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8 **UNITED STATES DISTRICT COURT**  
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10  
 11 **IN RE: AMERANTH PATENT**  
 12 **LITIGATION**

Lead Case No. 11-cv-1810 DMS (WVG)

13 **AMERANTH'S OPENING CLAIM**  
 14 **CONSTRUCTION BRIEF**

15 FAC filed: July 15, 2013

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1 Pursuant to Patent L.R. 4.2 and the Court’s Orders of Feb. 14, 2017 (Doc.  
2 623), July 6, 2017 (Doc. 775) and Aug. 16, 2017 (Doc. 782), Plaintiff Ameranth,  
3 Inc. (“Ameranth”) hereby presents its Opening Claim Construction Brief.

4 **I. OVERVIEW**

5 Many of the claim terms in the Ameranth 8,146,077 (“the ‘077 patent”)  
6 patent family have already been construed by two district courts,<sup>1</sup> the Federal  
7 Circuit<sup>2</sup> and the PTAB.<sup>3</sup> The 18 claims of the ‘077 patent were allowed only after  
8 lengthy and very careful review by the Patent Office, and were issued over 50  
9 patents and 100 other prior art references. The ‘077 patent was challenged by  
10 Defendants in multiple CBM petitions on §§ 101, 103, and 112 grounds. The  
11 PTAB rejected every argument Defendants made against all of the ‘077 claims.

12 The ‘077 claims are very detailed and require few new constructions.  
13 Ameranth’s four proposed terms for construction are specific “terms,” whereas  
14 Defendants and/or IPDEV seek constructions for entire claim “elements” for the  
15 most part, yet their proposed constructions are parsed out of context and fail to  
16 consider the meaning of the claims as a whole. Inconsistently, Defendants assert  
17 that Term 2 does not need construction, yet they propose constructions of Term 2  
18 within their proposals for the two different terms in Term 6. They also assert that  
19 Terms 5 and 8 are indefinite and lack structure, yet they propose constructions for  
20 the recited functions for the related terms in Terms 6 and 7.

21 Defendants’ proposed constructions appear to be made in light of their own  
22 products’ functionality<sup>4</sup> rather than the intrinsic evidence. Most of Defendants’

23 <sup>1</sup> There have been multiple independent District Court claim construction rulings in  
24 the ‘077 patent family. Ameranth urges this Court to at least consider, if not adopt,  
25 those well-reasoned constructions as discussed below.

26 <sup>2</sup> See *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1237 (Fed. Cir. 2016).

27 <sup>3</sup> CBM 2014- 00014 and CBM 2015- 00081 Non-Institution Decisions (Exhs. 1, 2).

28 <sup>4</sup> *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1118 (Fed. Cir. 1985)  
 (“A claim is construed in light of the [intrinsic evidence] . . . not in light of the  
accused device.”)



1 proposals also impermissibly would exclude every embodiment disclosed in the  
2 '077 specification, which in and of itself disqualifies them from being correct.<sup>5</sup>

3 Defendants wrongly seek to deny Ameranth its right to the full scope of the  
4 claims. But "plain and ordinary" meaning of claim terms must be applied unless  
5 "clear and unmistakable" disclaimers exist,<sup>6</sup> of which there is only *one*.

6 Indisputably, Ameranth disclaimed all "Web page" based embodiments from  
7 claims 1-12. After an in-person interview, the examiner suggested this disclaimer.<sup>7</sup>  
8 Ameranth accepted it and deleted "Web pages" from the claims and confirmed the  
9 disclaimer in a May 28, 2008 amendment by stating "Claims 103 and 118 [now  
10 '077 claims 1 and 9] have been further amended to delete web page menu  
11 generation recitations."<sup>8</sup> This "amendment based" disclaimer excludes all Web  
12 page embodiments from claims 1-12. (Shamos Decl. ¶ 30).

13 Defendants' constructions wrongly seek to restrict the claims to  
14 embodiments from the specification,<sup>9</sup> inject limitations taken out of thin air, or  
15 import functions already recited in the claims. This was held to be improper in the  
16 Federal Circuit's Nov. 29, 2016 claim constructions involving other patents of the  
17 family. That ruling alone compels denial of most of Defendants' proposals as a  
18 matter of law. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1237 (Fed. Cir.

19 <sup>5</sup> *Nellcor Puritan Bennett, Inc. v. Masimo Corp.*, 402 F.3d 1364, 1368 (Fed. Cir.  
20 2005) ("The fact that the construction ... would **have the effect of placing all the**  
21 **embodiments of the invention outside the scope of the claims** is powerful  
evidence that the court's construction is incorrect.") (emphasis added).

22 <sup>6</sup> To disavow or disclaim **the full scope** of a claim term, the patentee's statements  
23 in the specification or prosecution history must amount to a "**clear and**  
24 **unmistakable**" surrender. *Cordis Corp. v. Boston Sci. Corp.*, 561 F.3d 1319, 1329  
(Fed. Cir. 2009) (emp. added).

25 <sup>7</sup> App. Ser. No. 11/112,990, Interview Summary (April 22, 2008) (Exh. 3).

26 <sup>8</sup> *Id.* May 28, 2008 Amendment (including claim revisions striking "Web pages")  
at 2, 3, 6, 11 (Exh. 4).

27 <sup>9</sup> *Ecolab, Inc. v. Envirochem, Inc.*, 264 F.3d 1358, 1367 (Fed. Cir. 2001) ("Where  
28 the function is **not recited in the claim itself** by the patentee, we do **not** import  
such a limitation.") (emphasis added).

1 2016) (“Construing a claim term to include features of that term already recited in  
2 the claims would make those expressly recited features redundant.”).

3 Further, Defendants appear to believe that they have a right to be the  
4 “lexicographer”—as if **they** were the “inventor,” by injecting unrecited and  
5 indefinite terms into the claims out of thin air, *e.g.*, “a **particular** device,” “an  
6 **entire** network,” “at least a **portion**,” “in an **overlapping fashion**,” “an **update**”,  
7 and “remains **visible**.” Any of these proposals, if adopted, would necessitate a  
8 further Markman proceeding in 2018 to “construe the constructions.” The  
9 Markman process is directed to providing clarity to the claims. It is not directed to  
10 allowing infringers to introduce indefiniteness into the claims.

## 11 **II. TERMS IN DISPUTE**

### 12 **1. “wireless handheld computing device”**

13 Ameranth’s proposed construction is “a computing device that is capable of  
14 wireless communications and is sized to be held in one’s hand.”<sup>10</sup> Defendants and  
15 IPDEV argue that no construction is needed. However, the “capable of wireless  
16 communications” requirement is accepted by all parties. This is highly relevant,  
17 since none of the computers disclosed in the IPDEV Cupps ‘449 specification  
18 included this vital internal “wireless transceiver” capability. Defendants’ and  
19 IPDEV’s proposal is identical to Ameranth’s with the exception that they seek to  
20 eliminate any “size” aspects and to pluralize “hand.”<sup>11</sup> (Shamos Decl. ¶ 31).

