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INNOVATION, INC.

19 **UNITED STATES DISTRICT COURT**  
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21  
22  
23 IN RE: AMERANTH PATENT  
LITIGATION CASES

Civil Action No. 3:11-CV-1810 DMS-  
WVG

24 **DEFENDANTS’ RESPONSIVE**  
25 **CLAIM CONSTRUCTION BRIEF**

26 Judge: Hon. Dana M. Sabraw  
Hearing: December 11, 2017

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22	Excerpts from the Transcript of the Deposition of Dr. Franz (Oct. 27, 2017)
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25	Windows CE 2.0 Color Handheld PC Screen Shots (1997), <a href="http://www.pocketpcfaq.com/wce/wce20scrn.htm">http://www.pocketpcfaq.com/wce/wce20scrn.htm</a>
26	Microsoft Announces Release of Windows CE 2.0 (Sept. 1997), <a href="https://news.microsoft.com/1997/09/29/microsoft-announces-release-of-windows-ce-2-0/">https://news.microsoft.com/1997/09/29/microsoft-announces-release-of-windows-ce-2-0/</a>

1 **I. Menu Configuration Software & Communications Control Software<sup>1</sup>**

2 **A. Neither Ameranth nor IPDEV Applies the *Williamson* Standard.**

3 In arguing that the “software” elements should not be treated as means-plus-  
 4 function (“MPF”) elements, neither Ameranth nor IPDEV applies the correct legal  
 5 standard. Ameranth and IPDEV do not address whether (a) the “software” terms  
 6 would be understood as structure, or (b) the claims recite sufficient structure for  
 7 performing the claimed functions, because they cannot meet this standard.  
 8 *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). Instead,  
 9 Ameranth and IPDEV focus on other claim elements (*e.g.*, “master menu,” “data  
 10 storage device”), which they wrongly argue provide “structure in the context of the  
 11 claim as a whole.” *See* Am. Br. (“ABr.”) at 11-12, 20-22; IPDEV Br. (“IBr.”) at 11-  
 12 12, 24. But it is not sufficient to identify *something* in the claims that might be  
 13 considered “structure.” The claims require that the “software” elements, not these  
 14 other elements, perform the claimed functions. Def. Br. (“DBr.”) at 7.

15 Ameranth and IPDEV also argue that the claims require interaction between  
 16 software elements and other elements. But just as in *Williamson*, the recitation of  
 17 high-level interactions among claim elements fails to meaningfully inform the  
 18 structural character of the “software” elements. *See Williamson*, 792 F.3d at 1351  
 19 (“While portions of the claim do describe certain inputs and outputs at a very high  
 20 level . . . , the claim does not describe how the [MPF element] interacts with other  
 21 components . . . in a way that might inform the structural character of the limitation-  
 22 in-question or otherwise impart structure to the [MPF element]”). For example, the  
 23 fact that a programmed handheld menu configuration (“PHMC”) includes menu data  
 24 (*e.g.*, categories, items, and modifiers) that comes from a “master menu,” does not  
 25 inform a POSA as to the structural character of the menu configuration software  
 26 (“MCS”). Dkt. 866-1 at ¶¶ 34, 42.<sup>2</sup> Indeed, Ameranth’s expert Dr. Shamos admitted

27  
 28 <sup>1</sup> Defendant QuikOrder, Inc. does not join in this portion of Defendants’ brief.  
<sup>2</sup> *See generally* Ex. 22 at 104-231.

1 that the claims do not specify how the MCS determines the display-size of the  
 2 handheld even though it would need to make that determination to perform the  
 3 claimed functions.<sup>3</sup> Ex. 21 at 75:12-23, 143:21-146:14. Dr. Shamos also admitted  
 4 that “claim 13 recites a whole bunch of functions that one normally would not  
 5 associate with communication control software.” *Id* at 161:22-162:8.

