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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLLABORATIVE AGREEMENTS, LLC,

Plaintiff,

v.

ADOBE SYSTEMS INCORPORATED,
et al.,

Defendants.

Case No. [15-cv-03853-EMC](#)

**ORDER DENYING DEFENDANTS’
MOTION FOR RECONSIDERATION**

Docket No. 93

Plaintiff has filed suit against Defendants, asserting claims for patent infringement. Currently pending before the Court is Defendants’ motion for reconsideration. In the motion, Defendants ask the Court to reconsider the construction of certain patent terms. Having considered the parties’ briefs, the oral argument presented at the hearing on November 9, 2015, and all other evidence of record, the Court hereby **DENIES** Defendants’ motion.

I. FACTUAL & PROCEDURAL BACKGROUND

Plaintiff initiated this lawsuit in the Western District of Texas, asserting that Defendants infringe at least one claim of the ‘393 patent. *See* Docket No. 1 (complaint). The Texas court issued its claim construction order for the ‘393 patent in May 2015. *See* Docket No. 84 (claim construction order). In construing certain patent terms, the court relied, *inter alia*, on the Federal Circuit panel decision in *Williamson v. Citrix Online, LLC*, 770 F.3d 1371 (Fed. Cir. 2014). Subsequently, the Federal Circuit vacated the *Williamson* panel decision and reconsidered the case en banc. *See Williamson v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015) (en banc). In vacating the *Williamson* panel decision, the en banc court Federal Circuit’s reversed a line of cases which had imposed a “strong” presumption against the application of 35 U.S.C. § 112 ¶ 6 whenever the term “means” is not used in the claim.

1 After the en banc decision issued, Defendants filed the currently pending motion in which
2 they ask for certain patent terms to be reconstrued in light of the en banc decision. The district
3 court in Texas, however, did not rule on the motion because it transferred the case to this Court.
4 *See* Docket No. 101 (transfer order). That motion for reconsideration is now before this Court.

5 Defendants’ motion asks for reconsideration of two terms in the ‘393 patent: (1) the “code
6 segment” terms of claims 25 and 36, and (2) the “computer readable medium encoded with a
7 computer program” terms in claims 49 and 60. Claims 25 and 49 are representative claims and are
8 reproduced below.

9
10 25. A non-transitory computer readable medium encoded with a
11 computer program for facilitating a transaction between two or more
12 parties comprising:

13 a *code segment* for receiving one or more electronic documents and
14 an identity validation at a server computer via a network from a
15 client communications device of a first party to the transaction

16 wherein (a) the client communications device comprises a computer,
17 a workstation, a personal data assistant, an Internet-enabled phone or
18 a wireless communications device, (b) all of the one or more
19 electronic documents are locked against future changes, and (c) the
20 identity validation of the first party indicates that the first party has
21 agreed to the one or more electronic documents;

22 a *code segment* for receiving registration information at the server
23 computer via the network from the client communications device of
24 a second party to the transaction wherein the registration
25 information comprises the identity validation of the second party;

26 a *code segment* for assigning the transaction to an account on the
27 server computer that is accessible via the network;

28 a *code segment* for posting the received electronic documents to the
account on the server computer such that the client communications
device of the second party can access the posted electronic
documents via the network;

 a code segment for providing the second party with access to the
received electronic documents; and

 a *code segment* for whenever an acceptance of any of the one or
more electronic documents is received by the server computer from
the client communications device of the second party, attaching the
identity validation from the first party and the second party to the
accepted one or more electronic documents.