21 Thus, the dispute over this claim term is whether “handheld” actually means  
22 “handheld” or whether it means “two-hand~~s~~ held.” IPDEV and Defendants  
23 absurdly argue that “handheld” is met by any device that can be held with **two**

24 \_\_\_\_\_  
25 <sup>10</sup> This was substantially the same construction given by Judge Everingham in prior  
26 litigation on other patents in the ‘077 family. *See Ameranth, Inc. v. Menusoft*  
27 *Systems Corp.*, No. 2:07-cv-271, Doc. No. 106 at 24 (April 21, 2010) (“a wireless  
28 computing device that is sized to be held in one’s hand”) (Exh. 5).

<sup>11</sup> Defendants notified Ameranth on October 9, 2017 that Defendants have now  
adopted IDPEV’s proposed construction of “wireless handheld computing device.”

1 “hands.” In effect they are trying to import the construction for “portable” (recited  
2 in IPDEV’s `449 claims 19-21) as defined in the 1999 Microsoft Computer  
3 Dictionary (table on page 350; “portable computer”) (Exh. 6). The Microsoft  
4 Dictionary clearly defines “portable” as encompassing computers which are  
5 “designed to be moved easily” and which can weigh up to 30 lbs. Handhelds  
6 clearly weighed less than 2 lbs. “Portable” and “handheld” are not the same. A  
7 handheld is a subset of the larger class of portable devices. *Id.* The same  
8 dictionary defines “handheld” separately as “[a] computer small enough to be held  
9 in one hand while being operated with the other hand.” Thus, the second hand is  
10 for “operation,” not for “carrying.” (Exh. 6 at p. 211). A “two handed”  
11 carrying/holding construction would entirely eviscerate the meaning of “handheld”  
12 as defined in the specification and as known to a POSA, and is thus clearly wrong.  
13 IPDEV and Defendants are simply trying to secure a construction which includes  
14 “laptops” or “transportables,” *e.g.*, PC-standard computers, which is all that is  
15 disclosed in IPDEV’s `449 patent, and which indisputably is not “sized to be held  
16 in one’s hand.” The '077 specification clearly states that the invention is directed  
17 to “solving the problem of converting paper-based menus or Windows PC-based  
18 menu screens to small PDA-sized displays.” '077 patent 3:43-45 (Exh. 7)  
19 (emphasis added). A POSA would know that “small” and “PDA” sized excluded  
20 large “portables” such as “laptops.” The specification differentiates laptop  
21 computers from “handheld devices.” *Compare* '077 1:43-44 (Exh. 7) (“Also in  
22 common use are *portable* laptop and handheld devices”) with 2:7-8 (Exh. 7)  
23 (emphasis added) (“With the advent of the Palm and other handheld wireless  
24 devices...”). (Shamos Decl. ¶ 32).

25 Judge Sammartino, in this consolidated case, also recognized that a  
26 “handheld” is a “PDA sized” device: “The invention allows for the more efficient  
27 **use of personal digital assistant (“PDA”) type devices** in the restaurant and  
28

1 hospitality fields by creating an integrated solution that *formats data for smaller*  
 2 *displays* and allows for synchronization of data.”<sup>12</sup> The Petitioners/Defendants  
 3 themselves agreed in CBM2014-00014. *See* Amended Petition, Paper 8 at 47  
 4 (“Indeed, the **patent’s description** of converting a menu to a ‘**small PDA-sized**  
 5 **display**’ ....” (emphasis added) (Exh. 10). The PTAB also agreed. *See Id.* Non-  
 6 Inst. Dec., Paper 19 at 27 (Exh. 1);<sup>13</sup> *see also* Shamos Decl. ¶ 33.

7 Ameranth’s construction is consistent with the orders of Judges Everingham  
 8 and Sammartino, the PTAB, Defendants themselves (CBM2014-00014), the  
 9 Microsoft Dictionary and, critically, the specification. (Shamos Decl. ¶ 34).

## 10 2. “synchronized”/”synchronous”

11 “Synchronized” has the same meaning as “synchronous” in the ’077 patent  
 12 and claims. (Shamos Decl. ¶ 35). Ameranth proposes “made, or configured to  
 13 make, consistent.” This is the construction given by the PTAB in CBM2015-  
 14 00081. *See* Non-Inst. Dec. at 15 (Exh. 2). It is also very similar to the construction  
 15 given by Judge Payne in district court (“made to be the same”). *Ameranth, Inc. v.*  
 16 *Par et al.*, No. 2:10-cv-294, Doc. 169, at 17 (Aug. 10, 2012) (Exh. 11).

17 Defendants assert that construction is unnecessary, yet they contradict  
 18 themselves by proposing two different and inconsistent constructions for broader  
 19 elements which include it. IPDEV agrees with Ameranth’s proposal. If the Court  
 20 adopts Ameranth’s and IPDEV’s proposal, then Defendants’ proposals for the two  
 21 other terms containing it (Term 6) also must be rejected. (Shamos Decl. ¶ 36).

22 Defendants’ alternative proposal is “made to be the same such that **a change**  
 23 **to data made on one device is reflected on another device.**” This is wrong

24 <sup>12</sup> *Ameranth v. GrubHub*, Case No. 3:12-cv-00739, Doc. No. 57, Denial of  
 25 GrubHub MSJ, p. 3 (March 26, 2013) (emphasis added) (Exh. 9).

26 <sup>13</sup> Moreover, the specification discloses that “Windows CE” was the preferred  
 27 handheld device OS. ’077 12:12-14 (Exh. 7). The Microsoft Computer  
 28 Dictionary defines Windows CE as “designed for use with handheld and palm-  
 sized PCs.” (Exh. 6). The specification leaves no doubt that a handheld device is  
 sized to be held in one hand.

1 because the claims are clearly all directed to a consistent user interface, *i.e.*, “**for**  
2 **display of**” the data (used *six* times in claims 1-12 and *five* in claims 13-18).  
3 Defendants’ proposal would restrict what is synchronized to “data” replication  
4 only and/or from “device to device,” which is not “for display of.” It is further  
5 wrong because the synchronized “master database” and/or “Web pages” of claim  
6 13 are not “devices.” Defendants’ proposal is thus inconsistent with what the  
7 claims actually recite. Nothing in the claims limits synchronization of a PHMC or  
8 PHC to mere “data” replication only, which ignores that the explicitly recited  
9 display elements include that the PHMC and PHC are “programmed,” *i.e.*, they are  
10 not mere “data.” (Shamos Decl. ¶ 37).

11 The PTAB’s “consistent” based construction is more accurately reflective of  
12 the specification disclosure than “the same” *data* verbiage proposed by Defendants  
13 since it reflects the consistency of the “display” of the user interface on the  
14 wireless handhelds in all claims and also as to the “Web pages” of claims 13-18.  
15 (Shamos Decl. ¶ 38). GrubHub proposes “changes to the data being synchronized  
16 are reflected instantaneously on all linked devices without a request for an update  
17 from the devices.” This proposal is further wrong for the additional reasons  
18 provided below with respect to the disputed Term 6. *Id.* ¶ 39.

