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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GAMEVICE, INC.,
Plaintiff,
v.
NINTENDO CO., LTD., et al.,
Defendants.

Case No. [18-cv-01942-RS](#)

ORDER CONSTRUING CLAIMS

I. INTRODUCTION

Plaintiff and Counter-Defendant Gamevice, Inc. (“Gamevice”) is a designer and manufacturer of attachable handheld controllers for use with mobile phones and tablets. Defendant and Counter-Claimant Nintendo of America, Inc. (“Nintendo”) similarly develops gaming technology, including video game controllers and consoles. In March 2018, Gamevice filed suit against Nintendo for alleged infringement of two of Gamevice’s patents. In response, Nintendo moved to stay Gamevice’s infringement claims, and filed an answer and counterclaim. The motion to stay Gamevice’s claims was granted. Nintendo’s counterclaims against Gamevice, however, were allowed to proceed.

Nintendo accuses Gamevice of selling accessories for smart phones and tablets that infringe U.S. Patent Nos. 7,193,165 (“the ’165 patent”), 8,702,514 (“the ’514 patent”), and, 9,700,806 (“the ’806 patent”). The ’165 patent claims, among other things, a shoulder button for a game controller. The ’514 patent claims a combination of a game controller and attachable display device. Finally, the ’806 patent claims a game controller that connects to a separate “electronic

1 device” and provides additional controls for that device. The parties now seek construction of
2 twelve terms from Nintendo’s patents, pursuant to *Markman v. Westview Instruments, Inc.*, 52
3 F.3d 967 (Fed. Cir. 1995) (en banc).

4 II. LEGAL STANDARD

5 Claim construction is a question of law to be determined by the Court. *Markman*, 52 F.3d
6 at 979. “Ultimately, the interpretation to be given a term can only be determined and confirmed
7 with a full understanding of what the inventors actually invented and intended to envelop with the
8 claim.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (quoting *Renishaw PLC v.*
9 *Marposs Societa’ per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)). Accordingly, a claim should
10 be construed in a manner “that stays true to the claim language and most naturally aligns with the
11 patent’s description of the invention.” *Id.* (quoting *Renishaw*, 158 F.3d at 1250).

12 The first step in claim construction is to look to the language of the claims themselves. “It
13 is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the
14 patentee is entitled the right to exclude.’” *Id.* at 1312 (quoting *Innova/Pure Water, Inc. v. Safari*
15 *Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). A disputed claim term should
16 be construed in a manner consistent with its “ordinary and customary meaning,” which is “the
17 meaning that the term would have to a person of ordinary skill in the art in question at the time of
18 the invention, i.e., as of the effective filing date of the patent application.” *Id.* at 1312-13. The
19 ordinary and customary meaning of a claim term must take into account the context of the claim’s
20 overall language. *See id.* at 1314 (“[T]he use of a term within the claim provides a firm basis for
21 construing the term.”). Additionally, the use of the term in other claims may provide guidance
22 regarding its proper construction. *Id.*

23 A claim should also be construed in a manner that is consistent with the patent’s
24 specification. *See Markman*, 52 F.3d at 979 (“Claims must be read in view of the specification, of
25 which they are a part.”); *see also Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.
26 Cir. 1996) (“[T]he specification is always highly relevant to the claim construction analysis.”). In
27 limited circumstances, the specification may be used to narrow the meaning of a claim term that
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1 otherwise would appear to be susceptible to a broader reading. *See SciMed Life Sys., Inc. v.*
2 *Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1341 (Fed. Cir. 2001). For example, “[w]here
3 the specification makes clear that the invention does not include a particular feature, that feature is
4 deemed to be outside the reach of the claims of the patent, even though the language of the claims,
5 read without reference to the specification, might be considered broad enough to encompass the
6 feature in question.” *Id.* Courts may not, however, impose limitations that are not supported by the
7 language of the claim. *See Laitram Corp. v. NEC Corp.*, 163 F.3d 1342, 1347 (Fed. Cir. 1998);
8 *Comark Commc’ns., Inc. v. Harris Corp.*, 156 F.3d 1182, 1186 (Fed. Cir. 1998) (quotation
9 omitted) (explaining that, while “claims are to be interpreted in light of the specification . . . it
10 does not follow that limitations from the specification may be read into the claims.”); *SRI Int’l v.*
11 *Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc) (“It is the *claims*
12 that measure the invention.”) (emphasis in original).