6 Furthermore, neither Ameranth nor IPDEV offer any evidence that a POSA  
 7 would find that the generic term “software” modified by the functional language  
 8 “communication control” or “menu configuration” recites sufficiently definite  
 9 structure for performing the recited functions.<sup>4</sup> For example, Dr. Shamos does not  
 10 opine that the “software” recited by the claims is a definite structure that performs  
 11 the recited functions; instead, he asserts that the “software code structure” for  
 12 performing the claimed functions would have been apparent to a POSA. Dkt. 865-19  
 13 at ¶¶ 52,77; *see also* Ex. 21 at 150:9-13(testifying that the claims allow implementers  
 14 to “devise [their] own” algorithms). But whether a POSA could devise an algorithm  
 15 to perform the recited functions is irrelevant to whether *the claims themselves* recite  
 16 sufficient structure to perform those functions.

17 **B. Ameranth’s and IPDEV’s Cases are Inapposite.**

18 Ameranth’s arguments are based largely on non-analogous, pre-*Williamson*  
 19 cases that were abrogated if not outright overruled by *Williamson*. *See* 792 F.3d at  
 20 1348-49 (overruling “strong” presumption relied upon in *Inventio* and *Apple v.*  
 21 *Motorola*);<sup>5</sup> *see also Media Rights Techs., Inc. v. Capital One Financial Corp.*, 800

22 \_\_\_\_\_  
 23 <sup>3</sup> Dr. Shamos also admitted that the claims do not actually spell out the  
 interaction between the MCS and the master menu. Ex. 21 at 21:15-22:6.

24 <sup>4</sup> Ameranth and IPDEV concede that the claims recite functions performed by  
 the “software” elements. *See* ABr. at 11, 21; Dkt. 865-19 at ¶¶ 51, 76; Ex. 21 at  
 25 128:4-25; IBr. at 8, 23(defining the “software” elements as software capable of  
 26 performing “the functions recited in the remainder of the claim”); Dkt. 868-5 at 9, 24  
 (same). Additionally, Drs. Shamos and Stevenson agree that “communication control  
 27 software” should be construed with the following purely functional language:  
 “software capable of controlling communication ... and performing the functions  
 28 recited in the remainder of the claim.” Ex. 21 at 126:7-128:25; Dkt. 868-5 at 24.

<sup>5</sup> The claim term at issue in *Apple Inc. v. Motorola Inc.* was “heuristic” which

1 F.3d 1366, 1373 (Fed. Cir. 2015) (“In *Inventio*, moreover, the Court was applying  
 2 our now-superseded case law, which imposed a heavy presumption against finding a  
 3 claim term to be in [MPF] format.”).<sup>6</sup> For example, Ameranth analogizes to *Inventio*  
 4 by arguing that the “software” elements are “connected” to other elements and thus  
 5 the claims “define a structural system.”<sup>7</sup> ABr. at 11 (discussing *Inventio AG v.*  
 6 *ThyssenKrupp Corp.*, 649 F.3d 1350 (Fed. Cir. 2011). Since *Williamson*, however,  
 7 the Federal Circuit has distinguished *Inventio* in cases (like this one) involving claims  
 8 directed to generic software. In *Media Rights*, the Federal Circuit rejected similar  
 9 *Inventio*-based arguments, explaining that *Inventio* dealt with claims directed to  
 10 electric circuits, which have been treated as structural in the case law, whereas the  
 11 term “compliance mechanism” was not known in the art as a term that connotes a  
 12 particular structure and there was no structural description in the specification. 800  
 13 F.3d at 1372-73 (“[I]t was the specification’s disclosure regarding how the  
 14 ‘modernizing device’ and its internal components *operated as a circuit*, which we  
 15 had recognized in prior cases to connote sufficient structure, that was the basis for  
 16 this Court’s conclusion [in *Inventio*] that ‘modernizing device’ was not a [MPF]  
 17 term.”).<sup>8</sup> The “software” terms in the ’077 Patent must be construed as MPF terms  
 18 for the same reasons.