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49. A system for facilitating a transaction between two or more parties comprising:

a network interface;

one or more data storage devices;

one or more processors communicably coupled to the network interface and the data storage devices; and

a non-transitory computer readable medium encoded with a computer program communicably coupled to the processors to

(a) receive one or more electronic documents and an identity validation via the network interface from a client communications device of a first party to the transaction

wherein (i) the client communications device comprises a computer, a workstation, a personal data assistant, an Internet-enabled phone or a wireless communications device, (ii) all of the one or more electronic documents are locked against future changes, and (iii) the identity validation of the first party indicates that the first party has agreed to the one or more electronic documents,

(b) receive registration information at the server computer via the network from the client communications device of a second party to the transaction wherein the registration information comprises the identity validation of the second party,

(c) assign the transaction to an account on the server computer that is accessible via the network,

(d) post the received electronic documents to the account on the server computer such that the client communications device of the second party can access the posted electronic documents via the network;

(e) provide the second party with access to the received electronic documents, and

(f) whenever an acceptance of any of the one or more electronic documents is received by the server computer from the client communications device of the second party, attaching the identity validation from the first party and the second party to the accepted one or more electronic documents.

Docket No. 1-1, at 24–26 (‘393 patent) (emphasis added).

In its claim construction order, the Texas court rejected Defendants’ contention that the

1 “code segment” and “computer readable medium encoded with a computer program” terms are
2 means-plus-function terms subject to 35 U.S.C. § 112 ¶ 6. Because of the *Williamson* en banc
3 decision, Defendants contend that this conclusion was erroneous and that the terms should now be
4 deemed means-plus-function terms.

5 II. DISCUSSION

6 As a preliminary matter, Defendants’ motion for reconsideration is proper given the
7 *Williamson* en banc decision, which changed the analysis of means-plus-function claims upon
8 which the Texas court relied herein. Applying the then-applicable “strong” presumption that a
9 limitation lacking the word “means” is not subject to § 112 ¶ 6, the *Williamson* panel found that
10 the term “module” was not a means-plus-function term. The district court in Texas relied heavily
11 on the *Williamson* panel decision by applying the Federal Circuit’s analysis of “module” to the
12 “code segment” term in this case, finding § 112 ¶ 6 not applicable. *See* Docket No. 84 (claim
13 construction order). Reversing the panel decision, the en banc court in *Williamson* held that the
14 presumption against applying § 112 ¶ 6 is not “strong” and that “module” *was* a means-plus-
15 function term. *See Williamson*, 792 F.3d at 1349–51. Given the Texas court’s reliance on the
16 panel decision which was subsequently reversed, reconsideration is appropriate. On
17 reconsideration, however, the Court finds Defendants’ substantive arguments unpersuasive.

18 Means-plus-function claiming is authorized by 35 U.S.C. § 112 ¶ 6 (currently § 112(f)),
19 which provides:

20
21 An element in a claim for a combination may be expressed as a
22 means or step for performing a specified function without the recital
23 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.

24 35 U.S.C. § 112 ¶ 6. As indicated by the language above, “[m]eans-plus-function claiming
25 involves a quid pro quo.” *Noah Sys. Inc. v. Intuit Inc.*, 675 F.3d 1302, 1318 (Fed. Cir. 2012).
26 That is, “[i]n exchange for being able to draft a claim limitation in purely functional language,
27 ‘[t]he applicant must describe in the patent specification some structure which performs the
28 specified function.’” *Id.* Moreover, the description of the structure must be definite. “[A]

1 means-plus-function clause is indefinite if a person of ordinary skill in the art would be unable to
2 recognize the structure in the specification and associate it with the corresponding function in the
3 claim.” *Id.* at 1312.

4 In the instant case, the threshold question is whether the claim terms at issue are, in fact,
5 means-plus-function limitations. To determine whether a term is a means-plus-function limitation,
6 a court first looks to whether the claim term uses the word “means.” *See Williamson*, 792 F.3d at
7 1349. If so, then the claim term is presumed to be a means-plus-function limitation. *See id.* If,
8 however, the claim term does *not* use the word “means,” then the term is presumed *not* to be a
9 means-plus-function limitation. *See Personalized Media Commc'ns, LLC v. Int'l Trade Comm'n*,
10 161 F.3d 696, 703 (Fed. Cir. 1998) (noting that “the use of the term “means” has come to be so
11 closely associated with “means-plus-function” claiming that it is fair to say that the use of the term
12 “means” . . . generally invokes [§ 112, ¶ 6] and that the use of a different formulation generally
13 does not”). The latter presumption applies here because the challenged claim terms do not
14 include the word “means.”