13 A final source of intrinsic evidence is the prosecution record and any statements made by
14 the patentee to the United States Patent and Trademark Office (“PTO”) regarding the scope of the
15 invention. *See Markman*, 52 F.3d at 980. Courts may also consider extrinsic evidence, such as
16 expert testimony, dictionaries, or technical treatises, especially if such sources are “helpful in
17 determining ‘the true meaning of language used in the patent claims.’” *Phillips*, 415 F.3d at 1318
18 (quoting *Markman*, 52 F.3d at 980). Ultimately, while extrinsic evidence may aid the claim
19 construction analysis, it cannot be used to contradict the plain and ordinary meaning of a claim
20 term as defined within the intrinsic record. *Id.* at 1322-23.

21 III. DISCUSSION

22 A. The ’165 Patent

23 The ’165 patent claims, among other things, a shoulder button for a game controller. The
24 parties request construction of six terms related to this invention.

25 1. “housing

26 The term “housing” appears in almost all of the claims in the ’165 patent. Nintendo
27 contends this term does not require construction. In the alternative, Nintendo proposes the term be
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1 construed to mean “component that covers or protects.” Gamevice, for its part, proposes the term
2 be construed as “a rigid casing that encloses and protects an electrical and/or mechanical
3 mechanism.”

4 The term “housing” shall be construed to mean a “component that covers or protects.”
5 Although Gamevice argues construction of this term should include the word “rigid,” there is no
6 reference to rigidity in the patent itself. Furthermore, the fact that one of the embodiments in the
7 specification describes housing made of a “thin sheet of metal” does not justify limiting the scope
8 of the term to rigid structures. The extrinsic evidence, on balance, also weighs against limiting
9 “housing” to “rigid” coverings. While some dictionary definitions of the term “housing” include
10 references to rigidity, others do not. Nintendo’s expert also testified that gaming consoles use both
11 rigid and non-rigid housing to protect the exterior of gaming devices. Accordingly, Nintendo’s
12 proposed construction of “housing” to mean a “component that covers or protects” is adopted.

13 2. “*an upper side surface of said housing*”

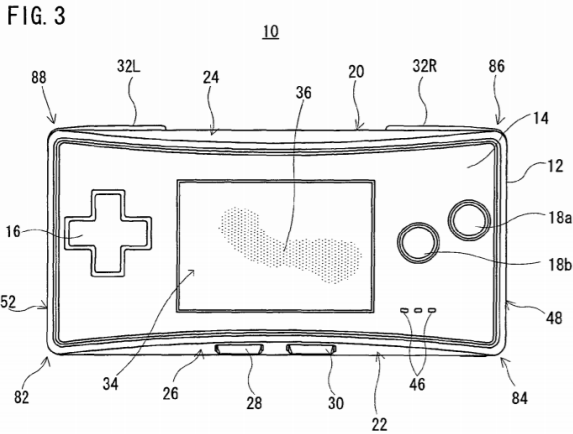
14 The term “an upper side surface of said housing” appears in claims 1 and 8 of the ’165
15 patent. Gamevice argues this term is indefinite, unless the term “housing” is construed to include
16 only rigid structures. This is because a person of ordinary skill in the art would not be able to
17 identify the “upper side surface” of an amorphous housing structure. Nintendo responds that the
18 term is not indefinite and, further, does not require construction because it uses ordinary terms that
19 can be easily understood by laypersons.

