

**P.R. 4-3 – Joint Claim Construction and Prehearing Statement
Appendix 1 – Parties’ Proposed Constructions for Disputed Claim Terms**

I. U.S. Patent No. 7,933,431

No.	Claim Term	Plaintiff’s Construction and Evidence	Defendants’ Construction and Evidence
1	<p>“means for controlling a function of said apparatus using said information”</p> <p>(Claim 7)</p>	<p>This term is governed by 35 U.S.C. § 112 ¶ 6</p> <p>Structure: a control system associated with a camera¹</p> <p>Function: “controlling a function of said apparatus using said information”</p> <p><u>Intrinsic Evidence:</u> Abstract; 2:7-13; 2:20-23; 3:15-33; 4:56-62; 5:50-60; 6:-19; 6:27-32; 7: 22-29; 7:55-76; 12:42-64; 13:8-15; 14:45-51; 16:-7; 17:34-50; 19:16-34; 23:66-24:7; 24:35-50</p> <p><u>Extrinsic Evidence:</u> See Expert Declaration of Benedict Occhiogrosso in Support of Plaintiff’s</p>	<p>Means-plus-function</p> <p><u>Function:</u> “controlling a function of said [handheld computer] apparatus using said information [concerning a position or movement of said object positioned by a user operating said object]”</p> <p>The dependent claims currently asserted by Plaintiff further add to the function, including: (1) wherein said object is a finger (Claim 8)</p> <p><u>Structure:</u> Indefinite</p> <p><u>Intrinsic Evidence</u> '431 Patent, FIG. 8; 11:53-13:44; Claims 7-8</p> <p><u>Extrinsic Evidence</u> Expert testimony of Dr. Robert Louis Stevenson regarding what a person of ordinary skill in the art would understand the claim term</p>

¹ Defendants object to the untimely change in GTP’s proposed structure for the “means for controlling” term, on the day of the P.R. 4-3 deadline and three weeks after the P.R. 4-2 deadline. GTP previously proposed that the structure for the “means for controlling” term was “a computer with at least one microprocessor specially programmed for controlling said apparatus using said information.” GTP did not raise the issue previously in any manner, and notably said nothing about it in the parties’ meet and confer the day before the P.R. 4.3 deadline. Defendants reserve the right to amend their construction and supporting evidence, including expert testimony, accordingly.

Plaintiff’s Response: Plaintiff modified their proposed constructions to better reflect the intrinsic record after further review of that record. Claim construction is an iterative process that is designed to arrive at the proper construction for a term and is designed for the parties to refine the constructions after fair consideration of the intrinsic record, appropriate extrinsic evidence and the opposing parties positions. Plaintiff has done just that.

		Opening Claim Construction Brief served on July 16, 2021 ² Plaintiff reserves the right to provide additional evidence to rebut evidence proffered by Defendants.	to mean (which may include determining its recited function(s) and corresponding structure), based on the knowledge, experience, and understanding of a person of ordinary skill in the art, and upon reviewing the claims of the '431 Patent, in view of the claim language, the drawings, the written description, the specification of the '431 Patent as a whole, the file history of the '431 Patent, and the extrinsic evidence, and to respond to Plaintiff's claim construction positions and any testimony of Plaintiff's expert witnesses.
2	"computer means within said housing for analyzing said image to determine information concerning a	No construction necessary. Not governed by 35 U.S.C. § 112 ¶ 6. Alternatively, if the Court finds this term is subject to 35 U.S.C. § 112 ¶ 6:	Means-plus-function Function: "analyzing said image to determine information concerning a position or movement of said object [positioned by a user operating said object]"

² Defendants object to GTP's untimely identification of expert testimony across all claim terms. GTP failed to identify any expert or expert testimony—or any extrinsic evidence for that matter—for any claim term in its P.R. 4-2 disclosures as required by P.R. 4-2(b). GTP is identifying its expert, Benedict Occhiogrosso, for the first time on the day of the P.R. 4-3 deadline.

