

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

KIT CHECK, INC.,

Plaintiff,

v.

HEALTH CARE LOGISTICS, INC.,

Defendant.

Case No. 2:17-cv-01041

Judge Algenon L. Marbley

Magistrate Judge Chelsey M. Vascura

**DEFENDANT HEALTH CARE LOGISTICS, INC.'S**  
**OPENING CLAIM CONSTRUCTION BRIEF**

Dated: November 16, 2018

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	<p>Claim construction requires a review of the claims, the specification, and the prosecution history. <i>Phillips v. AWH Corp.</i>, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). This intrinsic evidence usually provides sufficient context to ascertain the meaning of the claim terms to one of ordinary skill in the art (POSITA) at the time of the invention. <i>V-Formation, Inc. v. Benetton Group SpA</i>, 401 F.3d 1307, 1310 (Fed. Cir. 2005). The POSITA in the timeframe at issue (circa 2011-2015) would have at least a bachelor’s degree or equivalent experience in inventory control related technology including knowledge and experience in RFID technology as well as knowledge, education or experience with software relating to inventory management. The POSITA would also have the ability, based upon their industry experience, to utilize RFID technology in managing pharmaceutical and medical-item inventory. Specifically, the POSITA would possess the requisite knowledge and skills to utilize RFID to assist with healthcare inventory management.</p>	
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Means-plus-function claiming rules under 35 U.S.C. § 112, para. 6 apply where the claims fail to recite sufficiently definite structure, or otherwise recite a function without reciting sufficient structure for performing that function. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1349 (Fed. Cir. 2015). In the software context, structure is commonly understood through “an outline of an algorithm, a flowchart, or a specific set of instructions or rules” or “by describing the claim limitation’s operation, such as its input, output, or connections”. *Konami Gaming, Inc. v. High 5 Games, LLC*, Case No. 2:14-cv-01483-RFB-NJK, 2018 U.S. Dist. LEXIS 28337, at \*27-28, 31-32 (D. Nev. Feb. 21, 2018). The fact that a commercially available, general purpose computer has the capacity to be programmed to perform the claimed function(s) is insufficient. *Id.* Once it is determined that 35 U.S.C. § 112, para. 6 applies, the claimed function must first be identified. *Citrix*, 792 F.3d at 1351. Second, the structure that is disclosed in the specification and corresponds to the claimed function, if any, must be identified. *Id.* Here, 35 U.S.C. § 112, para. 6 is applicable because the claims recite terms like “processor”, “computer readable medium”, or “computer executable instructions” which are the same or similar to terms found to invoke means-plus-function claiming in other decisions. Further, there is no structure given in the specification detailing how the generic processor, etc. is supposed to go about performing the claimed functions.

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