20 “[A] patent is invalid for indefiniteness if its claims, read in light of the specification
21 delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those
22 skilled in the art about the scope of the invention.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572
23 U.S. 898, 901 (2014). Thus, the definiteness requirement “mandates clarity, while recognizing that
24 absolute precision is unattainable.” *Id.* at 910. In evaluating indefiniteness, the term “an upper side
25 surface of said housing” must be read in light of the specification. Here, the specification provides
26 Figure 3 (below) and describes item 20 in that figure as the “upper side surface” of the housing.

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1 Patent '165 at 6:27-53.



10 Neither a layperson or a person of ordinary skill in the art is likely to have difficulty
 11 understanding what the “upper side surface” means in the context of the ’165 patent. While
 12 Gamevice is correct that, depending upon the shape of the controller, there may be some
 13 ambiguity as to whether a particular surface qualifies as “an upper side surface,” the Supreme
 14 Court has recognized that “absolute precision is unattainable.” *Nautilus*, 572 U.S. at 910.
 15 Accordingly, the term “an upper side surface of said housing” is neither indefinite nor in need of
 16 construction.

17 3. “said center of a main surface of said housing”

18 The term “said center of a main surface of said housing” appears in dependent claims 4 and
 19 11 of the ’165 patent. Nintendo maintains this term does not require construction. To the extent
 20 construction is necessary, Nintendo proposes the term be construed to mean “a horizontal center of
 21 the surface of said housing that faces the user when said housing is held upright as in, for example,
 22 Figure 17.” Gamevice contends the term is indefinite.

23 The term “said center of a main surface of said housing” is indefinite because it lacks an
 24 antecedent basis. Claims 1 and 8—the independent claims upon which claims 4 and 11 rely
 25 respectively—make no reference to a “center of a main surface.” Instead claims 1 and 8 refer to a
 26 “center of said housing in a horizontal direction.” Patent ’165 at 19:46-48, 20:24-26 (emphasis
 27 added). This creates ambiguity as to whether “said center of a main surface of said housing” refers
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1 to the horizontal center of the *housing* or the horizontal center of the *main surface*. This ambiguity
2 could be resolved by at least three plausible modifications to the language of the claims. First, the
3 subject term could be modified to read “said center of ~~a main surface of~~ said housing,” thus
4 clarifying that the “center” identified in independent claims 1 and 8 and dependent claims 4 and 11
5 is the horizontal center of the *housing*. Alternatively, this term could be modified to read: “~~said a~~
6 center of a main surface of said housing,” thereby decoupling claims 1 and 8 from claims 4 and
7 11. Finally, the language of independent claims 1 and 8 could be modified to refer to a “center of ~~a~~
8 **main surface of** said housing in a horizontal direction,” thus establishing that the “center”
9 referenced in claims 1, 8, 4, and 11 is the horizontal center of the *main surface* of the device.

10 That multiple feasible clarifications are available for the ambiguity in the term “said center
11 of a main surface of said housing” ultimately renders the term indefinite. *See Novo Indus., L.P. v.*
12 *Micro Molds Corp.*, 350 F.3d 1348, 1358 (Fed. Cir. 2003) (“Since we cannot know what
13 correction is necessarily appropriate or how the claim should be interpreted, we must hold [the
14 claim] invalid for indefiniteness.”); *Trusted Knight Corp. v. Int’l Bus. Machines Corp.*, 681 F.
15 App’x 898, 904 (Fed. Cir. 2017) (affirming claims were indefinite because patentee’s proposed
16 correction is “subject to reasonable debate” and “other possible corrections appear to be feasible”).