15 This presumption, however, is rebuttable. The party challenging the presumption against §
16 112 ¶ 6 has the burden of showing that the claim term fails to recite sufficiently definite structure.
17 *See Williamson*, 792 F.3d at 1348. The *Williamson* en banc court held the presumption against §
18 112 ¶ 6 may be overcome where “the words of the claim are understood by persons of ordinary
19 skill in the art to have a sufficiently definite meaning as the name for structure.” *See id.* at 1349.
20 Section 112 ¶ 6 applies if the claim term fails to “recite[] sufficiently definite structure’ or else
21 recites ‘function without reciting sufficient structure for performing that structure.’” *Id.* (quoting
22 *Watts v. XL Sys., Inc.*, 232 F.3d 877, 880 (Fed. Cir. 2000)).

23 The challenging party may provide intrinsic or extrinsic evidence as proof of what a person
24 of ordinary skill in the art understands. *See Personalized Media*, 161 F.3d at 703–04 (listing as
25 examples the patent itself and the prosecution history as well as dictionary definitions). Extrinsic
26 evidence, such as dictionaries, provide useful and objective resources for determining the meaning
27 of terms as understood by persons of ordinary skill in the relevant art. *See Texas Digital Sys., Inc.*
28 *v. Telegenix, Inc.*, 308 F.3d 1193, 1203 (Fed. Cir. 2002). However, the intrinsic record provides

1 the “most reliable guide to help the court determine which of the possible meanings of the terms in
2 question was intended by the inventor to particularly point out and distinctly claim the invention.”
3 *Id.*; see also *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862–63 (Fed. Cir. 2004) (stating
4 that *Texas Digital* did not hold extrinsic evidence trumps intrinsic evidence, but that consulting
5 dictionaries as the initial step in determining the meaning of a term helps avoid improperly narrow
6 constructions). Expert testimony cannot “create structure where none otherwise is disclosed.”
7 *Williamson*, 792 F.3d at 1351.

8 A. “code segment”

9 Claim 25 is a representative claim for the “code segment” term.

10
11 25. A non-transitory computer readable medium encoded with a
12 computer program for facilitating a transaction between two or more
13 parties comprising:

14 a *code segment* for receiving one or more electronic
15 documents and an identity validation at a server computer
16 via a network from a client communications device of a first
17 party to the transaction

18 wherein (a) the client communications device comprises a
19 computer, a workstation, a personal data assistant, an
20 Internet-enabled phone or a wireless communications device,
21 (b) all of the one or more electronic documents are locked
22 against future changes, and (c) the identity validation of the
23 first party indicates that the first party has agreed to the one
24 or more electronic documents;

25 a *code segment* for receiving registration information at the
26 server computer via the network from the client
27 communications device of a second party to the transaction
28 wherein the registration information comprises the identity
validation of the second party;

a *code segment* for assigning the transaction to an account on
the server computer that is accessible via the network;

a *code segment* for posting the received electronic
documents to the account on the server computer such that
the client communications device of the second party can
access the posted electronic documents via the network;

a *code segment* for providing the second party with access to
the received electronic documents; and

a *code segment* for whenever an acceptance of any of the one
or more electronic documents is received by the server

1 computer from the client communications device of the
2 second party, attaching the identity validation from the first
3 party and the second party to the accepted one or more
4 electronic documents.

5 Docket No. 1-1, at 24 (‘393 patent, claim 25).

6 Because the “code segment” term does not use the word “means,” the Court presumes that
7 the term is not a means-plus-function limitation, and it is Defendants’ burden to prove otherwise –
8 *i.e.*, to show that a person of ordinary skill in the art would not understand the term to have a
9 sufficiently definite meaning as the name for structure. *See Williamson*, 792 F.3d at 1348.

10 At the hearing, Defendants basically conceded that they were not making an argument that
11 anytime software is implicated in a term, the term is a means-plus-function limitation. Defendants
12 argued, nevertheless, that, without enough information about how the software operates, the use of
13 the term “software,” or something akin to that term, essentially becomes function claiming and
14 fails to recite a “sufficiently definite structure.” *Id.* at 1349.

