UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: AMERANTH CASES,

CASE NOS.

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14cv1303 DMS (WVG)
12cv2350 DMS (WVG)

ORDER CONSTRUING CLAIMS

This matter came before the Court for a claim construction hearing on December 11, 2017. William Caldarelli and John Osborne appeared and argued on behalf of Ameranth, Andrew Warnecke and Brian Orr appeared and argued on behalf of IPDEV, and Richard Zembek, Erin Gibson, Patrick McKeever, Eric Faragi, Jared Bobrow and Laura Miller appeared and argued on behalf of the Joint Defense Group ("JDG"). After a thorough review of the parties' claim construction briefs and all other material

submitted in connection with the hearing, the Court issues the following order construing the disputed terms of the patent at issue in this case.

I.

BACKGROUND

The only patent remaining in this case is United States Patent Number 8,146,077 ("the '077 Patent"). The Patent is entitled, "Information Management and Synchronous Communications System with Menu Generation, and Handwriting and Voice Modification of Orders." As indicated in the specification, there are four principal objects of the invention described and claimed in the '077 Patent: To provide an improved information management and synchronous communications system and method which (1) "facilitates user-friendly and efficient generation of computerized menus for restaurants and other applications that utilize equipment with non-PC-standard graphical formats, display sizes and/or applications[,]" (2) "provides for entry, management and communication of information from the operator as well as to and from another computer, Web page menu, remote digital device using a standard hardwired connection, the internet or a wireless link[,] (3) "is small, affordable and lightweight yet incorporates a user-friendly operator interface and displays menus in a readily comprehensible format[,]" and (4) "enables automatic updating of both wireless and internet menu systems when a new menu item is added, modified or deleted from any element of the system." ('077 Patent at 2:61-3:17.)

There are three independent claims in the '077 Patent, claims 1, 9 and 13, and the terms and phrases for construction are found in those claims. Pursuant to Patent Local Rule 4.2.a, those terms and phrases are:[1]

(1) "wireless handheld computing device;"

(2) "synchronized/synchronous;"

[1] Pursuant to the parties' agreement, Ameranth proposed claims (1), (2), (4) and (5) for construction, the JDG proposed claims (3), (8) and (9) for construction and IPDEV proposed claims (6), (7) and (9).

(3) "real time synchronous communications to and from the wireless handheld computing device utilizing the programmed handheld menu configuration/synchronize the hospitality application information in real time between the master database, at least one wireless handheld computing device, at least one web server and at least one web page;"

(4) "web page;"

(5) "graphical user interface;"

(6) "customized display layout;"

(7) "cascaded sets of linked graphical user interface screens;"

(8) "generate a programmed handheld menu configuration/format a programmed handheld configuration;" and

(9) "communications control software enabled to/menu configuration software."

II.

DISCUSSION

Claim construction is an issue of law, *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372 (1996), and it begins "with the words of the claim." *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1142 (Fed. Cir. 2005) (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Generally, those words are "given their ordinary and customary meaning." *Id.* (citing *Vitronics*, 90 F.3d at 1582). This "'is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.'" *Id.* (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005)). "The person of ordinary skill in the art views the claim term in the light of the entire intrinsic record." *Id.* Accordingly, the Court must read the claims "'in view of the specification, of which they are a part.'" *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995)). In addition, "'the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor

limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be.'" *Id.* (quoting *Phillips*, 415 F.3d at 1318).

A. Wireless Handheld Computing Device

The first term at issue here is "wireless handheld computing device." Ameranth asserts this term should be construed as "a computing device that is capable of wireless communications and is sized to be held in one's hand." The JDG, with the exception of Apple, and IPDEV assert the term needs no construction, but that if construed, it should be construed as "a computing device that is capable of wireless communications and can be held in one's hands."

As indicated by the proposed constructions, the dispute here centers on whether the device can be held in one hand as opposed to two. Ameranth argues for one hand to limit the devices to PDA-size, while the JDG and IPDEV argue for two hands to include laptop-sized devices in the definition.