### 19 3. “Web page”

20 Ameranth’s proposed construction is “a document, with associated files for  
21 graphics, scripts, and other resources, accessible over the internet and viewable in a  
22 Web browser.” This is the proper construction of “Web page” as decided by the  
23 PTAB and by two different district court judges in litigation. *E.g.*, CBM2014-  
24 00014, Non-Inst. Dec., Paper 19 at 8 (Exh. 1); *Ameranth v. Par*, Doc. 169, at 9  
25 (Exh. 11). The construction is defined by the World Wide Web Consortium (Exh.  
26 17) and is thus not disputable. (Shamos Decl. ¶ 40).

### 27 4. “graphical user interface”

28 Ameranth proposes “computer environment provided by an operating

1 system wherein an application program presents graphical representations of data  
 2 on a computer display screen and enables a user to make selections of the  
 3 graphically represented data.” The parties essentially agree, except that  
 4 Defendants and IPDEV do not include “provided by an operating system.”  
 5 However, the ‘077 claims and specification are clear that the GUI as claimed is  
 6 provided by an operating system:

7 Most personal computers today run under ***an operating system that***  
 8 ***provides a graphical user interface*** (“GUI”) for accessing user  
 9 applications. A GUI is used in the preferred embodiment ... The most  
 10 common GUI operating systems that provide this “object-oriented”  
 11 environment for personal computers are Microsoft Windows systems,  
 12 including Windows CE for handheld wireless devices....FIG. 1 shows  
 13 an example of the ***GUI provided by the operating system*** of the  
 14 preferred embodiment of the present invention.<sup>14</sup>

15 ‘077 patent 6:12-30; 7:32-35 (emphasis added) (Exh. 7). The GUIs recited in the  
 16 ‘077 claims are structures and functions provided by an operating system such as a  
 17 Windows OS, as opposed to a “DOS” OS which a POSA knew was not GUI-  
 18 based. The ‘077 priority application was filed in 1999, not long after the general  
 19 uptake of GUI operating systems, which is why the specification makes clear that  
 20 the invention involves GUI based operating systems. (Shamos Decl. ¶ 41).

21 Defendants and IPDEV are attempting to eliminate the express requirement  
 22 of a GUI provided by an OS because, while ignoring that “Web page”  
 23 embodiments were disclaimed from claims 1-12, they seek to assert that prior art  
 24 Web page-based systems either invalidate or disclose the claimed GUIs. However,  
 25 Defendants and IPDEV cannot change the explicitly defined definition through  
 26 extrinsic evidence or expert testimony. (Shamos Decl. ¶ 42).

27 <sup>14</sup> Construction of GUI as being provided by an OS is not importation of a  
 28 preferred embodiment. Claims 1 and 9 explicitly require “an operating system  
 including a first graphical user interface” and facilitation of display of the PHMC  
 “on the display screen of a handheld **graphical user interface integral with** the  
 wireless handheld computing device.” A POSA would know that “**integral with**”  
 means integral with the mobile OS. (Shamos Decl. ¶ 41, fn. 9).

1 Further, the '077 specification (13:41-45 (Exh. 7)) explicitly differentiates  
2 OS/GUI functionality versus “Web Page” functionality:

3 The software running on the user’s client computer that enables the  
4 user to view HTML documents on the computer’s video monitor ... is  
5 known as a browser.

6 The claims are consistent with the specification’s distinction between OS/GUI and  
7 Web functionality. Claims 1 and 9 recite GUI functionality only in the context of  
8 display in association with a computer server or integral with a wireless handheld  
9 computing device (*i.e.*, a Windows or Windows CE type GUI provided by an OS).  
10 Claim 13 likewise recites GUI functionality only in the context of display on a  
11 wireless handheld computing device. The recited Web page functionality of claim  
12 13 makes no mention of GUI functionality. Further, the preferred embodiment in  
13 the specification relies on the Windows CE mobile operating system to integrate  
14 with the “generated/configured” PHMC and/or PHC’s and their “linked graphical  
15 user interface screens” as claimed. '077 patent 12:12-14 (Exh. 7). Thus, a POSA  
16 would know that the handheld display functionality of claims 1, 9 and 13 is  
17 provided by an **integral** and **integrated** OS/GUI. *See* '077 patent 12:9-10 (“PDA  
18 and handheld wireless operating system integration”) (Exh. 7). In contrast, the  
19 Web page display functionality of claim 13 is provided by a Web browser. This  
20 requirement for an integral and “integrated” OS/GUI also eviscerates Defendants'  
21 attempt to preclude any aspects of “menu generation,” “configuration” or  
22 “formatting” from occurring on the handheld since clearly PHMC/PHC integration  
23 occurs with the GUI and its associated mobile OS. (Shamos Decl. ¶ 43).

### 24 **5. “communications control software enabled to”**

25 No construction is necessary for this phrase. Claim 13 itself clearly defines  
26 its structure and functions (Exh. 7 at 19:15-20:4) as part of the claimed system  
27 overall. *See Apple, Inc. v. Ameranth, Inc.*, 82 F.3d 1229, 1237 (Fed. Cir. 2016)  
28 (“Construing a claim term to include features of that term already recited in the

1 claims would make those expressly recited features redundant.”). IPDEV agrees  
 2 that no construction is necessary. IPDEV’s alternate proposal (if the Court  
 3 provides a construction) which includes “**performing the functions recited in the**  
 4 **remainder of the claim**” confirms that the phrase need not be construed., *See id.*;  
 5 *see also* Shamos Decl. ¶ 44.

6 Defendants do not actually propose a construction as is required during  
 7 claim construction.<sup>15</sup> They simply assert that this phrase is indefinite and written in  
 8 means-plus-function format as a stalking horse to assert indefiniteness during  
 9 claim construction. But they contradict themselves by proposing not only a  
 10 construction; they also identify structure in their proposed construction of Term 7  
 11 for a key aspect of the CCS. (Shamos Decl. ¶ 45). Further, the Court’s Order of  
 12 August 16, 2017 (Doc. 782) prohibited indefiniteness arguments during claim  
 13 construction. There is no claim construction dispute between Defendants and either  
 14 Ameranth or IPDEV. No party proposes that a construction is necessary.  
 15 Ameranth thus submits that indefiniteness should not be considered during this  
 16 claim construction proceeding consistent with the Court’s Order in regard to other  
 17 terms which were challenged by Defendants based on alleged indefiniteness.<sup>16</sup> In  
 18 the event the Court were to consider indefiniteness at this stage, which Ameranth  
 19 objects to, Ameranth’s position is as follows:

20 **a. Defendants Did Not Present Evidence Sufficient To**  
 21 **Overcome The Presumption That The Challenged**  
 22 **Phrase Is Not Means Plus Function**

23 In the Joint Claim Construction Hearing Statement, Defendants merely  
 24 alleged indefiniteness based on the assertion that the explicitly defined structure  
 25 and function of the claims (which Defendants themselves identified) cannot be

25 <sup>15</sup> Defendant QuikOrder did not assert that this phrase is indefinite.