15 The Court is not persuaded. First, the term “code segment” suggests some kind of
16 structure as evidenced by the dictionary definition provided by Plaintiff. *See* Docket No. 77-2, at
17 6–8 (Plaintiff’s Exhibits). The *Microsoft Press Computing Dictionary* 96 (3d. 1997), provided by
18 Collaborative, defines “code segment” as:

- 19 1. A memory segment containing program instructions. 2. A named
20 and segregated portion of a program’s code typically performing a
21 specific class of operations. Code segments in this sense are often
22 loaded into memory as memory segments. The main program
23 segment is kept in memory, and auxiliary segments are loaded only
24 when they are required.

25 Docket No. 77-2, at p. 6 (Plaintiff’s Exhibit A).

26 Moreover, the claim language here provides a description as to how the code segment
27 operates. The language in claim 25, does not simply describe broadly phrased high-level
28 functions such as “receiving communications” or “coordinating the operation of the streaming data
module,” as in *Williamson*. *See id.* at 1344. Instead, claim 25 describes the objective and
operation of the code segment as “receiving one or more electronic documents and an identity
validation at a server computer,” while also describing the structural interactions among the

1 computer program’s code segment components: “code segment for receiving one or more
2 electronic documents . . . code segment for posting the received documents . . . code segment for
3 providing the second party with access to the received documents . . .” *See* Docket No. 1-1, at 24
4 (‘393 patent).

5 In this regard, the Court finds *Linear Tech. Corp. v. Impala Linear Corp.*, 379 F.3d 1311
6 (Fed. Cir. 2004), instructive.¹ In *Linear*, the Federal Circuit rejected the contention that held that
7 challenged term “circuit” was a means-plus-function limitation. The challenged claim in *Linear*
8 was as follows:

- 9
- 10 1. A **circuit** for *controlling a switching voltage regulator* . . . the
control circuit comprising:
 - 11 a first **circuit** for *monitoring* a signal from the output
terminal to *generate* a first feedback signal;
 - 12 a second **circuit** for *generating* a first control signal during a
13 first state of circuit operation, the first control signal being
14 responsive to the first feedback signal to vary the duty cycle
of the switching transistors to maintain the output terminal at
15 the regulated voltage; and
 - 16 a third **circuit** for *generating* a second control signal during
a second state of circuit operation to cause both switching
17 transistors to be simultaneously OFF for a period of time if a
sensed condition of the regulator indicates that the current
18 supplied to the load falls below a threshold

19 *Id.* (emphasis added).

20 The *Linear* court began its analysis by consulting dictionary definitions:

21 “Technical dictionaries, which are evidence of the understandings of
22 persons of skill in the technical arts, plainly indicate that the term
‘circuit’ connotes structure. For example, *The Dictionary of*
23 *Computing* 75 (4th ed. 1996) defines “circuit” as “the combination
of a number of electrical devices and conductors that, when
24 interconnected to form a conducting path, fulfill some desired
function.” Thus, when the structure-connoting term “circuit” is
25 coupled with a description of the circuit’s operation, sufficient
structural meaning generally will be conveyed to persons of ordinary
26 skill in the art, and § 112 ¶ 6 presumptively will not apply.

27

28 ¹ As a pre-*Lighting World* (which established the “strong” presumption) case, *Linear* followed the appropriate standard for overcoming the presumption against § 112 ¶ 6.

1 *Id.* at 1320.

2 The *Linear* court then concluded that there was a sufficient description of the circuit’s
3 operation in the claim language itself:

4
5 Claim 1 recites: “a first circuit for monitoring a signal from the
6 output terminal to generate a first feedback signal.” ‘178 patent, col.
7 16, ll. 42-43. The contextual language describes the objective of the
8 “circuit,” “monitoring a signal from the output terminal,” and the
9 desired output of the “circuit,” “generat[ing] a first feedback signal.”
10 The “second circuit” and “third circuit” limitations in claim 1 are
11 accompanied by similar language reciting their respective objectives
12 or operations. *See id.* at col. 16, ll. 44-57. That persons of ordinary
13 skill in the art would understand the structural arrangements of
14 circuit components from the term “circuit” coupled with the
15 qualifying language of claim 1 was recognized by *Linear*’s expert
16 witness.