The Court agrees with the JDG and IPDEV on their construction of this term. Although the specification clearly indicates that "handheld" devices can be held in one hand, (*see, e.g.*, '077 Patent at 2:7-10) (comparing "handheld devices" to the Palm), and may be "small PDA-sized," (*id.* at 3:42-46), there is nothing in the specification that places that kind of hard limit on "handheld." It appears the parties agree that "handheld" excludes devices the size of a standard PC, but there is no similar exclusion for devices smaller than a standard PC but larger than a PDA, *e.g.*, an iPad. Furthermore, although not part of the intrinsic evidence, IPDEV points out that Ameranth previously argued for a broader construction of this term than it now recommends, a point Ameranth does not dispute. (*See* Decl. of Stephanie DeBrow in Supp. of JDG's Opening Br., Ex. 19 at 25.[2]) Ameranth's change in position casts some doubt on its current proposal. Therefore, for these reasons the Court adopts the JDG and IPDEV's proposed construction of this term.

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[2] The page number cited refers to the page number generated by this Court's CM/ECF system.

B. "Synchronous" and "Real Time" Terms and Phrases

The next terms and phrases at issue here are "synchronized" and "synchronous," and "real time synchronous communications to and from the wireless handheld computing device utilizing the programmed handheld menu configuration" and "synchronize the hospitality information in real time between the master database, at least one wireless handheld computing device, at least one web server and at least one web page." There are two disputes surrounding these terms and phrases. The first dispute is whether the Court should construe only "synchronize" and "synchronous" or the broader phrases in which those terms appear. The second dispute is over the meaning of these terms and phrases.

On the first dispute, the Court finds both the terms and phrases require construction. Although "synchronize" and "synchronous" appear more often with the modifier "real time," there are two instances in claim 13 where the terms "synchronize" and "synchronized" are used without that modifier. Thus, the Court will construe both the terms and the phrases.

As to "synchronize" and "synchronous," Ameranth and IPDEV assert the Court should construe these terms to mean "made, or configured to make, consistent." The JDG asserts the terms should be construed to mean "made to be the same such that a change to data made on one device is reflected on another device."

The parties' proposed constructions are generally the same in that all encompass the concept of making things consistent or the same. The JDG's proposal includes an additional limitation of synchronizing "data" on a "device," but those additions are unnecessary. The claims themselves identify what is to be synchronized or synchronous such that further explanation is unnecessary. Accordingly, the Court adopts Ameranth and IPDEV's proposed construction of these terms.

Turning to the phrases, the JDG requests the Court construe the first phrase as "changes made to the master menu or the programmed handheld menu configuration and selections made from the programmed handheld menu configuration are reflected

on an entire network of connected devices without a request for an update," and the second phrase as "changes in the hospitality application information are reflected instantaneously on the master database, wireless handheld computing device, web server and web page without a request for updated hospitality application information."[3] Ameranth does not offer constructions of these phrases, but instead proposes a definition of "real time" as "having to do with the actual time during which physical events take place" or "the performance of a computation during the actual time that the related physical process transpires in order that results of the computations are useful in guiding the physical process." IPDEV asserts these phrases should be construed according to their plain and ordinary meaning, or if a construction is necessary, that the phrases should be construed to mean "real time synchronous communications between the wireless handheld computing device and the system using the programmed handheld menu configuration."

Turning first to IPDEV's proposed construction, the Court rejects it for two reasons. First, IPDEV's proposal is more of a re-wording of the claim language rather than a translation. Second, IPDEV fails to address the primary issue here, which is the meaning of "real time."

On that precise issue, Ameranth proposes "real time" means as the events are happening while the JDG asserts it means instantaneously and automatically. Of these two proposals, the Court finds Ameranth's more persuasive for the following reasons.

First, Ameranth's proposed construction reflects the plain and ordinary meaning of the term. In regular parlance, "real time" means as the event is unfolding. For example, a court reporter may provide a transcript in "real time," which means he or she is reporting the words of a proceeding as they are being spoken. The reporting of the words, however, does not happen instantaneously with the words being spoken. Rather,

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[3] GrubHub supports the JDG's proposed construction, and requests the Court add another limitation, namely that the "linked devices in the real time synchronous menu/ordering system 'know' whether the items sought to be ordered are available when the order is entered, not immediately after."

there is a momentary delay, or as Ameranth's expert describes it, a delay due to technological feasibility. (Decl. of Stephanie DeBrow in Supp. of JDG's Responsive Claim Construction Br., Ex. 21 at 21.) *See, e.g., Paragon Solutions, LLC v. Timex Corp.*, 566 F.3d 1075, 1087-1093 (Fed. Cir. 2009) (construing "displaying real-time data" as "'displaying data without intentional delay, given the processing limitations of the system and the time required to accurately measure the data.")