26 <sup>16</sup> The Court has consistently held that indefiniteness is not appropriately resolved  
 27 during claim construction. *Imageware Systems, Inc. v. M2SYS Technology, LLC*,  
 28 Case No. 3:13-cv-846 DMS-JMA, Doc. 48 at 14 (S.D. Cal. July 24, 2014) (even  
 where parties agreed that 112(6) was applicable, indefiniteness was deferred).



1 found in the specification. This conclusory statement failed to overcome the  
 2 presumption that claims which do not recite the term “means” are not subject to  
 3 112(6). The law is clear that a proponent of 112(6) treatment of a claim devoid of  
 4 “means” language must present evidence which overcomes the presumption.  
 5 *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015).<sup>17</sup>

6 **b. The Phrase Is Not Governed By Section 112(6)**

7 Defendants ignore the fact that all `077 claims are directed to  
 8 “synchronization” and that the proper construction is “made, or configured to  
 9 make, consistent.” This requires “structure,” as recited in the claims. For  
 10 example, the interaction between the recited “master database” and the other claim  
 11 elements including the CCS in the overall claimed system precludes 112(6)  
 12 treatment of this limitation under *Williamson*. (Shamos Decl. ¶ 48).

13 With respect to software limitations, “the patent need only disclose sufficient  
 14 structure for a person of skill in the field to provide an operative software program  
 15 for the specified function.” *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d  
 16 1376, 1385 (Fed. Cir. 2011) (citation omitted).<sup>18</sup>

17  
 18 <sup>17</sup> The *Williamson* court went on to further explain: “When a claim term lacks the  
 19 word ‘means,’ the presumption can be overcome and § 112, para. 6 will apply if  
 20 the challenger demonstrates that the claim term fails to ‘recite sufficiently definite  
 21 structure’ or else recites ‘function without reciting sufficient structure for  
 22 performing that function.’” *Williamson*, 792 F.3d at 1348 (emphasis added).

23 <sup>18</sup> See also *M2M Solutions, LLC, v. Sierra Wireless America, Inc.*, CA No. 12-30-  
 24 RGA, 2015 WL 5826816, at \*3 (D. Del. Oct. 2, 2015) (applying *Williamson* and  
 25 *Typhoon Touch*, in holding that the term “processing module” is not a means-plus-  
 26 function limitation: “Despite the fact that the claim recites a function, the  
 27 immediately following words provide algorithmic structure for performing that  
 28 function.”); *Microprocessor Enhancement Corp. v. Texas Instruments Inc.*, 520  
 F.3d 1367, 1375 (Fed. Cir. 2008) (“Functional language may also be employed to  
 limit the claims without using the means-plus-function format.”); *id.* (holding a  
 claim to a “pipelined processor for executing instructions comprising” a “condition  
 code” and “conditional execution decision logic” to be definite); *Sage Prod., Inc.*  
*v. Devon Indus., Inc.*, 126 F.3d 1420, 1427–28 (Fed. Cir. 1997) (“where a claim

1 The Federal Circuit’s basis for finding that a “computing unit” was not  
2 means-plus-function in *Inventio AG v. ThyssenKrupp Corp.*, 649 F.3d 1350, 1359  
3 (Fed. Cir. 2011) is likewise applicable to the ‘077 claims. The Federal Circuit  
4 relied on the fact that the recited “computing unit” was connected to other elements  
5 and the system was programmed to perform particular functions recited in the  
6 claims, including generating and transmitting signals:

7 The claims recite that the computing unit is connected to the modernizing  
8 device and generates a destination signal for transmission to the  
9 modernizing device. The claims elaborate that the computing unit is  
10 connected to the floor terminals of the elevator system, and evaluates  
11 incoming call reports, destination floors, and identification codes to  
12 generate the destination signal for processing by the modernizing device.

13 Similarly, the communications control software (“CCS”) is “connected to” the  
14 master database and its master database file structure and programmed handheld  
15 configuration (“PHC”). (Shamos Decl. ¶ 49).

16 Every one of the recited CCS functions requires a definite software structure  
17 in the context of the claim as a whole very similar to the *Inventio* claimed functions  
18 of “identifying,” “evaluating,” “transmitting” and “generating” in a specific system  
19 defined by both hardware and software structure and function. Thus the claim  
20 elements themselves define a structural system including the CCS which a POSA  
21 would understand as definite structure. (Shamos Decl. ¶¶ 50, 51, 52).<sup>19</sup>

22 Other Federal Circuit caselaw also makes clear that recitation of a claim  
23 limitation’s connections, functions and operation in the remainder of the claim  
24 recites a function, but then goes on to elaborate sufficient structure, material, or  
25 acts within the claim itself to perform entirely the recited function, the claim is not  
26 in means-plus-function format.”); *Affinity Labs of Texas, LLC v. Samsung Elecs.*  
27 *Co.*, No. 1:12-cv-557, 2014 U.S. Dist. LEXIS 184075, at \*12–\*13 (E.D. Tex. June  
28 4, 2014) (holding that “software” connotes structure).

<sup>19</sup> The decision in *Inventio* also relied on the specification to support the  
determination of whether the “computing unit” was a means-plus-function  
limitation. The ‘077 specification demonstrates that the CCS is not a MPF  
limitation. (Shamos Decl. ¶ 52, fn. 15).

1 removes the limitation from Section 112(6):

2           Structure may also be provided by describing the claim limitation's  
3           operation, such as its input, output, or connections. The limitation's  
4           operation is more than just its function; it is how the function is  
5           achieved in the context of the invention.

6 *Apple, Inc. v. Motorola, Inc.*, 757 F. 3d 1286, 1299 (Fed. Cir. 2014).

7           [T]he claims do not nakedly recite heuristics without further  
8           description in the remaining claim language and specification. To the  
9           contrary, the claim language and specification disclose the heuristics'  
10          operation within the context of the invention, including the inputs,  
11          outputs, and how certain outputs are achieved.

12 *Id.*, 757 F.3d at 1301. Just as Defendant Apple successfully argued that its claims  
13 were not subject to Section 112(6) in the *Motorola* case, the very analogous '077  
14 structure and limitations are likewise not subject to 112(6) for the same reasons.  
15 (Shamos Decl. ¶ 53).

16           Further, there is structural meaning in terms which include "interface" with  
17 an appropriate identifier, *e.g.*, "real time interface" recited in claim 13 and  
18 "graphical user interface" recited in all claims. *See Apex v. Raritan Computer*, 325  
19 F.3d 1364, 1373 (Fed. Cir. 2003) (holding that "the term 'circuit' with an  
20 appropriate identifier such as 'interface', 'programming', and 'logic', certainly  
21 identifies some structural meaning to one of ordinary skill in the art."<sup>20</sup>)

22           The CCS (claim 13) configures the programmed handheld configuration for  
23 display on a handheld graphical user interface and thus this software element is a  
24 recitation of structure which produces structural entities (the recited configurations  
25 for handheld GUIs) pursuant to the analysis and holding of *Apex*, as would be  
26 understood by a POSA. Likewise, a "real time interface" is expressly provided by  
27 the CCS. (Shamos Decl. ¶ 55).