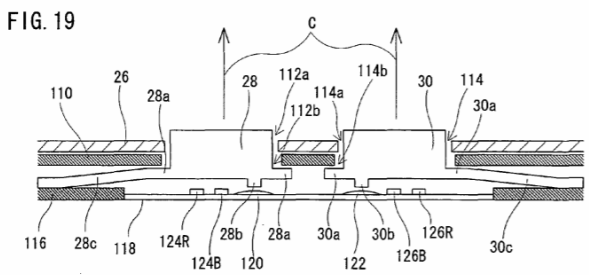
17 4. “*elastic body*”

18 The term “elastic body,” appears in claims 1, 3, 8, and 10 of the ’165 patent. Gamevice
19 proposes this term be construed to mean “a coil spring, leaf spring, rubber, or the like that is
20 abutted against or secured to the keytop.” Nintendo contends the term does not require
21 construction but, in the alternative, proposes the term be construed to mean a “spring, including
22 but not limited to, leaf spring, coil spring or other component that can be pressed or pulled but
23 returns to its former shape when released.” The crux of the dispute concerns whether the “elastic
24 body” must be a separate component from the keytop.

25 The term “elastic body” shall be construed to mean “a coil spring, leaf spring, rubber, or
26 like component that can be pressed or pulled but returns to its former shape when released.” The
27 elastic body need not be a completely separate component from the keytop. First, the claim
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1 language does not state that the elastic body must be by physically separate. Although the court in
 2 *Becton, Dickinson & Co. v. Tyco Healthcare Grp.* reasoned that, where “a claim lists elements
 3 separately, the clear implication” is that those elements are distinct components, that case is
 4 distinguishable. 616 F.3d 1249, 1254 (Fed. Cir. 2010) (quotation omitted). There, the claim listed
 5 four elements: “1) a needle, 2) a guard that rides on the needle, 3) a hinged arm attached to the
 6 guard, and 4) a spring means ‘connected to’ the hinged arm.” *Id.* The Federal Circuit noted that,
 7 “[i]f the hinged arm and the spring means are one and the same, then the hinged arm must be
 8 ‘connected to’ itself and must ‘extend between’ itself and a mounting means, a physical
 9 impossibility.” *Id.* at 1255. In other words, a construction which would permit the two components
 10 to be a single unitary structure would render the asserted claim “facially nonsensical.” *Id.*
 11 Furthermore, the specification contained “no suggestion that the hinged arm” and spring means
 12 could be part of a unitary structure. *Id.* at 1254.

13 Here, the claims refer to “an elastic body for elastically pushing said keytop toward a state
 14 that said switch portion is not actuated, wherein when said keytop is depressed against an elastic
 15 force provided by said elastic body, said other end of said keytop is rotated about said pivot
 16 portion to actuate said switch portion.” Patent ’165 at 19:56-62. In other words, all that is required
 17 is that the “elastic body” “push[es]” the keytop to a state where it is not actuated and that the
 18 keytop may be depressed “against” the elastic force of this elastic body. The specification further
 19 explains that the term “elastic body” includes not only coil springs, but also leaf springs or
 20 rubbers. Patent ’165 at 11:62-63. An example of a leaf spring is depicted in Figure 19 of the
 21 specification (below).



22 Although Figure 19 depicts a leaf spring in conjunction with a “start switch” as opposed to
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1 a “shoulder button,” it still provides a clear depiction of how a leaf spring would act in
2 conjunction with a keytop. As explained in the specification, the keytops depicted in Figure 19 are
3 “normally pushed by the action of the leaf spring portions 28c and 30c in the direction shown by
4 the arrow C.” Patent ’165 at 16:64-65. When the keytops are depressed by the user, however, they
5 lower “against the elastic force of the leaf spring portions 28c and 30c.” Patent ’165 at 16:67-17:1.
6 This discussion of how the leaf spring in Figure 19 interacts with the keytop mirrors the
7 description of the “elastic body” set forth in the claims. Therefore, unlike in *Becton*, allowing the
8 “elastic body” to be part of a unitary component which includes a distinct “keytop” portion does
9 not render the claim nonsensical and is supported by the specification. Accordingly, the term
10 “elastic body” will be construed to mean “a coil spring, leaf spring, rubber, or like component that
11 can be pressed or pulled but returns to its former shape when released.”