Second, the specification does not support equating "real time" with "instantaneous." To be sure, the specification describes changes in the system as being reflected "instantaneously," ('077 Patent at 5:36-39), but there is no indication that the term "real time" was to be construed in that manner. On the contrary, the use of the term "real time" in the claims as opposed to "instantaneous" reflects the two terms were not meant to be interchangeable.

Third, although the prosecution history reflects Ameranth distinguished several pieces of prior art on the ground they did not disclose "real time synchronous" systems, that evidence does not reflect a "clear and unmistakable disclaimer" of all systems other than those that synchronize "instantaneously" and "automatically," or those that "know" whether items sought to be ordered are available when the order is placed. *See Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir. 2017) (quoting *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1325-26 (Fed. Cir. 2003)) ("'[F]or prosecution disclaimer to attach, our precedent requires that the alleged disavowing actions or statements made during prosecution be both clear and unmistakable.'") When considered in light of the claim language and the specification, Ameranth's statements during prosecution were not "so clear as to show reasonable clarity and deliberateness, and so unmistakable as to be unambiguous evidence of disclaimer." *Omega Eng'g*, 334 F.3d at 1325 (citations omitted). Thus, the Court adopts Ameranth's proposed construction of the term "real time," specifically, that "real time" means "having to do with the actual time during which physical events take place."

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C. Web Page

The next term at issue is "web page." Ameranth argues this term should be construed as "a document, with associated files for graphics, scripts, and other resources, accessible over the internet and viewable in a Web browser." IPDEV agrees with this proposed construction. The JDG asserts the term should be given its plain and ordinary meaning.

The Court agrees with the JDG that "web page" should be given its plain and ordinary meaning. A person of ordinary skill in the art at the time of the invention would know what a "web page" was, and the term would not need to be defined. Accordingly, the Court adopts the JDG's proposal, and gives this term its plain and ordinary meaning.

D. Graphical User Interface

The next term at issue is "graphical user interface." Ameranth asserts this term should be construed as a "computer environment provided by an operating system wherein an application program presents graphical representations of data on a computer display screen and enables a user to make selections of the graphically represented data." The JDG asserts the term should be construed as "a computer environment wherein an application program presents graphical representations of data on a computer screen and enables a user to make selections of the graphically represented data." IPDEV asserts this term should be given its plain and ordinary meaning, but if construed, should be construed according to the JDG's proposal.

The only difference between these two proposals is Ameranth's inclusion of the phrase "provided by an operating system." As the JDG points out, this limitation is specifically provided for in claims 1 and 9 of the '077 Patent, (*see id.* at 15:62-63; 17:41-44), and thus Ameranth's additional language is not necessary for those claims. Ameranth's additional language is not set out in claim 13, however, (*see id.* at 19:39-20:9), and its absence there counsels against adding it into that claim. Accordingly, the Court adopts the JDG's proposed construction of "graphical user interface."

E. Customized Display Layout

The next term at issue is "customized display layout." IPDEV asserts this term should be construed as "a display layout that is customized based on the user's device and appropriate for display and use on said device." Ameranth asserts the term does not require construction, but "agrees with IPDEV's proposed construction if it is construed as part of the overall elements in each of the four usage instances in claims 1-12 and three instances in claims 13-18." The JDG, with the exception of Hyatt, asserts this term does not require construction. Hyatt asserts the term should be construed as "information adapted to the handheld display so that scrolling is not required to view all available information."

The Court agrees with Ameranth and the JDG that this term does not require construction. It is clear from reading the claim language as a whole that the display layout is customized "to the wireless handheld device" and "to facilitate user operations with and display of the programmed handheld menu configuration" on the display. ('077 Patent at 16:20-27.) IPDEV's proposed construction simply restates what is evident from the claim language, and is therefore unnecessary.

Hyatt's proposal relies entirely on the prosecution history, which reveals the invention was teaching away from the requirement of scrolling. However, the statements Ameranth made during prosecution and the CBM proceedings do not amount to clear and unmistakable disclaimers of scrolling. Indeed, Ameranth stated as much during prosecution. (*See* Ameranth's Opening Br., Ex. 15 at 28) ("It should be appreciated, however, that an option of scrolling of menu screens is not precluded in the context of practice of the claimed invention as long as the claimed configuration of a handheld menu from a master menu is present.")

For these reasons, the Court adopts Ameranth and the JDG's position on this term, and finds construction of this term is unnecessary.