17 *Id.* Thus, the court held § 112 ¶ 6 did not apply because the claim language recited the respective
18 circuit’s operation in sufficient detail to avoid means-plus-function treatment. *Id.* at 1320–21.

19 In the instant case, the level of specificity in describing the operations of “code segment” is
20 similar to that described for “circuit” in *Linear*. And, it is more specific than the description of the
21 operation of “distributed learning module” in *Williamson*. In *Williamson*, the claim term read:

22
23 a distributed learning control module for receiving communications
24 transmitted between the presenter and the audience member
25 computer systems and for relaying the communications to an
26 intended receiving computer system and for coordinating the
27 operation of the streaming data module.

28 *Williamson*, 792 F.3d at 1344. The en banc court concluded the challenged term did not connote
sufficient structure and thus should be deemed a means-plus-function claim. *See id.* at 1349–51.

The challenged term “module” was a “well-known nonce word” with no structural meaning, and
the prefix language – “distributed learning control” – added no structural meaning. *See id.*

Furthermore, the description of the module’s outputs and inputs – *e.g.*, “communications between
the presenter and audience member computer systems” – did not impart any structural significance
because the description failed to indicate how the module interacted “with other components . . . in
a way that might inform the structural character of the limitation-in-question or otherwise impart
structure to the ‘distributed learning control module’ as recited in the claim”; the court

1 characterized this description as being only “at a very high level.” *Id.* at 1351. As such, there was
2 no evidence that suggested the “module” was anything but a “generic ‘black-box’” for achieving
3 the claimed functions. *Id.* at 1350.

4 In this case, “code segment” has some structural meaning, as supported by the dictionary
5 definition tendered by Plaintiff; code segment is not a nonce word. In addition, the claim
6 language describes the code segment’s operation with a degree of specificity not present in
7 *Williamson*. This case is more similar to *Linear* than *Williamson*.

8 At the hearing, Defendants argued that *Linear* is distinguishable because a “circuit” in
9 *Linear* is clearly hardware, and software (as here) is different from hardware in that, with
10 software, there is an element of creativity – *i.e.*, there are infinite ways to build or at least many
11 different ways of doing things. At the hearing, Defendants argued that more specificity about the
12 operation of the software was needed in order for it to convey sufficiently definite structure to a
13 person of ordinary skill in the art. For example, for the term “a code segment for receiving one or
14 more electronic documents and an identity validation at a server computer,” Defendants argued
15 that specificity was needed as to how exactly the “receiving” was done – *e.g.*, through a “get”
16 request. As another example, for the term “a code segment for . . . attaching the identity validation
17 from the first party and the second party to the accepted one or more electronic documents,”
18 Defendants contended that there are multiple ways to affirmatively identify – *e.g.*, through sound,
19 through a link, or through meta-data even.

20 But requiring the patent to describe precisely how the claimed functions are achieved or
21 how a person of ordinary skill in the art could make and use the invention goes beyond the
22 threshold trigger for the application of § 112 ¶ 6. As Plaintiff argued at the hearing, Defendants’
23 argument here sounds more in the nature of enablement or disclosure of corresponding structure
24 where it has already been determined that a term is a means-plus-function limitation, not the
25 threshold question whether § 112 ¶ 6 applies in the first place. *Cf. Tech. Licensing Corp. v.*
26 *Videotek, Inc.*, 545 F.3d 1316, 1338 (Fed. Cir. 2008) (stating that, “if a claim *includes* a means-
27 plus-function limitation, failure to disclose adequate structure corresponding to the claimed
28 function results in the claim being invalid for indefiniteness[;] [w]hether the written description

