

**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 or 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.

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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