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F. Cascaded Sets of Linked Graphical User Interface Screens

The next phrase at issue is "cascaded sets of linked graphical user interface screens." The JDG asserts this phrase should be construed as "two or more linked graphical user interface screens that are displayed in an overlapping fashion such that at least a portion of each selected screen remains visible." Ameranth asserts the phrase does not require construction, but if construed, it should mean "sets of graphical user interface screens whose members are linked and arranged in succession." IPDEV asserts the phrase should be construed as "graphical user interface screens that are organized hierarchically."

The term "cascaded sets" appears only once in the specification of the '077 Patent, and each side relies on that portion of the specification to support its proposed construction. That portion of the specification states:

> The use of menus is conventional in GUIs for software applications. Menus are typically utilized to provide end users of applications with available choices of processing options while using the applications. For example, in a typical desktop or interactive application, selection of a 'file' from a menu bar may cause display of a context menu which provides 'file' options. File options can have additional subordinate or child options associated with them. If a file option having subordinate options is selected, the child options are displayed in context in a child menu or submenu proximate to the selected parent option. One or more of the child options provided in the child menu may have further subordinate options. Thus, such a menu system comprises cascading sets of menus which are displayable in context to show the parent/child relationships between options of the context menu.

('077 Patent at 6:37-51.) Notably, this description of a "cascading set" of menus does not use either "overlapping" or "offset." Although overlapping and offset menus could be considered "cascading," there is nothing in the specification that limits "cascading" to only those arrangements. Indeed, menus could still be cascading even if they did not overlap or were not offset. Thus, the JDG's proposed construction cannot be correct.

IPDEV relies on a different portion of the specification to support its proposed construction. That portion describes Figure 1, which includes a "hierarchical tree" structure showing the different relationships between menu categories, items, modifiers and sub-modifiers. (*Id.* at 7:31-43.) That portion of the specification, however, is

describing a preferred embodiment of the invention. It is not setting limits on the claims. Thus, IPDEV's proposed construction is also incorrect.

This leaves only Ameranth's proposed construction, which is "sets of graphical user interface screens whose members are linked and arranged in succession." The claim language itself explains that the cascading sets of screens are "linked," therefore this modifier is unnecessary. "Arranged in succession" is a helpful descriptor, but it, too, is not be necessary to explain the term to a person of ordinary skill in the art. Therefore, subject to the discussion above, the Court declines to further construe this term and instead will give the term its plain and ordinary meaning.

G. Generate a Programmed Handheld Menu Configuration/Format a Programmed Handheld Configuration

The next two phrases at issue are "generate a programmed handheld menu configuration" and "format a programmed handheld configuration." The JDG asserts the "generate" phrase should be construed as "on a central server in the back office, and not on a handheld device, generate a menu that has been optimized for display on a particular handheld device," and the "format" phrase should be construed as "at a central server in the back office, and not on a handheld device, format hospitality application information that has been optimized for display on a particular handheld device." Ameranth asserts these phrases do not require construction. IPDEV agrees with Ameranth, but also asserts that if the phrases are construed, that the "generate" phrase be construed as "the programmed handheld menu configuration is generated from the master menu by the menu configuration software using parameters from the master menu file structure and is subsequently transmitted to the wireless handheld devices connected to the system," and the "format" phrase be construed as "the programmed handheld configuration is formatted from the master menu by the menu configuration software using parameters from the master menu file structure and is subsequently transmitted to the wireless handheld devices connected to the system."

There are two disputes at the heart of the parties' proposed constructions: (1)

where the menu configuration is generated and (2) whether the menu configuration must be optimized for display on the particular handheld device. The JDG argues the menu configuration must be generated on a "back office" server, not on the handheld device, and it must be optimized for display on the handheld device. Ameranth disputes both of those arguments. IPDEV agrees with the JDG that the menu configuration cannot occur on the handheld device, but disagrees that it must occur at a "back office" server. IPDEV also disagrees that the menu configuration must be optimized for display on the handheld.

The claim language provides the strongest evidence in support of the JDG and IPDEV's proposals that the generation of the menu configuration occurs outside the handheld device. Claim 1 describes "menu configuration software enabled to generate a programmed handheld menu configuration from said master menu *for wireless transmission to* and programmed for display on a wireless handheld computing device[.]" (*Id.* at 16:5-8) (emphasis added). Ameranth does not seem to dispute that the menu configuration is generated outside the handheld. Rather, it argues the menu configuration can be integrated on the handheld. However, integration and generation of the menu configuration are two separate things. Based on the claim language itself, the Court finds the menu configuration must be generated outside the handheld device.