12 5. *“pivot portion”*

13 The term “pivot portion” appears in independent claims 1 and 8 and dependent claims 2
14 and 9. The independent claims refer to the term generally, whereas the dependent claims recite a
15 specific construction of the “pivot portion.” For example, claim 1 simply refers to a “pivot portion
16 provided at an other end of said keytop,” whereas claim 2 describes “a pivot portion [] constructed
17 by a pin and a bearing.” Patent ’165 at 19:54, 19:64-65. Gamevice proposes the term “pivot
18 portion” be construed as “a pin and bearing or other assembly with a fixed point around which the
19 keytop rotates.” Nintendo maintains that no construction is necessary but, in the alternative,
20 proposes the term be construed to mean “the point around which the keytop rotates.”

21 As Gamevice acknowledges, the term “pivot portion” is not limited to the pin and bearing
22 type assembly discussed in the specification, therefore there is no need to include this
23 configuration in the construction of the term. Contrary to Nintendo’s position, however, the term
24 “pivot portion” clearly refers to a physical component, not merely an abstract point in space.
25 Accordingly, the term “pivot portion” shall be construed to mean “a component or assembly with
26 a fixed point around which the keytop rotates.”

27 6. *“switch portion”*

1 The term “switch portion” appears in independent claims 1 and 8. Gamevice proposes this
2 term be construed to mean “a combination of a switch contact and a protrusion formed on the
3 lower end surface of the keytop that engages the switch contact.” Nintendo contends that no
4 construction is necessary. In the alternative, Nintendo proposes the term “switch portion” be
5 construed as “an electrical switch and a part that acts on the electrical switch.” The crux of the
6 dispute relates to whether the “switch portion” must include “a protrusion” formed on the base of
7 the keytop. The claim language does not suggest any such requirement. Moreover, the fact that the
8 preferred embodiment in the specification includes such a protrusion, without more, does not
9 suggest such a limitation. Ultimately, it is highly implausible that a person of ordinary skill in the
10 art would think the only way to create the “switch portion” described in claims 1 and 8 would be
11 to include a protrusion on the keytop. Accordingly, the term “switch portion” shall be construed to
12 mean “an electrical switch and a part that acts on the electrical switch.”

13 **B. The ’514 Patent**

14 The ’514 patent claims a controller system that combines a display device with a second
15 handheld device that is removably connected to the display device. The parties seek construction
16 of three terms from this patent.

17 1. *“bar-shaped first grip portion” / “bar-shaped second grip portion”*

18 The two terms at issue appear in independent claims 1 and 10 and dependent claim 2 of the
19 ’514 patent. Gamevice proposes this term be construed to mean “a pillar-like structure that can be
20 held by one hand as shown in, for example, FIGS. 15-19.” Nintendo responds that no construction
21 is necessary. In the alternative, Nintendo proposes these terms be construed to mean “bar-like or
22 pillar-like portion capable of being held.”

23 The terms “bar-shaped first grip portion” / “bar-shaped second grip portion” shall be
24 construed to mean a “pillar-like portion capable of being held.” On its own, the meaning and scope
25 of the term “bar-shaped grip” is somewhat ambiguous. Nintendo, however, clarified the meaning
26 of this term by describing the term “bar-like” as synonymous with “pillar-like.” Patent ’514 at
27 30:3-6 (describing the grips as having “a bar-like (pillar-like) shape”). In so doing, Nintendo acted
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1 as its own lexicographer. *Vitronics*, 90 F.3d at 1582 (“[A] patentee may choose to be his own
2 lexicographer and use terms in a manner other than their ordinary meaning, as long as the special
3 definition of the term is clearly stated in the patent specification or file history”). All of the
4 embodiments in the specification are consistent with this construction.

