

(1) a ***sensor***, (2) ***memory*** coupled to the sensor to store the sensor data, and (3) a ***computer processor*** configured to write-protect and store the sensor data in a particular manner while continuing to record sensor data in the memory. (Dkt. 36 at 12-13.)

As in *Apex* with respect to the term “circuit”, here, technical dictionaries confirm the structure of the term “processor” consisting of at least an instruction control unit and an arithmetic and logic unit” and “the central processing unit of a computer.” *SyncPoint Imaging, LLC v. Nintendo of Am. Inc.*, 2016 U.S. Dist. LEXIS 677, at *59-60 (E.D. Tex. Jan. 5, 2016) (citing *IBM Dictionary of Computing* and *Webster’s New World Dictionary of Computing Terms*) (internal quotations omitted). One of the dictionaries cited by Defendants’ own expert confirms this structure defining “central processor” as “[t]he main part of a computer consisting of an arithmetic logic unit and a control unit.” (Dkt. 37-3 at 4.)

The holding in *WSOU II* and the dictionary definition of “processor” each alone support the finding of sufficient structure to avoid the application of § 112 ¶ 6. Taken together, they clearly demonstrate the fallacy of Defendants’ argument. Accordingly, the Court should find

that § 112 ¶ 6 does not apply. Because § 112 ¶ 6 does not apply, the Court need not address Defendants' arguments regarding function and corresponding structure.

2. The “hardware that executes an instruction set” claim of the ’752 Patent Is Not Means-Plus-Function

For similar reasons to their “computer processor” argument, Defendants assert that the term “hardware that executes an instruction set” invokes § 112 ¶ 6. And for similar reasons as outlined above, Defendants fail to rebut the presumption against the application of § 112 ¶ 6.

The extrinsic evidence confirms the inapplicability of § 112 ¶ 6. First, technical dictionaries relied upon by other courts, as well as at least one relied upon by Defendants' expert, confirm that the phrase “hardware that executes an instruction set” would be understood to connote actual physical structure, specifically “mechanical, electrical and electronic components of a computer system,” as opposed to a non-structural element. (Dkt. 37-3 at 5; *see also*, Dkt. 36-2 at 5.) This is further supported by the primary case Defendants rely upon, the aforementioned *WSOU II* decision by the Federal Circuit. *WSOU II* expressly refers to “hardware that runs the computer program code,” as a way to describe physical structure for an associated function, thus avoiding application of § 112 ¶ 6. *WSOU II*, 2023 U.S. App. LEXIS 27763, at *14.

Again, Defendants do not appear to appreciate the teaching of *WSOU II*, which explains that § 112 ¶ 6 may apply even in the absence of “means for” language where the use of the disputed term is so generic that it could refer “to hardware, software, or essentially anything else that could perform the claimed functions.” *Id.* at *7; *see also, id.* at * 9 and *14 (“[i]n other words, the [’045 patent] specification teaches that the processor could be software, hardware, or a combination of the two. Other references to the ‘processor’ in the specification describe it only in terms of its function,” but “[i]n contrast to the ’045 patent, the [’825 patent] specification here describes the ‘processor’ as hardware that runs the computer program code.”)

In the context of the specification and associated words of the claims in the '752 patent, a POSITA would understand the term “hardware that executes an instruction set” refers to a known physical structure with a known functional purpose, and therefore connotes sufficient structure to a POSITA for the same reasons as discussed in Section I.B.1, above. And when combined with a description of the operation and objectives of the recited hardware, the term conveys sufficient structural meaning to a POSITA and § 112 ¶ 6 does not apply. *SyncPoint*, 2016 U.S. Dist. LEXIS 677, at * 59 (quoting *Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d 1311, 1319-21(Fed. Cir. 2004)).

Moreover, like the '901 and '910 patents, the '752 patent confirms a structural meaning—as was emphasized in *WSOU II*—because the associated elements within the claim recite interrelated structures. For example, claim 1 of the '752 patent recites: (1) a **camera** to convert images into data streams, (2) a **memory** to store the converted images, and (3) **hardware that executes an instruction set (processor)** that protects and stores a segment of a data stream in a particular manner while continuing to record another data stream in the memory without overwriting the protected segment. *See WSOU II*, 2023 U.S. App. LEXIS 27763, at *11-12 (“The disputed claim limitation recites multiple elements and their connections to one another. Though terms like ‘computer program code,’ ‘memory,’ and ‘processor’ may be broad, the recited combination of these multiple broadly named structures informs the skilled artisan's relative understanding of what each structure is and what it is not, as well as how the various structures relate to one another.”).

The term “hardware that executes and instruction set”, especially when combined with the other elements, connotes sufficient structure to a POSITA. Defendants have not presented any contrary, more compelling evidence to rebut the presumption that this claim limitation is not

in means-plus-function format. Because the term is not governed by § 112 ¶ 6, the Court need not reach Defendants' indefiniteness argument.

II. CONCLUSION

For the reasons set forth above, Stellar requests that the Court find that Defendants have failed to meet their burden of establishing that '540 patent, claim 1 is indefinite. Stellar further asks that the Court find that none of the disputed terms invoke § 112 ¶ 6 because Defendants have failed to meet their burden of showing otherwise. To the extent the Court does find that a term invokes § 112 ¶ 6, Stellar submits that there is sufficient structure disclosed to support the recited function and requests that the Court adopt Stellar's identification of the recited function and corresponding structure for each term.

Dated: June 7, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2024 I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/Robert Kiddie
Robert Kiddie