The JDG argues generation of the menu configuration must occur on a "back office" server, while IPDEV argues the generation of the menu configuration need only occur in connection with the master menu. The evidence does not support the JDG's inclusion of a "back office" server in the construction of this term. However, the claim language does support IPDEV's proposal that a master menu is involved. (*See id.* at 5-8) ("menu configuration software enabled to generate a programmed handheld menu configuration *from said master menu*") (emphasis added). Because IPDEV's proposal is recited in the claim, however, that explanation is unnecessary.

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As for the JDG's proposal that the menu configuration be "optimized" for display on a particular handheld device, the evidence does not support importing that limitation into the claims. Therefore, the Court rejects that proposal.

Although the "format a programmed handheld configuration" phrase is obviously different from the "generate" phrase, the analysis above applies to the "format" phrase as well. Like the "generate" phrase, the "format" phrase indicates the configured hospitality application information is transmitted "*to* the wireless handheld computing device." (*Id.* at 20:10-12) (emphasis added). Also, the optimized language would not apply here either as the claim requires "a customized display layout of *at least two* different wireless handheld computing device display sizes in the same connected system[.]" (*Id.* at 1-4.)

In accordance with the above discussion, the Court construes these phrases to include the limitation that the configurations be generated and formatted outside the handheld devices, but declines to impose the other proposed limitations.

H. Communications Control Software Enabled To/Menu Configuration Software

The next two phrases for construction are "communications control software enabled to" and "menu configuration software." The JDG, with the exception of QuikOrder, asserts these phrases are drafted in "means-plus-function" format, that they fail to disclose corresponding structure for the recited functions, and that the claims are therefore indefinite. Ameranth, IPDEV and QuikOrder disagree with that assertion. Ameranth argues the phrases need no construction. IPDEV agrees with that argument for "communications control software enabled to," but proposes a construction for that phrase nonetheless, which is "software capable of controlling communication of data between all devices connected to the system and performing the functions recited in the remainder of the claim." IPDEV also contends that "menu configuration software" should be construed as "any software application capable of generating a menu

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configuration, downloading the menu configuration to a user based on the user's request, and carrying out the functions recited in the remainder of the claim."

The first issue here is whether these phrases are governed by 35 U.S.C. § 112(f). This section states:

> 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.

35 U.S.C. § 112(f). To determine whether this statute applies, the court must first ascertain if the element is truly a "means-plus-function" element. When a claim uses the term "means" to describe a limitation, the court presumes "'that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses.'" *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1375 (Fed. Cir. 2003) (quoting *Sage Prods., Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1427 (Fed. Cir. 1997)). In contrast, "'[a] claim term that does not use 'means' will trigger the rebuttable presumption that [35 U.S.C. § 112(f)] does not apply.'" *Depuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1023 (Fed. Cir. 2006) (quoting *CCS Fitness v. Brunswick Corp.*, 288 F.3d 1359, 1369 (Fed. Cir. 2002)). To overcome this presumption, a party must show "'that the claim element recite[s] a function without reciting sufficient structure for performing that function.'" *Id.* (quoting *Watts v. XL Sys. Inc.*, 232 F.3d 877, 880-81 (Fed. Cir. 2000)).

The terms at issue here, "communications control software" and "menu configuration software," do not recite the term "means," and thus, there is a presumption that § 112(f) does not apply. The JDG attempts to rebut that presumption by arguing that "software" does not connote sufficient structure for performing the functions set out in the claim. However, its argument is not persuasive for a number of reasons.

First, the JDG fails to cite any controlling authority in support. It cites *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1340-41 (Fed. Cir. 2008), but that case

did not involve the issue presented here, which is whether the use of the generic term "software" without the use of the term "means" is sufficient to rebut the presumption that § 112(f) does not apply.