19 Ameranth’s lone post-*Williamson* case is also inapposite. In *M2M Sols. LLC*  
 20 *v. Sierra Wireless Am., Inc.*, unrebutted evidence demonstrated that the claim

21 “ha[d] a known meaning” in the art. 757 F.3d 1286, 1300-01 (Fed. Cir. 2014). Here,  
 22 neither Ameranth nor IPDEV argues that the terms “menu configuration software”  
 23 and “communications control software” have known meanings in the art.

24 <sup>6</sup> Ameranth also cites cases out of context. The *Typhoon Touch Techs., Inc. v.*  
 25 *Dell, Inc.* quote relates to definiteness (*i.e.*, whether the specification discloses  
 26 corresponding structure), not MPF treatment (*i.e.*, whether the claims recite sufficient  
 27 structure to perform the recited functions). 659 F.3d 1375, 1385 (Fed. Cir. 2011).

28 <sup>7</sup> Ameranth and its expert concede that the claims recite functions performed by  
 the “software” elements. *See supra* n.5

<sup>8</sup> *Apex* is another pre-*Williamson* case dealing with non-analogous electrical  
 circuits. *Apex Inc. v. Raritan Computer, Inc.*, 325 F.3d 1364, 1373-75 (Fed. Cir.  
 2003) (discussing “‘circuit’ limitations”); *see also id.* at 1372 (suggesting a strong  
 presumption by stating the absence of “‘means’ is central to the analysis”).

1 language recited not just a function, but also a three-step algorithm for performing it.  
 2 2015 WL 5826816, at \*5 (D. Del. Oct. 2, 2015) (“Despite the fact that the claim  
 3 recites a function, the immediately following words provide algorithmic structure for  
 4 performing that function.”).<sup>9</sup> Here, in contrast, the ’077 claims recite only functions,  
 5 not algorithms.<sup>10</sup>

6 IPDEV’s post-*Williamson* cases are also distinguishable.<sup>11</sup> *Collaborative*  
 7 *Agreements, LLC v. Adobe Sys. Inc.* involved claims with a series of limitations each  
 8 reciting “a code segment” for performing a specific software step. 2015 WL 7753293,  
 9 at \*1-2 (N.D. Cal. Dec. 2, 2015). Finding that the claims included “a degree of  
 10 specificity not present in *Williamson*,” the Court declined to apply § 112, ¶ 6. *Id.* at  
 11 \*6-8. Similarly, *Syncpoint Imaging, LLC v. Nintendo of Am. Inc.* involved claims  
 12 reciting “instructions for” performing specific software steps. 2016 WL 55118, \*21-  
 13 24 (E.D. Tex. Jan. 5, 2016). There, the court noted that the claims recited the  
 14 “operations of the instructions” and a POSA “would understand the structural  
 15 arrangements of the instructions” from the claim language. *Id.* at \*23.

16 Here, the recited functions are not limited to discrete software steps as in  
 17 *Collaborative Agreements* and *Syncpoint*;<sup>12</sup> instead, the claims recite the functions of

18  
 19 <sup>9</sup> The claim in *M2M* recited “a processing module for authenticating an at least  
 one transmission” by “determining if the at least one transmission contains the coded  
 number.” *Id.* at \*4.

20 <sup>10</sup> See Ex. 21 at 149:11-24 (testifying that if 75 different people were asked to  
 21 develop algorithms for performing the functions of the claimed “menu configuration  
 22 software,” “[one] would expect 75 different solutions”); *id.* at 149:24-150:24  
 (testifying that the communication control software has to perform the functions  
 23 recited in the claim, “but that doesn’t mean that one needs to use particular algorithms  
 or particularly known algorithms;” “[y]ou can devise your own”); see also *supra* n.2.

24 <sup>11</sup> IPDEV relies heavily on *Whitserve*, a pre-*Williamson* strong-presumption  
 case. See *WhitServe LLC v. GoDaddy.com, Inc.*, 65 F. Supp. 3d 317, 320 (D. Conn.  
 25 2014) (presumption based on absence of means “is a high bar ... [that] will not be  
 26 defeated ‘without a showing that the limitation essentially is devoid of anything that  
 can be construed as structure’”); but see *Williamson*, 792 F.3d at 1348-49 (rejecting  
 “devoid of . . . structure” standard).