Plaintiff's Response: Defendants' complaint about Plaintiff's failure to comply with the Local Rules is equally applicable to Defendants. While Defendants identified an expert, Defendants did not identify or give a brief description of the Defendants' Experts testimony for each claim limitation. Instead, Defendants' recited the identical paragraph for each claim limitation reciting only that the expert will rely upon non-specific citations to the intrinsic record, their expertise, and the prosecution history. Plaintiff reproduces the excerpt in its entirety below. Given Defendants' generic, non-specific recitation of their expert's purported testimony, relying on the universe of generic evidence that the expert may rely on, Defendants were equally non-compliant especially given their numerous indefiniteness challenges. For many of the claim terms, Plaintiff had no forewarning that Defendants would assert that the terms were controlled by 112 para 6, were indefinite for undisclosed grounds, or otherwise would be challenged as not disclosing definite structure. It was only after the 4.2 disclosures that Plaintiff became fully aware of Defendants tactics. Plaintiff has now identified an expert that has provided rebuttal testimony from which Defendants may conduct appropriate claim construction discovery if they choose. Defendants have suffered no prejudice that is not of their own making.

"Expert testimony of Dr. Robert Louis Stevenson regarding what a person of ordinary skill in the art would understand the claim term to mean (which may include determining its recited function(s) and corresponding structure), based on the knowledge, experience, and understanding of a person of ordinary skill in the art, and upon reviewing the claims of the '431 Patent, in view of the claim language, the drawings, the written description, the specification of the '431 Patent as a whole, the file history of the '431 Patent, and the extrinsic evidence, and to respond to Plaintiff's claim construction positions and any testimony of Plaintiff's expert witnesses."

<p>position or movement of said object” (Claim 7)</p>	<p>Structure: A computer with at least one microprocessor specially programmed to determine information concerning a position or movement of said object.</p> <p>Function: “analyzing said image to determine information concerning a position or movement of an object”</p> <p><u>Intrinsic Evidence:</u> Abstract; 2:7-13; 2:20-23; 3:15-33; 4:48-62; 6:2-19; 6:27-32; 6:64-7:14; 7:22-29; 7:55-76; 8:25-38; 8:60-9:14; 11:55-58; 12:42-64; 13:8-15; 14:45-51; 16:1-7; 17:34-50; 19:16-34; 23:66-24:7; 24:35-50</p> <p>FIGS. 1A</p> <p><u>Extrinsic Evidence:</u> See Expert Declaration of Benedict Occhiogrosso in Support of Plaintiff’s Opening Claim Construction Brief served on July 16, 2021</p> <p>Plaintiff reserves the right to provide additional evidence to rebut evidence proffered by Defendants.</p>	<p>The dependent claims currently asserted by Plaintiff further add to the function, including: (1) wherein said object is a finger (Claim 8)</p> <p><u>Structure:</u> “A computer programmed to (1) scan the pixel elements in a matrix array on which said image is formed, and then calculate the centroid location “x,y” of a target on the object using the moment method disclosed in U.S. Patent No. 4,219,847 to Pinkney, as disclosed at 4:48-62; (2) add or subtract said image from prior images and identify movement blur, as disclosed at 6:64-7:14, 7:22-29; (3) obtain a time variant intensity change in said image from the detected output voltage from the signal conditioning of the camera means or by subtracting images and observing the difference due to such variation, as disclosed at 8:25-38; or (4) detect a change in color reflected from a diffractive, refractive, or interference based element on said object that reflects different colors during movement, as disclosed at 8:60-9:14.”</p> <p><u>Intrinsic Evidence</u> '431 Patent, FIG. 8; 3:63-4:4, 4:9-28, 6:64-7:29, 8:4-38, 8:60-9:14; Claims 7-8</p> <p>U.S. Patent App. No. 10/893,534 Prosecution History, including Jan. 24, 2008 Final Rejection at 2 and Apr. 24, 2008 Notice of Appeal at 2</p> <p><u>Extrinsic Evidence</u> Expert testimony of Dr. Robert Louis Stevenson regarding what a person of ordinary skill in the art would understand the claim term to mean (which may include determining its recited function(s) and corresponding structure), based on the knowledge, experience, and understanding of a person of ordinary skill in the art, and upon reviewing the claims of the '431 Patent, in view of the claim language, the drawings, the written description, the specification of the '431 Patent as a whole, the file history of the '431 Patent,</p>
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			and the extrinsic evidence, and to respond to Plaintiff's claim construction positions and any testimony of Plaintiff's expert witnesses.
3	<p>“display function which is controlled”</p> <p>(Claim 9)</p>	<p>No construction necessary. Not governed by 35 U.S.C. § 112 ¶ 6.</p> <p><u>Intrinsic Evidence:</u> 5:50-60; 13:46-14:14;</p> <p>FIGS. 9, 10A, 10B</p> <p><u>Extrinsic Evidence:</u> See Expert Declaration of Benedict Occhiogrosso in Support of Plaintiff's Opening Claim Construction Brief served on July 16, 2021</p> <p>Plaintiff reserves the right to provide additional evidence to rebut evidence proffered by Defendants.</p>	<p>Means-plus-function</p> <p><u>Function:</u> “controlling a display function”</p> <p><u>Structure:</u> “a computer programmed to (1) move a slider on the display as disclosed at 13:54-67, (2) turn a knob on the display as disclosed at 13:63-14:9, or (3) throw a switch on the display as disclosed at 13:63-13:67”</p> <p><u>Intrinsic Evidence</u> '431 Patent at FIG. 9, 13:54-67; Claim 9</p> <p><u>Extrinsic Evidence</u> Expert testimony of Dr. Robert Louis Stevenson regarding what a person of ordinary skill in the art would understand the claim term to mean (which may include determining its recited function(s) and corresponding structure), based on the knowledge, experience, and understanding of a person of ordinary skill in the art, and upon reviewing the claims of the '431 Patent, in view of the claim language, the drawings, the written description, the specification of the '431 Patent as a whole, the file history of the '431 Patent, and the extrinsic evidence, and to respond to Plaintiff's claim construction positions and any testimony of Plaintiff's expert witnesses.</p>
4	<p>“sensing means associated with said device”</p> <p>(Claim 1)</p>	<p>No construction necessary. Not governed by 35 U.S.C. § 112 ¶ 6.</p> <p>Alternatively, if the Court finds this term is subject to 35 U.S.C. § 112 ¶ 6:</p> <p>Structure: Electro-optical sensor.</p>	<p>Means-plus-function</p> <p><u>Function:</u> “electro-optically sensing light reflected from said at least one finger”</p> <p><u>Structure:</u> “a camera”</p>