Second, although the JDG does cite a district court case wherein the court found the term "CPU software" failed to recite sufficient structure thereby rebutting the presumption that § 112(f) did not apply, *Advanced Ground Information Systems, Inc. v. Life360, Inc.*, No. 14-80651-CV-MIDDLEBROOKS, 2014 WL 12652322, at *5-7 (S.D. Fla. Nov. 21, 2014), the majority of courts have reached the opposite conclusion when considering "software" terms. *See Uniloc USA, Inc. v. Autodesk, Inc.*, No. 2:15-cv-1187-JRG-RSP, 2016 U.S. Dist. LEXIS 87921, at *52-58 (E.D. Tex. July 7, 2016) ("add-on computer software code");[4] *Whitserve LLC v. GoDaddy.com, Inc.*, 65 F.Supp.3d 317, 319-22 (D. Conn. 2014) ("software"); *Affinity Labs of Tex., LLC v. Samsung Elecs. Co.*, No. 1-12-CV-557, 2014 U.S. Dist. LEXIS 184075, at *11-16 (E.D. Tex. June 4, 2014) ("software ... configured to"); *RLIS, Inc. v. Allscripts Healthcare Solutions, Inc.*, Nos. 3:12-CV-208, 3:12-CV-209, 2013 WL 3772472, at *14-16 (S.D. Tex. July 16, 2013) ("computer system under software control," "computer executable database software," "an editing software utility," "executable software" and "computer software"); *Eolas Techs., Inc. v. Adobe Sys., Inc.*, 810 F.Supp.2d 795, 810 (E.D. Tex. 2011) ("software ... operable to ... cause").

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[4] *Uniloc* was decided after the Federal Circuit's decision in *Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015). *Williamson* is at the heart of the JDG's argument that § 112(f) applies to the software terms at issue here. That decision did away with the "heightened bar to overcoming the presumption that a limitation expressed in functional language without using the word 'means' is not subject to § 112, para. 6." *Id.* at 1349. However, it did not do away with the presumption in its entirety. The presumption still applies, and can only be overcome "if the challenger demonstrates that the claim term fails to 'recite sufficiently definite structure' or else recites 'function without reciting sufficient structure for performing that function.'" *Id.* (quoting *Watts*, 232 F.3d at 880). The JDG has not met that burden here for the reasons set out above and below.

Furthermore, *Williamson* did not address whether the term "software," either generally or in context, recites sufficient structure to avoid application of § 112(f). Rather, it addressed the term "module," which the court described as "a well-known nonce word that can operate as a substitute for 'means' in the context of § 112, para. 6." *Id.* at 1350. On its facts, therefore, *Williamson* is of limited assistance in this case.

Third, the claims here provide sufficient context to support a finding that the "software" terms connote sufficient structure. *See Uniloc*, 2016 U.S. Dist. LEXIS 87921, at *57 ("The claims connote that the 'add-on computer software code' is structural by describing how the 'add-on computer software code' operates within the claimed invention to achieve its objectives."); *Affinity Labs*, 2014 U.S. Dist. LEXIS 184075, at *14 (stating "[t]he use of the term 'software,' coupled with a description of the software's operation is sufficient structure to avoid a means-plus-function construction."); *RLIS*, 2013 WL 3772472, at *15-16 (viewing terms in "context" to determine whether it recites sufficient structure to escape the application of § 112(f)). The "menu configuration software" is described as part of "[a]n information management and real time synchronous communications system for configuring and transmitting hospitality menus[,]" ('077 Patent, claims 1, 9), and the "communications control software" is described as part of "[a]n information management and real time synchronous communications system for use with wireless handheld computing devices and the internet[.]" (*Id.*, claim 9.) Both types of software are part of a larger system that also includes, in the case of the menu configuration software, a CPU, a data storage device, an operating system, and a wireless handheld computing device, and in the case of the communications control software, a master database, a wireless handheld computing device, a web server and a web page. When viewed in the context of the claims as a whole, both "software" terms recite sufficient structure to avoid the application of § 112(f). Thus, the Court finds these terms are not subject to means-plus-function analysis.

The only remaining issue is the construction of "menu configuration software." As mentioned above, IPDEV asserts this term should be construed as "any software application capable of generating a menu configuration, downloading the menu configuration to a user based on the user's request, and carrying out the functions recited in the remainder of the claim." Ameranth asserts the term needs no construction.

The Court agrees with Ameranth that IPDEV is attempting to import a limitation into this claim, namely the "downloading" limitation. Clearly, there is nothing in the claim itself that requires "downloading" in connection with the software. The other aspects of IPDEV's proposed construction are clearly provided for in the claim language itself, and thus unnecessary. Thus, the Court adopts Ameranth's position here, and find construction of "menu configuration software" is unnecessary.

III.

CONCLUSION

For the reasons stated above, the disputed terms are interpreted as set forth in this Order.

IT IS SO ORDERED.

DATED: December 28, 2017

HON. DANA M. SABRAW
United States District Judge