27 <sup>12</sup> Reliance on *Collaborative Agreements* and *Syncpoint* also is questionable  
 28 because those cases rely heavily on *Linear Techs*, an electrical circuits case. See  
*Collaborative Agreements*, 2015 WL 7753293 at \*6 (“This case is more similar to



1 an entire software module<sup>13</sup> or program. Thus, this case is more like *Williamson*,  
 2 which dealt with a claimed software “module,” and the *Verint* and *Zeroclick* cases  
 3 cited in Defendants’ brief, which dealt with claims reciting functions performed by  
 4 an entire “computer application” and “program,” respectively. *Verint Sys., Inc. v. Red*  
 5 *Box Recorders Ltd.*, 166 F. Supp. 3d 364, 379-384 (S.D.N.Y. 2016); *Zeroclick, LLC*  
 6 *v. Apple Inc.*, 2016 WL 5477115, at \*4-5 (N.D. Cal. Aug. 16, 2016).

7 The ’077 claims are also different from those in *Collaborative Agreements* and  
 8 *Syncpoint* because they provide high-level descriptions of complex functions. *See*,  
 9 *e.g.*, *Collaborative Agreements*, 2015 WL 7753293 at \*5 (the claim language at issue  
 10 “does not simply describe broadly phrased high-level functions”). For example, the  
 11 ’077 claims require generating a PHMC that must include “programmed linkages  
 12 between menu screens,”<sup>14</sup> but provide no indication as to how the claimed “software”  
 13 (a) determines how many screens should be used in a given PHMC, or (b) creates  
 14 linkages between the screens. *See Williamson*, 792 F.3d at 1350-51 (claims do not  
 15 indicate structure where they “set[] forth the same black box recitation of  
 16 structure . . . as if the term ‘means’ had been used”).

17 **C. Ameranth and IPDEV Did Not Identify Corresponding Structure.**

18 Assuming the Court agrees that the “software” terms are subject to § 112, ¶ 6,  
 19 the claims must be found indefinite. Ameranth and IPDEV did not even attempt to  
 20 identify algorithms in the specification corresponding to the claimed functions. Their  
 21 experts could not do so either. Ex. 21 at 166:21-169:12; Ex. 23 at 93:19-96:2. Thus,  
 22 Defendants’ arguments and evidence on this point are un rebutted. DBr. at 7-10; Dkt.

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 25 *Linear* than *Williamson*.”); *Syncpoint*, 2016 WL 55118 at \*23-24 (repeatedly citing  
 26 *Linear Tech.*). As discussed above, in *Media Rights*, which involved software claims,  
 the Federal Circuit highlighted the fact that electrical circuits have been treated  
 differently than other subject matter. *See* 800 F.3d at 1373.

27 <sup>13</sup> The ’077 patent repeatedly describes the “communications control software”  
 28 as a “module” (’077 patent at 5:17-20, 10:49-51, 12:39-42), and Ameranth described  
 both claimed “software” elements as “software modules” (Dkt. 866-7 at 15).

<sup>14</sup> *See* Dkt. 866-12 at ¶ 111; *see also* Ex. 21 at 93:13-18.

1 866-1 at ¶¶ 44-52. Ameranth instead misrepresents this Court’s Aug. 16, 2017 order,  
 2 which only deferred indefiniteness arguments on other terms,<sup>15</sup> and contends that it  
 3 should be permitted to address corresponding structure in the future. ABr. at 13, 22.  
 4 But, Ameranth’s contention is contrary to well-settled law. *Williamson*, 792 F.3d at  
 5 1351-52 (“Construing a [MPF] claim term is a two-step process” that includes  
 6 “determin[ing] what structure, if any, disclosed in the specification corresponds to  
 7 the claimed function.”).