1 adequately sets forth structure corresponding to the claimed function must be considered from the
2 perspective of a person skilled in the art”) (emphasis added); *Aristocrat Techs. Australia Pty Ltd.*
3 *v. Int’l Game Tech.*, 521 F.3d 1328, 1336 (Fed. Cir. 2008) (in evaluating a claim that *was* a means-
4 plus-function limitation, stating that “[w]hether the disclosure would enable one of ordinary skill
5 in the art to make and use the invention is not at issue here”; “[e]nablement of a device requires
6 only the disclosure of sufficient information so that a person of ordinary skill in the art could make
7 and use the device” while “[a] section 112 paragraph 6 disclosure . . . serves the very different
8 purpose of limiting the scope of the claim to the particular structure disclosed, together with
9 equivalents”) (emphasis added).

10 Defendants also argued at the hearing that the more ways there are of accomplishing the
11 claimed function, the less structure the claim term connotes to a person of ordinary skill. As
12 above, this proposition is unsupported by case law. The challenged term may connote a type of
13 structure; it need not specify a particular individual structure. *See Personalized Media*, 161 F.3d
14 at 705 (holding that “detector” connotes sufficiently definite structure because even though
15 “detector” did not specifically evoke a particular structure, it conveyed to person of ordinary skill
16 in the art, a variety of structures known as “detectors.”). Disclosure of corresponding structure
17 applies only if a court holds that § 112 ¶ 6 applies. *See Med. Instrumentation & Diagnostics Corp.*
18 *v. Elekta AB*, 344 F.3d 1205, 1211 (Fed. Cir. 2003) (“The duty of a patentee to clearly link or
19 associate structure with the claimed function is the quid pro quo for allowing the patentee to
20 express the claim in terms of function under section 112, paragraph 6.”). The two inquiries are
21 distinct.

22 It is true that when a limitation *is* a means-plus-function limitation, and the corresponding
23 structure is software, there needs to be an algorithm for the software or else the means-plus-
24 function limitation will be considered indefinite unless the function can be performed by a general
25 purpose computer. *See Aristocrat*, 521 F.3d at 1332–31 (holding that the corresponding disclosure
26 for a computer-implemented means-plus-function claim is an algorithm). But that authority is not
27 on point because that definiteness analysis is triggered only where the limitation *is* a means-plus-
28 function limitation.

1 In essence, Defendants are asking that the level of specificity needed to avoid means-plus-
2 function claiming is equivalent or at least close to the level of specificity needed to avoid an
3 indefiniteness problem (35 U.S.C. § 112 ¶ 2). But courts have cautioned that the two should not
4 be conflated. *See E2E Processing, Inc. v. Cabela's Inc.*, No. 2:14-CV-36-JRG-RSP, 2015 WL
5 4051423, at *7 (E.D. Tex. July 2, 2015) (stating that defendant's argument "improperly conflates
6 the issue of whether a term is a means-plus-function term with the issue of whether the
7 specification discloses corresponding structure for a term that has been found to be a means-plus-
8 function term"); *Wi-Lan USA, Inc. v. Alcatel-Lucent USA, Inc.*, No. 12-23568-CIV, 2013 WL
9 4811233, at *40 (S.D. Fla. Sept. 9, 2013) (finding that *Aristocrat* was not applicable because the
10 standard to prove sufficient structure is different from the standard used to identify corresponding
11 structure); *Markem-Imaje Corp. v. Zipher Ltd.*, No. 10-CV-112-PB, 2011 WL 5837087, at *4 n.7
12 (D.N.H. Nov. 21, 2011) (finding that "controller" was sufficiently structural to escape means-plus-
13 function treatment and that the algorithm requirements of *Aristocrat* did not apply because
14 *Aristocrat* involved a party who *intended* to invoke § 112 ¶ 6 by using the term "means" in the
15 claim); *see also WhitServe LLC v. GoDaddy.com, Inc.*, 65 F. Supp. 3d 317, 320 (D. Conn. 2014)
16 (mentioning that the Federal Circuit has not required non-means-plus-function software claims to
17 describe an algorithm, but not discussing the issue further).