28 <sup>20</sup> *See also In re: Certain Hybrid Vehicles*, Inv. No. 337-TA-1042 (USITC Oct. 6, 2017) ("The term 'controller' is a common term of art with familiar structure, not a nonce word that operates as a substitute for 'means' in a claim.") (citing other cases) (Exh. 12).

1                   **c.     The Phrase Is Not Indefinite**

2           To prove indefiniteness, the Supreme Court has held that there must be a  
3 showing that the challenged claims "read in light of the specification delineating  
4 the patent, and the prosecution history, fail to inform, with reasonable certainty,  
5 those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig*  
6 *Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014).

7           The '077 claims, read in light of the specification, satisfy the *Nautilus*  
8 standard as detailed above. Tellingly, Defendants have proposed a construction for  
9 "format a programmed handheld configuration." The fact that Defendants could  
10 propose what they believe the CCS does to format that configuration compels the  
11 conclusion that it is not indefinite. "If a claim is indefinite, the claim, by definition,  
12 cannot be construed." *Enzo Biochem, Inc., v. Applera Corp.*, 599 F.3d 1325, 1332  
13 (Fed. Cir. 2010); *see also* Shamos Decl. ¶ 56.

14                   **d.     The Specification Contains Supporting Disclosure**

15           Even if the Court were to incorrectly conclude that the CCS is governed by  
16 Section 112(6), the element and its claim-defined structure and function are clearly  
17 supported by corresponding structure in the specification. (Shamos Decl. ¶ 58).

18           **6.     "real time synchronous communications to and from the wireless**  
19           **handheld computing device utilizing the programmed handheld**  
20           **menu configuration" / "synchronize the hospitality application**  
21           **information in real time between the master database, at least one**  
22           **wireless handheld computing device, at least one web server and**  
23           **at least one web page"**

24           Despite arguing that "synchronization" needs no construction, here  
25 Defendants reverse themselves. They also improperly lumped together these two  
26 very different phrases from two very different independent claims. They are clearly  
27 different limitations. Ameranth submits that no construction is necessary for these  
28 elements except with regard to "synchronized/synchronous" as discussed above  
(and "real time" if the Court determines that construction of these elements is

1 necessary).<sup>21</sup> The claims themselves define these elements. (Shamos Decl. ¶ 59).

2 While asserting that they are the same element, Defendants inexplicably  
3 propose two very different constructions, neither of which is correct. For the first,  
4 they propose “changes made to the master menu or the programmed handheld  
5 menu configuration and selections made from the programmed handheld menu  
6 configuration are reflected instantaneously on an entire network of connected  
7 devices without a request for an update.” For the second, they propose “changes in  
8 the hospitality application information are reflected instantaneously on the master  
9 database, wireless handheld computing device, web server and web page without a  
10 request for updated hospitality application information.” (Shamos Decl. ¶ 60).

11 These phrases are found in different claims with very different structures.  
12 Defendants’ constructions both include a “timing” limitation (“instantaneously”)  
13 and “without a request for update[.]” Both aspects are wrong. Neither  
14 “instantaneously” nor “request for update” appear anywhere in any claim. “Real  
15 time” (the correct “timing” limitation) does appear in the claim and specifically in  
16 these phrases. “Instantaneous” does not appear in the claims and is inconsistent  
17 with “real time.” Nor does real time have anything to do with a “request for  
18 update” or the absence thereof. To the extent anything related to “timing” is  
19 construed, it must be in regard to “real time,” which means “1. Having to do with  
20 the actual time during which physical events take place. 2. The performance of a  
21 computation during the actual time that the related physical process transpires in  
22 order that results of the computations are useful in guiding the physical process.”  
23 This was the PTAB construction based on Defendants’ own chosen technical  
24 dictionary and constructions. CBM2015-00081, Non-Inst. Dec at 16 (Exh. 2).  
25 Defendants still support this definition from the Graf Dictionary as evidenced by  
26 their citation to it in the Joint Claim Construction Chart as extrinsic evidence. Doc.

27 <sup>21</sup> And, as discussed above, the correct construction of “synchronized” compels  
28 rejections of both of the Defendants’ proposals with respect to these terms as well.

1 781-1 at 11, 15, 25, 29; Graf Dictionary at 627 (Exh. 18); Shamos Decl. ¶ 61.

2 Further, the decision in *Apple v. Ameranth* precludes importation of “an  
3 entire network of connected devices” or “without a request for update” into this  
4 term. 842 F.3d at 1237 (“[N]othing in the patents' specifications indicates that a  
5 synchronous communication system is required to include a central back-office  
6 server that communicates data updates to and from multiple client devices.”).

7 Also, the specification itself precludes a requirement of communication to  
8 “all devices” or “an entire network” of devices by describing communications to  
9 “the appropriate devices.”<sup>22</sup> Moreover, the “**entire network**” argument is  
10 ludicrous on its face—**this** limitation itself clearly recites “to/from” a **single** (“the”) **single**  
11 wireless handheld computing device. (Shamos Decl. ¶ 63).

12 With respect to the second phrase, recited in claim 13, the claim itself  
13 precludes Defendants’ “without a request for update” proposal. Claim 13  
14 explicitly includes synchronization across nodes including a “Web server” and a  
15 “Web page.” A POSA would know that Web users “request updates” via web  
16 browsers, as clearly stated in the specification. *See* ‘077 patent 13:33-54 (Exh. 7).  
17 Moreover, the specification explicitly contemplates a request for **updated** prices,  
18 *i.e.*, a “query.” ‘077 patent 11:45-46 (“*The POS interface on the handheld device*  
19 *supports pricing in the database or querying prices from the POS server.”)  
20 (emphasis added) (Exh. 7). This disclosed embodiment would be impermissibly  
21 read out of the claims by Defendants’ proposal. (Shamos Decl. ¶ 64).*

22 GrubHub proposes appending the following to Defendants’ proposal for the  
23 second disputed phrase (recited in claim 13): “and linked devices in the real time

24 \_\_\_\_\_  
25 <sup>22</sup> ‘077 patent 10:42-48 (“A communications control program monitors and routes  
26 all communications to **the appropriate devices**. It continuously monitors the  
27 wireless network access point and all other devices connected to the network such  
28 as pagers, remote devices, internet Web links and POS software. Any message  
received is decoded by the software, and then routed to **the appropriate device.**”)  
(emphasis added) (Exh. 7); *see also* CBM2015-00091, Reply Brief at 17 (Exh. 16).