## 8 **II. Real Time Synchronization Terms**

9 Ameranth’s and IPDEV’s constructions should be rejected for two reasons.  
 10 First, they fail to take into account Ameranth’s clear and unequivocal disclaimers  
 11 during prosecution. To obtain allowance of the claims, Ameranth repeatedly and  
 12 unequivocally distinguished the prior art on the basis that “real time synchronization”  
 13 requires: “instantaneously” pushing updates to synchronized components without a  
 14 request for an update.<sup>16</sup> DBr. at 10-13. Ameranth and IPDEV improperly ignore these  
 15 disclaimers. The specification likewise describes real time synchronization as a  
 16 process by which changes are “reflected instantaneously”<sup>17</sup> without a request for an  
 17 update. DBr. at 13-14; *see also* IBr. at 22 (conceding the specification discloses  
 18 changes “reflected instantaneously” on synchronized devices). IPDEV’s assertion  
 19

20 <sup>15</sup> *See* Dkt. 782 (deferring consideration of “whether the ***additional claim***  
 21 ***terms/phrases identified on page 11 of the Joint Statement*** are indefinite”).

22 <sup>16</sup> Consistent with Ameranth’s statements during prosecution that real time  
 23 synchronization must be “instantaneous,” Dr. Shamos agreed that, to qualify as  
 24 “synchronized in real time,” the data on the handheld device must “always be  
 25 consistent with the data that’s in the master menu,” subject only to delays due to  
 26 technological feasibility. *See* Ex. 21 at 131:14-21; *see also id.* at 130:22-131:13  
 27 (testifying that a system in which a waiter’s handheld device updates only when the  
 28 waiter opens the menu would not be a “real time synchronous system” because the  
 menu on the waiter’s device would be “out of date”).

<sup>17</sup> IPDEV’s contention that “instantaneous” synchronization is inconsistent with  
 the specification should be rejected, as it relies solely on a conclusory statement of  
 its expert. IBr. at 22 (citing Dkt. 868-5 at 28); *Phillips v. AWH Corp.*, 415 F.3d 1303,  
 1318 (Fed. Cir. 2005) (“conclusory, unsupported assertions by experts as to [claim  
 construction] are not useful”).

1 that this disclosure relates to an “aspect of the invention [that] is not claimed,” IBR.  
2 at 21, ignores both the plain language of the claims (all of which recite real time  
3 synchronization) and Ameranth’s repeated prosecution disclaimers.

4 Second, Ameranth’s and IPDEV’s subjective construction of “real time”  
5 (“having to do with the actual time during which physical events take place”) injects  
6 ambiguity not clarity. Under this construction, it is unclear what constitutes “physical  
7 events” in the context of the ’077 claims and what constitutes a time period “*having*  
8 *to do with* the actual time during which the physical events take place.” For example,  
9 the construction does not clarify whether synchronization could be considered “real  
10 time” when it: (a) overlaps with the physical event, (b) immediately follows the  
11 physical event, or (c) occurs after the physical event. Nor does it clarify how much  
12 delay is permitted. Dr. Shamos’ testimony confirms that this construction of “real  
13 time” is entirely subjective. Ex. 21 at 113:8-115:3 (a delay of “a quarter-of-a-second”  
14 may be “real-time” for an online retailer, but a five minute delay could be “okay” for  
15 email). Such subjectivity “fail[s] to inform, with reasonable certainty, those skilled  
16 in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*,  
17 134 S. Ct. 2120, 2124 (2014); *see also Interval Licensing LLC v. AOL, Inc.*, 766 F.3d  
18 1364, 1371 (Fed. Cir. 2014).

19 Ameranth’s assertion that *Apple v. Ameranth*, 842 F.3d 1229 (Fed. Cir. 2016),  
20 “precludes” any portion of Defendants’ construction is wrong for two reasons. First,  
21 the decision applied a different claim construction standard. *Id.* at 1236 (applying  
22 broadest reasonable interpretation standard). Second, the decision does not address  
23 the meaning of “real time synchronization.” None of the claims at issue in that appeal  
24 recited real time synchronization. *Id.* at 1234.