		<p>Function: “electro-optically sensing light reflected from at least one finger”</p> <p><u>Intrinsic Evidence:</u> Abstract, 3:15-22; 3:44-52; 4:42-47; 8:14-24; 9:16-28; 10:64-11:6; 11:54-58; 14:30-32; 14:52-59; 15:3-17; 17:4-16; 17:34-43; 18:6-8; 18:20-24; 19:3-8; 20:23-25; 20:45-49; 21:21-26; 22:9-12; 23:58-65; 25:22-35</p> <p>FIGS. 1A, 1B, 1C, 2A, 5, 10, 11A, 11B, 13, 17A, 17B</p> <p><u>Extrinsic Evidence:</u> <i>See</i> Expert Declaration of Benedict Occhiogrosso in Support of Plaintiff’s Opening Claim Construction Brief served on July 16, 2021</p> <p>Plaintiff reserves the right to provide additional evidence to rebut evidence proffered by Defendants.</p>	<p><u>Intrinsic Evidence</u> ’431 Patent at FIGS. 1A, 3A, 3C, 10A; 3:44-52, 7:22-25, 8:4-8, 16:10-15; Claim 1</p> <p><u>Extrinsic Evidence</u> Expert testimony of Dr. Robert Louis Stevenson regarding what a person of ordinary skill in the art would understand the claim term to mean (which may include determining its recited function(s) and corresponding structure), based on the knowledge, experience, and understanding of a person of ordinary skill in the art, and upon reviewing the claims of the ’431 Patent, in view of the claim language, the drawings, the written description, the specification of the ’431 Patent as a whole, the file history of the ’431 Patent, and the extrinsic evidence, and to respond to Plaintiff’s claim construction positions and any testimony of Plaintiff’s expert witnesses.</p>
5	<p>“means for transmitting information”</p> <p>(Claim 11)</p>	<p>This term is governed by 35 U.S.C. § 112 ¶ 6.</p> <p>Structure: A transmitter.</p> <p>Function: “transmitting information”</p> <p><u>Intrinsic Evidence:</u> 3:15-22; 11:62-64; 12:65-13:7</p> <p>FIG. 8A</p>	<p>Means-plus-function</p> <p><u>Function:</u> “transmitting information”</p> <p><u>Structure:</u> “cellular transceiver”</p> <p><u>Intrinsic Evidence</u> ’431 Patent at 12:65-13:3; Claim 11</p> <p><u>Extrinsic Evidence</u> Expert testimony of Dr. Robert Louis Stevenson regarding what a person of ordinary skill in the art would understand the claim term</p>

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