1 synchronous menu/ordering system ‘know’ whether the items sought to be ordered  
 2 are available when the order is entered, not immediately after.” Nothing in claim  
 3 13 requires “knowing” that an item is available. Ameranth anticipates that  
 4 GrubHub will try to rely on an isolated prosecution statement which was at most  
 5 poorly phrased and not even close to a “clear and unmistakable disclaimer,”<sup>23</sup> while  
 6 ignoring the entirety of the prosecution history and all of the previous Court and  
 7 PTAB constructions none of which found any disclaimer of the type asserted by  
 8 GrubHub).<sup>24</sup> GrubHub's proposal is an attempt to import unrecited limitations in  
 9 an attempt to avoid infringement, with no basis in the intrinsic evidence.  
 10 GrubHub's proposal must be rejected for additional reasons, including that “menu”  
 11 is not even recited in claim 13, nor is “ordering” a term in any claim. Moreover, it  
 12 is indisputable that “frequent customer,” “reservations” and “ticketing” are types of  
 13 hospitality application information disclosed by the ‘077 patent and that a POSA  
 14 would know that one does not “order” a reservation or “customer/guest frequency  
 15 information.” Importing an “ordering” requirement would impermissibly read out  
 16 those claimed functions and embodiments. (Shamos Decl. ¶ 65).

17 **7. “[generate/format] a programmed handheld [menu]**  
 18 **configuration”**

19 Defendants also improperly lumped together these two different terms from  
 20 very different claims. Again, while contradicting themselves by claiming that the  
 21 MCS and CCS terms are indefinite and lack structure, Defendants propose  
 22 constructions for the functionality of these sub terms—including structure. As with  
 23 the broader MCS and CCS terms themselves, Ameranth submits that construction  
 24 is unnecessary for either since the claims themselves define these terms in detail.

25 <sup>23</sup> See, e.g., *Biogen Idec, Inc. v. GlaxoSmithKline LLC*, 713 F.3d 1090, 1100 (Fed.  
 26 Cir. 2013) (“We have long followed the rule that even a poorly-phrased  
 27 prosecution argument does not a disclaimer make.”).

28 <sup>24</sup> For a prosecution disclaimer inquiry, “we examine the entire prosecution  
 history.” *Seachange, Inc. v. C-COR Inc.*, 413 F.3d 1361, 1372 (Fed. Cir. 2005).

1 The Defendant’s contrived proposals read out and/or conflict with the definitions  
2 of the claims themselves. Further, unlike the “generate” term of claims 1-12,  
3 claims 13-18 use “configure” and do not include “generate” nor is the recited PHC  
4 a “menu,” nor is it configured from a “master menu” that is displayed in a “first  
5 GUI,” nor are its handheld displays required to be different from the display of a  
6 master menu nor are categories/items/modifiers required. (Shamos Decl. ¶ 66).

7 For “generate a programmed handheld menu configuration,” which appears  
8 three times in each of independent claims 1 and 9 (the functionality of which is  
9 defined, *e.g.*, as to claim 1 (‘077 19:5-62), as part of the claimed system overall),  
10 Defendants focus only on this single term and propose “on a central server in the  
11 back office, and not on a handheld device, generate a menu that has been  
12 optimized for display on a particular handheld device.” Defendants’ proposal adds  
13 surplusage that is either not required by the claims or is recited elsewhere in the  
14 claims and would then require a “construction of the construction,” *i.e.*, the  
15 definition of “back office” which is not in any of the claims. The generation of the  
16 programmed handheld menu configuration (“PHMC”), not “menu” as incorrectly  
17 urged by Defendants, is defined throughout claims 1 and 9. *See Apple v.*  
18 *Ameranth*, 842 F.3d at 1237 (separately recited requirements cannot be read into a  
19 claim term). While the claims do explicitly state that the PHMC is generated by the  
20 menu configuration software, nothing in the claims precludes the presence of some  
21 functionality regarding *display* of the PHMC integral and integrated with the GUI  
22 and the mobile OS on/at the handheld device itself,<sup>25</sup> nor is it precluded by the  
23 prosecution history. The mere fact that the PHMC is generated from a “master

24 \_\_\_\_\_  
25 <sup>25</sup> Additionally, the examiner suggested that Ameranth might amend the claims to  
26 recite that “configuration is not done at the handheld.” July 29, 2009 Interview  
27 Summary, App. Ser. No. 11/112,990 (Exh. 13). Unlike the earlier suggestion to  
28 delete “Web page” recitations from claims 1-12, here Ameranth declined to do so.  
Thus, Ameranth did not disclaim any configuration of the display at/on the  
handheld.



1 menu” (*e.g.*, in claims 1-12), does not mean that the PHMC does not take into  
2 account and “integrate” with the mobile OS on the handheld. In fact, the  
3 specification and claims themselves provide for, in fact require, just that. As  
4 explained above, the menu generation invention clearly “integrates” the PHMC  
5 with the mobile GUI and OS (*e.g.*, Windows CE) and the claims require the PHMC  
6 “to facilitate user operations with” the handheld (and likewise for the PHC of claim  
7 13). The requirement for “integration” of the PHMC/PHC with the mobile OS of  
8 the handheld would be understood by a POSA and cannot be read out of the claims  
9 through Defendants’ proposed negative limitation.<sup>26</sup> (Shamos Decl. ¶ 67).

10 For “format a programmed handheld configuration,” recited in claims 13-18,  
11 Defendants once again focus on a single term alone and ignore the explicit  
12 requirements within the claim itself by proposing “at a central server in the back  
13 office, and not on a handheld device, format hospitality application information  
14 that has been optimized for display on a particular handheld device.” Defendants’  
15 proposal seeks to redefine the “configured” functionality defined in the preceding  
16 wherein clause and parses out the “of at least **two different** wireless handheld  
17 computing device display sizes” from the claim. The “**two different**” limitation  
18 innately eviscerates Defendants’ attempt to inject “on **a particular**” handheld.  
19 Here again, they ignore what the claim says and add uncited and unrequired  
20 surplus terms out of thin air and seek a negative limitation in conflict with the  
21 claim itself and the specification. The CCS “configures” the hospitality

22 <sup>26</sup> Ameranth's argument during prosecution against the Micros HHT in regard to  
23 `077 claims 1-12 was directed only to “manual” programming/generation by a  
24 human “programmer/operator” on the Micros HHT itself. The `077 examiner and  
25 the PTAB (in CBM2015-00081) fully understood that the `077 claims  
26 distinguished the Micros reference. (Exh. 2). Ameranth’s inventions eliminated  
27 the “dual menu programming” requirement of Micros and other such prior art  
28 systems. This did not preclude some PHMC/PHC “integration” with the features of  
the OS on the handhelds, any more than the GUI of the claimed “master menu”  
interactions with its associated OS can be read out of claims 1 and 9. (Shamos  
Decl. ¶ 67).

1 application information and formats the programmed handheld configuration  
2 (“PHC”) “for display” on the handheld and the PHC integrates with the mobile OS  
3 on the *two* or more different handhelds. This is defined throughout claim 13; other  
4 aspects of the claim cannot be merged into and redefined within this single term.  
5 *See Apple v. Ameranth*, 842 F.3d at 1237 (separately recited requirements cannot  
6 be read into a claim term). (Shamos Decl. ¶¶ 68, 69). Further, these claims recite a  
7 “**Web** server,” not a single “**central** server” and the decision in *Apple v. Ameranth*  
8 precludes importation of “central server” or “back office” functionality into the  
9 construction of this specific “format” term to the exclusion of all relevant  
10 functionality on the handheld as recited in the claim overall. 842 F.3d at 1237.