### 25 **III. Synchronized / Synchronous**

26 Ameranth and IPDEV rely on the PTAB’s construction of “synchronized,”  
27 while ignoring the differing standards for claim construction in the PTAB and district  
28 court. *Compare In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1279 (the PTAB

1 gives claim terms their “broadest reasonable interpretation”) *with Phillips*, 415 F.3d  
 2 at 1312-13 (a district court gives claim terms their “ordinary and customary  
 3 meaning”). Furthermore, IPDEV concedes that its construction is inconsistent with  
 4 the term’s ordinary meaning, arguing that the patent defines “synchronous” to mean  
 5 “asynchronous” (*i.e.*, not existing or happening at the same time). IBr. at 17. In order  
 6 to “define terms of a claim contrary to their ordinary meaning,” the specification must  
 7 “clearly redefine [the] claim term.” *Process Control Corp. v. HydReclaim Corp.*, 190  
 8 F.3d 1350, 1357 (Fed. Cir. 1999). The ’077 specification does not redefine  
 9 “synchronous” to mean “asynchronous.” Instead, the patentee defined the claimed  
 10 synchronization to require that changes are “reflected instantaneously” on  
 11 synchronized devices “without a request for an update.” *See supra* at II.

#### 12 **IV. [Generate/Format] A Programmed Handheld [Menu] Configuration**

13 Defendants’ constructions are compelled by Ameranth’s clear disavowal of  
 14 systems where configuration occurred after transmission to a handheld device rather  
 15 than before transmission on a central server in the “back office.” DBr. at 16-19.  
 16 Ameranth attempts to avoid its clear disclaimer on three meritless grounds.

17 First, Ameranth argues that it did not adopt the Examiner’s proposed  
 18 amendment to expressly recite “configuration is not done at the handheld.” ABr. at  
 19 17. The file history demonstrates Ameranth (1) acknowledged the Examiner’s  
 20 “possible additional amendments including the clarification that *configuration is not*  
 21 *done at the handheld, which applicant contends is a difference between the present*  
 22 *invention and the art of record,*” (2) amended its claims to recite the “generate a  
 23 programmed handheld menu configuration” limitation,<sup>18</sup> and (3) explained that it had  
 24 “addressed each of the issues and/or *incorporated each of the suggestions made by*  
 25 *the Examiner into the presently-amended claims.*” Dkt. 866-6 at 2, 7, 14. In the

26  
 27 <sup>18</sup> Argument alone would have been sufficient for disclaimer. *Aylus Networks,*  
 28 *Inc. v. Apple Inc.*, 856 F.3d 1353, 1359 (Fed. Cir. 2017); *Fenner Investments, Ltd. v.*  
*Cellco P’ship*, 778 F.3d 1320, 1325 (Fed. Cir. 2015) (“[T]he interested public has the  
 right to rely on the inventor’s statements made during prosecution.”).

1 same submission, Ameranth repeatedly distinguished the newly amended claims  
 2 from prior art in which menus were configured on handheld devices. DBr. at 17-18.  
 3 Indeed, Ameranth’s expert agrees that the claims require the PHMC/PHC to be  
 4 generated prior to transmission to the handheld, testifying that “logic requires that”—  
 5 “[y]ou can’t transmit something before it’s been generated.” Ex. 21 at 81:3-9.<sup>19</sup>

6 Second, Ameranth contends it disclaimed only “‘manual’ programming/  
 7 generation by a human ‘programmer/ operator.’” ABr. at 18 n.26. Ameranth’s  
 8 statements regarding manual programming, however, were merely descriptions of  
 9 the operation of a prior art device. For example, Ameranth distinguished the Micros  
 10 system on the grounds that the PHMC are “manually programmed” by an  
 11 “installer/programmer” on the HTT device, “not previous to transmission to the  
 12 device.” Dkt. 866-4 at 23. Ameranth thereby disclaimed programming that occurs  
 13 outside of a central server in a back office, not manual programming.