18 At bottom, although the presumption against § 112 ¶ 6 is no longer "strong," it is still a
19 presumption that the Defendants must affirmatively overcome. *See M2M Solutions LLC v. Sierra*
20 *Wireless Am., Inc.*, No. CV 12-30-RGA, 2015 WL 5826816, at *2 (D. Del. Oct. 2, 2015) (on a
21 motion for reconsideration based on *Williamson*, holding that Defendants failed to overcome the
22 presumption against § 112 ¶ 6 because they did not provide evidence to show that "programmable
23 interface" failed to connote sufficiently definite structure). Defendants have failed to do so here.
24 Accordingly, the Court grants Defendants' motion to reconsider, but affirms the Texas district
25 court's conclusion that the term "code segment" is not a means-plus-function limitation.

26 B. "computer readable medium encoded with a computer program"

27 The second challenged term, in full, is "a non-transitory computer readable medium
28 encoded with a computer program communicably coupled to the processors to." Claim 49 is a

1 representative claim containing the term:

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49. A system for facilitating a transaction between two or more parties comprising:

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a network interface;

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one or more data storage devices;

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one or more processors communicably coupled to the network interface and the data storage devices; and

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a non-transitory computer readable medium encoded with a computer program communicably coupled to the processors to

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(a) receive one or more electronic documents and an identity validation via the network interface from a client communications device of a first party to the transaction

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wherein (i) the client communications device comprises a computer, a workstation, a personal data assistant, an Internet-enabled phone or a wireless communications device, (ii) all of the one or more electronic documents are locked against future changes, and (iii) the identity validation of the first party indicates that the first party has agreed to the one or more electronic documents,

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(b) receive registration information at the server computer via the network from the client communications device of a second party to the transaction wherein the registration information comprises the identity validation of the second party,

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(c) assign the transaction to an account on the server computer that is accessible via the network,

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(d) post the received electronic documents to the account on the server computer such that the client communications device of the second party can access the posted electronic documents via the network;

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(e) provide the second party with access to the received electronic documents, and

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(f) whenever an acceptance of any of the one or more electronic documents is received by the server computer from the client communications device of the second party, attaching the identity validation from the first party and the second party to the accepted one or more electronic documents.

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28 Docket 1-1, at 25 ('393 patent) (emphasis added); *see also* Docket No. 84, at 28 (claim

1 construction order). As indicated by the language above, claim 49 is quite similar to claim 25.
2 Although claim 49 does not use the term “code segment,” it uses the term “computer program” (as
3 does claim 25), and therefore software is still implicated. Both parties, as well as the Texas court,
4 have acknowledged this similarity.

5 As a starting point, the Court notes that, because the term “computer readable medium
6 encoded with a computer program” lacks the word “means,” the term is, presumptively, not a
7 means-plus-function limitation, and Defendants bear the burden of proving otherwise. As above,
8 the Court concludes that Defendants have failed to meet this burden. Given the similarity between
9 claims 49 and 25, the analysis for the “code segment” term is largely applicable here – *i.e.*,
10 software has some structural meaning, and the surrounding claim language provides sufficient
11 specificity as to how the software operates. Moreover, there is even a stronger case here that
12 *Linear* is on point because a “computer readable medium encoded with a computer program”
13 implicates not only software but also hardware; thus, there is a stronger analogy to the “circuit” at
14 issue in *Linear*.

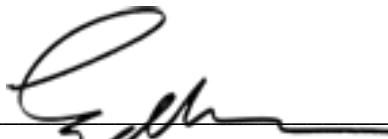
15 **III. CONCLUSION**

16 For the foregoing reasons, even after the en banc *Williamson* decision, the Court concludes
17 that the claim terms at issue – *i.e.*, “code segment” and “computer readable medium encoded with
18 a computer program” – are not means-plus-function terms.

19 This order disposes of Docket No. 93.

20
21 **IT IS SO ORDERED.**

22
23 Dated: December 2, 2015

24 
25 _____
26 EDWARD M. CHEN
27 United States District Judge
28