#### 11 **8. “menu configuration software”**

12 Ameranth submits that construction of this term is unnecessary. Again, the  
13 claim itself defines this term as is confirmed by Defendants (Doc. 781-1 at 4-6  
14 (Defendants’ identification of functions “a” thru “d”)). IPDEV proposes “any  
15 software application capable of generating a menu configuration, downloading  
16 the menu configuration to a user based on the user’s request, and carrying out the  
17 functions recited in the remainder of the claim.” IPDEV’s proposal that the  
18 phrase be construed as “carrying out the functions recited in the remainder of the  
19 claim” is a further clear confirmation that the phrase need not be construed  
20 because the claims themselves define the meaning of the phrase. IPDEV’s  
21 attempt to insert “downloading the menu configuration to a user based on the  
22 user’s request” is a transparent attempt to import limitations which are not in the  
23 claims simply for purposes of trying to read the sparse Web page-only disclosure  
24 of IPDEV’s ‘449 patent into the limitation. There is no basis for such  
25 importation. (Shamos Decl. ¶ 70).

26 Defendants do not actually propose a construction as is required during  
27 claim construction. Defendants simply assert that this phrase is indefinite and in  
28

1 means-plus-function format as a stalking horse to assert indefiniteness.<sup>27</sup> Yet, as  
 2 explained above, they propose a construction and identify structure as regards  
 3 Term 7 (the “generate a PHMC” term), which of course is what the allegedly  
 4 “indefinite” MCS term does. (Shamos Decl. ¶ 71). Further, the Court’s Order of  
 5 Aug. 16, 2017 (Doc. 782) prohibited indefiniteness arguments during claim  
 6 construction. The only claim construction dispute is between Ameranth and  
 7 IPDEV. Ameranth thus submits that indefiniteness should not be considered  
 8 during this proceeding. In the event the Court were to consider indefiniteness at  
 9 this stage, which Ameranth objects to, Ameranth’s position is as follows:

10 **a. Defendants Did Not Present Evidence Sufficient To**  
 11 **Overcome The Presumption That The Challenged**  
 12 **Phrase Is Not Means Plus Function**

13 As discussed above with respect to the “communications control software”  
 14 limitation, Defendants have not provided evidence sufficient to overcome the  
 15 presumption that claims without the use of the term “means” are not subject to  
 16 112(6). As discussed above, Defendants provided no argument at all in the Joint  
 17 Claim Construction Hearing Statement as to this requirement.

18 **b. The Challenged Limitation Is Not Governed By § 112(6)**

19 As discussed above in regard to the CCS limitation, Defendants ignored the  
 20 fact that all ‘077 claims are directed to “synchronization” and that the proper  
 21 construction of “synchronization” is “made, or configured to make, consistent.”  
 22 Combining that fatal omission with the fact that Defendants also ignored the  
 23 proper construction of “master menu” and how it interacts with the other elements  
 24 of the claimed system including “menu configuration software,” Defendants  
 25 further failed to apply or properly consider *Williamson*. (Shamos Decl. ¶ 74).

26 In fact, the critical role of the “master menu,” which is stored on the “data  
 27 storage device” (which is connected to the “central processing unit” and which

28 <sup>27</sup> Defendant QuikOrder does not assert that this phrase is indefinite.

1 interacts with the “operating system including the first graphical user interface), all  
2 synchronizing via the “master menu file structure” and the “menu configuration  
3 software”/”programmed handheld menu configuration,” would be understood by a  
4 POSA to impart the requisite structure, as confirmed by the PTAB in prior  
5 proceedings.<sup>28</sup> The claim elements themselves thus provide the requisite structure  
6 that a POSA would fully understand. Additionally, applying the correct  
7 construction for “synchronized” as “configured for consistency,” this is a readily  
8 understood software function, the structure of which is readily understood, just as  
9 Apple’s expert Turnbull correctly concluded did not require disclosure of any  
10 specific “algorithm” because it is clear what the software structure must be.

11 CBM2015-00081, Exhibit 1002 at ¶ 74 (Exh. 14); *see also* Shamos Decl. ¶ 75.<sup>29</sup>

12 Similar to the claim elements at issue in *Inventio v. ThyssenKrupp*, 649 F.3d  
13 at 1359, as discussed above, the menu configuration software (“MCS”) is  
14 “connected to” the CPU, data storage device, OS, first GUI, master menu file  
15 structure and PHMC. (Shamos Decl. ¶ 76).

16 With respect to the enumerated MCS functions above, every one of the  
17 recited functions requires a definite software structure in the context of the claim as  
18 a whole very similar to the *Inventio* claimed functions of “identifying,”  
19 “evaluating,” “transmitting” and “generating” in a specific system defined by both  
20 hardware and software structure and function (discussed above in regard to the  
21 CCS element).<sup>30</sup> Thus the claim elements themselves define a structural system  
22 including menu configuration software which a POSA would understand as  
23 definite structure. (Shamos Decl. ¶ 77).

24 <sup>28</sup> *See, e.g.*, CBM2014-00014, Non-Inst. Dec., Paper 19 at 39 (“the system is  
25 enabled to synchronize, in real time, information between a programmed handheld  
26 menu configuration and a master menu file structure ...”) (Exh. 1).

27 <sup>29</sup> As discussed above, “the patent need only disclose sufficient structure for a  
28 person of skill in the field to provide an operative software program for the  
specified function.” *Typhoon Touch*, 659 F.3d at 1385.

<sup>30</sup> See also the discussion above regarding the *Apple v. Motorola* case.

1           The MCS (claims 1 and 9) generates the PHMC for display on a handheld  
 2 GUI and thus this software element is a recitation of structure which produce  
 3 structural entities (the recited configuration for handheld GUIs) pursuant to the  
 4 analysis and holding of *Apex*, as discussed above, as would be understood by a  
 5 POSA. A POSA would thus know that the software provides structure on this  
 6 basis alone pursuant to *Apex*. For the same reason, pursuant to *Apex*,  
 7 “programmed” in the claims is modified by the identifiers “handheld menu  
 8 configuration” and thus “programmed” is defined as structure by these identifiers.  
 9 The MCS generates the programmed handheld menu configuration and thus this  
 10 software element is a recitation of structure which produce structural entities (the  
 11 recited configuration), as would be understood by a POSA. (Shamos Decl. ¶ 78).

12                           **c.       The Limitation Is Not Indefinite**

13           As discussed above with respect to the CCS limitation, the claims, including  
 14 the MCS, when read in light of the specification, “inform with reasonable certainty  
 15 those skilled in the art about the scope of the invention.” *Nautilus*, 134 S. Ct. at  
 16 2124. This is demonstrated by Defendants’ proposal of a construction for  
 17 “generate a programmed handheld menu configuration.” The fact that Defendants  
 18 could propose what they believe the menu configuration software does to generate  
 19 that configuration compels the conclusion that the limitation is not indefinite. “If a  
 20 claim is indefinite, the claim, by definition, cannot be construed.” *Enzo v.*  
 21 *Applera*, 599 F.3d at 1332; Shamos Decl. ¶ 79.