14 Third, Ameranth argues that “the requirement for ‘integration’ of the [PHMC]  
 15 with the mobile OS of the handheld” permits generating/formatting the PHMC on  
 16 the handheld device. ABr. at 18; Dkt. 865-19 at ¶¶ 67-68. This argument ignores that  
 17 the claim expressly recites the “menu configuration software” generating the PHMC.  
 18 Even if the claims could be read to cover generating/formatting at the handheld,  
 19 Ameranth disclaimed that scope during prosecution and cannot reclaim it. DBr. at  
 20 16-19. Likewise, IPDEV’s contention that the specification suggests a broader scope  
 21 to the alleged invention (IBr. at 14) cannot negate Ameranth’s clear disclaimer.

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 23  
 24 <sup>19</sup> IPDEV similarly asserts that “Ameranth never limited its claims to require that  
 25 menu configuration *only* occur at the back office server, but rather that it just occurs  
 26 prior to transmission and not on the handheld device.” IBr. at 14. While correctly  
 27 acknowledging that configuration must occur prior to transmission (*i.e.*, not at the  
 28 handheld), IPDEV ignores Ameranth’s unambiguous argument to the USPTO that  
 “the claimed menu *configuration occurs prior to transmission to the handheld  
 device*” and “the ‘programmed’ handheld menu configuration is *transmitted from  
 the back office to the handheld device.*” Dkt. 866-6 at 21, 24.

1 **V. Cascaded Sets of Linked Graphical User Interface Screens.**

2 Only Defendants' construction accurately reflects the meaning of "cascaded"  
3 to a POSA. DBr. at 20-23. Defendants' construction is supported by dictionary  
4 definitions, textbooks and other evidence demonstrating how a POSA would  
5 understand the term (*Id.*), while Ameranth and IPDEV offer only attorney argument  
6 (ABr. at 23) or conclusory expert testimony unsupported by documentary evidence  
7 (Dkt. 865-19 at ¶ 81; Dkt. 868-5 at 14-15). Neither is persuasive. *See Phillips*, 415  
8 F.3d at 1318; *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1332 (Fed.  
9 Cir. 2009) (rejecting "attorney argument lacking evidentiary support").

10 Ameranth's arguments against Defendants' construction are meritless. First,  
11 Ameranth is wrong to disregard Defendants' extrinsic evidence demonstrating the  
12 meaning of "cascaded" in the context of the "standard" Windows operating systems  
13 described in the '077 patent. ABr. at 23. Ameranth does not dispute that Defendants'  
14 construction accurately reflects the meaning of "cascaded" in "standard" Windows  
15 systems. *Id.* And, contrary to Ameranth's conclusory expert opinion, Windows CE  
16 also displayed cascaded menus in overlapping fashion. Ex. 26 (Windows CE 2.0 was  
17 released in 1997); Ex. 24 ("Windows CE 2.0 cascades the Start menu buttons...");  
18 Ex. 25 (depicting overlapping and offset "cascaded" menus). Second, contrary to  
19 Ameranth's assertions, Defendants' construction is consistent with Figure 7 of the  
20 '077 Patent. ABr. at 23. Indeed, Figure 7 shows only a single screen of the "cascaded  
21 set of linked graphical user interface screens," and does not depict how any linked  
22 screens are displayed, as would be required to support or refute the parties' proposed  
23 constructions. Third, Ameranth's argument regarding Dr. Turnbull's opinion in  
24 CBM2015-00081 ignores that (1) Dr. Turnbull construed the term using a different  
25 claim construction standard (broadest reasonable interpretation), and (2) the  
26 Microsoft dictionary definition quoted therein defines "cascaded" by illustrating the  
27 characteristic overlapping and offset "cascaded" visual display. Dkt. 865-14 at ¶ 86.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2017, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants.

By: /s/ Dan D. Davison

**SIGNATURE CERTIFICATION**

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to counsel of each Defendant signing the document, and that I have obtained each Defendant’s authorization to affix its electronic signature to this document.

By: /s/ Dan D Davison