22                           **d.       The Specification Contains Supporting Disclosure**

23           Even if the Court were to incorrectly conclude that the MCS is governed by  
 24 Section 112(6), the element and its claim-defined structure and function are  
 25 supported by corresponding structure in the specification. (Shamos Decl. ¶ 80).

26                           **9.       “cascaded sets of linked graphical user interface screens”**

27           Ameranth submits that construction is unnecessary. Defendants attempt to  
 28

1 insert a requirement out of thin air that the recited GUI screens “are displayed in an  
2 overlapping fashion such that at least a portion of each selected screen remains  
3 visible.” There are no “overlapping” or “remains visible” limitations in the claims  
4 nor teaching of such in the ‘077 specification or prosecution history.<sup>31</sup> These terms  
5 would need new constructions of their own. The common and ordinary meaning  
6 of “cascaded” is simply to be arranged in succession. This is apparent from the  
7 claims themselves, and thus no construction is needed. If construed, the phrase  
8 simply means “sets of graphical user interface screens whose members are linked  
9 and arranged in succession.” (Shamos Decl. ¶ 81).

10 Defendants apparently will attempt to rely on the specification disclosure of  
11 standard “Windows” systems related to the “master menu” displayed on a “first  
12 GUI” of claims 1-12 and then extrinsic definitions based thereon. This is incorrect  
13 because the ‘077 patent discloses Windows CE as the exemplary handheld device  
14 operating system. ‘077 Figure 7 (Exh. 7) clearly shows a handheld device GUI  
15 which has cascading linkages (at top) but does not display the menu screens  
16 thereunder concurrently. (Shamos Decl. ¶ 82).

17 Further, the specification clearly refers to the GUI on the handhelds, as  
18 shown in Figure 7, as “page-type,” which was different from the “first GUI” of  
19 claims 1 and 9. “Pag[ing] through” (‘077 11:33-41 (Exh. 7)) correlated with  
20 “cascading” “pages” in the ‘077 patent, which would have been readily apparent to  
21 a POSA by looking at Figure 7 including the “**direction**” option of that Figure,  
22 clearly showing the “linkages” between the GUI screens. There is nothing in the  
23 specification about “pages” which would have required “overlapping” screens.  
24 Further, the claim element is directed to “cascading *screens*,” not “cascading

25 <sup>31</sup> Significantly, as discussed above in the context of the “handheld” term, Judge  
26 Sammartino recognized that the inventions of the Ameranth patent family are  
27 directed to, *inter alia*, “non PC standard” displays. Defendants wrongly seek to  
28 impose constructs from the “PC standard” world, *e.g.*, “overlapping screens.”  
Small non-PC displays were not simply smaller versions of PC standard displays.

1 **windows.**” The Microsoft Dictionary definition relied on by Defendants is directed  
 2 only to cascading “windows.” (Exh. 6). A Microsoft “window” was very different  
 3 from a handheld device display screen. (Shamos Decl. ¶ 83).

4 Also, the presence of “linked” in this phrase differentiates handheld  
 5 cascading screens from a standard Windows drop-down menu box system such as  
 6 might be used with the “first GUI” of claims 1 and 9. A POSA would know,  
 7 however, that Windows drop down **boxes** are not “linked” screens in the sense of a  
 8 set of linked GUI **screens** as taught by the ‘077 patent. (Shamos Decl. ¶ 84).

9 Additionally, Defendants’ new “overlapping screens” proposal is belied by  
 10 their prior position in the CBMs, as well as the Board’s own conclusions. There,  
 11 Apple’s own expert Turnbull agreed with Ameranth’s proposal herein, stating with  
 12 regard to “cascaded sets:” “I understand that the Board has previously construed  
 13 this claim term as ‘sets whose members are arranged in succession.’ In the context  
 14 of the Patents and a menu user interface, I agree with this construction ...”  
 15 CBM2015-00081, Exhibit 1002 at ¶ 86 (Exh. 14); (Shamos Decl. ¶ 85).

16 IPDEV’s proposal tries to read *in* a “hierarchical” requirement while reading  
 17 **out** “linked.” IPDEV does this because IPDEV’s Cupps ‘449 specification only  
 18 generates and transmits a “single” Web page at a time, thus clearly without any  
 19 programmed “linkage” between the *two* or more screens of a PHMC/PHC.<sup>32</sup>  
 20 “Hierarchical” does not appear in the ‘077 claims, and thus there is no basis for  
 21 such a construction. (Shamos Decl. ¶ 86).

## 22 **10. “customized display layout”**

23 Ameranth submits that construction is unnecessary. A POSA would readily  
 24 understand the common and ordinary meaning as defined by the claims  
 25 themselves. However, if construed, Ameranth agrees with IPDEV’s proposal if the  
 26 construction is consistent with the claim elements as a whole and specifically with

27 <sup>32</sup> Thus in the ‘449 patent, only one “Web page” (which is not even a GUI screen)  
 28 ever even exists at one time.

1 regard to each of the four usage instances in claims 1-12 and three instances in  
2 claims 13-18. (Shamos Decl. ¶ 87).

3 Ameranth was informed on October 3, 2017 by all Defendants (except  
4 Hyatt) that they would withdraw their proposal and instead agree that no  
5 construction is necessary. Hyatt indicated by email on September 22, 2017 that it  
6 would assert a different construction from that initially proposed by Defendants,  
7 *i.e.*, Hyatt said it would propose “information adapted to the handheld display so  
8 that scrolling is not required to view all available information.”

9 Hyatt's newly-concocted proposal suffers from the same fatal infirmities as  
10 Defendants' initial proposal. Like Defendants' initial proposal of “unique display  
11 of information on the target handheld that does not require having to scroll  
12 left/right or up/down to view the information,” Hyatt's belatedly-modified proposal  
13 is completely divorced from the terminology itself. There is nothing in the claims  
14 about “scrolling” or any preclusion of “scrolling.” Neither Defendants' original  
15 proposal nor Hyatt's belatedly-modified proposal are supported by the claims or the  
16 intrinsic evidence. Ameranth stated clearly during prosecution, not once but **twice**,  
17 that some scrolling is not prohibited.<sup>33</sup> Thus, indisputably, not only was there no  
18 “unmistakable disclaimer” of scrolling functionality, scrolling was ***expressly***  
19 ***included***. The claimed invention merely “eliminates the need to rely ***entirely*** on  
20 scrolling in the display of menu or other hospitality information on small screen  
21 devices.” *Id.* at 46 (emphasis added). (Shamos Decl. ¶ 89).

22  
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24  
25 <sup>33</sup> See Amendment in App. Ser. No. 11/112,990 at 27, 46 (Aug. 21, 2009) (Exh. 15)  
26 (“[S]crolling of menu screens is not precluded in the context of the claimed  
27 invention as long as the claimed configuration of a handheld menu from a master  
28 menu is present.”) (“[A]ny combination of the inventive system as claimed even  
with some scrolling falls within the scope of the present claims.”).



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Dated: October 20, 2017 CALDARELLI HEJMANOWSKI PAGE & LEER LLP

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