5 Nintendo argues the reference to a “pillar-like” shape is just one example of “bar-shaped
6 grip.” Indeed, in Nintendo’s view, the term “bar-shaped” shape encompasses a flat space bar
7 shaped protrusion that runs along the surface of a device, a pillar-like column that extends away
8 from the device, or any other grip that is in some fashion “bar-like.” A person of ordinary skill in
9 the art reviewing the ’514 patent, however, would not be on notice that the terms “bar-shaped first
10 grip portion” / “bar-shaped second grip portion” were meant to have such a broad scope.
11 Accordingly, these terms shall be construed to mean “pillar-like portion capable of being held.”

12 2. “*generally plate-shaped housing*”

13 The term “generally plate-shaped housing” appears in claims 1 and 13 of the ’514 patent.
14 Gamevice proposes this term be construed to mean “a rectangular, tablet-like shape.” Nintendo
15 maintains that no construction is necessary. In the alternative, Gamevice proposes the term be
16 construed to mean a “horizontally-elongated rectangular shape.” The parties agree that “generally
17 plate-shaped housing” refers to a rectangular shape but disagree about whether such housing must
18 have a “tablet-like shape.” The term “generally plate-shaped housing” shall be construed to mean
19 a “horizontally-elongated flat rectangular shape.”

20 The specification describes the housing in question as having “a horizontally-elongated
21 rectangular plate shape” and states that the display can be described as “a tablet-type information
22 processing device.” Patent ’514 at 16:34-37. Although Nintendo objects to the inclusion of the
23 term “tablet-like” in the construction of the claim, the company acknowledged at the *Markman*
24 hearing that “plate-shaped housing” must be relatively flat. By using the term “flat” rather than
25 “table-like,” however, the adopted construction makes clear that “generally plate-shaped housing”
26 need not necessarily be the same *size* as a tablet.

27 3. “*a support portion configured to . . .*”
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1 The term “a support portion configured to” appears in independent claim 1 of the ’514
2 patent. The claim specifically refers to “a support portion configured to detachably support the
3 device so that a screen of the display section is in a generally vertical direction when the first grip
4 portion is in a vertical direction.” Patent ’514 at 66:52-55. The sole dispute between the parties
5 with respect to this term relates to whether it qualifies as a means-plus-function limitation that is
6 subject to construction under 35 U.S.C. § 112(6).

7 The first step in assessing a purported means-plus-function limitation is to determine
8 whether the word “means” appears in the claim. The absence of the word “means” to describe a
9 limitation creates a rebuttable presumption that Section 112(6) does not apply. *Zeroclick, LLC v.*
10 *Apple Inc.*, 891 F.3d 1003, 1007 (Fed. Cir. 2018). The party seeking application of Section 112(6)
11 bears the burden of showing the claim term “fails to recite sufficiently definite structure or else
12 recites function without reciting sufficient structure for performing that function.” *Id.* (quotation
13 omitted). The essential inquiry is whether a person of ordinary skill in the art would have
14 understood the terms of the claim to have a sufficiently definite structural (as opposed to
15 functional) meaning. *Id.* The disputed term need not be limited to a single structure “as long as the
16 class of structures is identifiable by a person of ordinary skill in the art.” *Linear Tech. Corp. v.*
17 *Impala Linear Corp.*, 379 F.3d 1311, 1322 (Fed. Cir. 2004). This analysis is conducted using
18 traditional claim construction principles. *Zeroclick*, 891 F.3d 1007.

19 The term “support” has been accepted as a structural term by other courts. *See e.g., Fargo*
20 *Elects., Inc. v. Iris Ltd., Inc.*, No. 04-1017 JRT/FLN, 2005 WL 3241851, at *11 (D. Minn. Nov. 30,
21 2005), *aff’d*, 287 F. App’x 96 (Fed. Cir. 2008) (holding that the term “support” was not a means-
22 plus-function limitation); *see also GoPro, Inc. v. 360Heros, Inc.*, 16-cv-01944-SI, 2017 WL
23 2617906, at *4 (N.D. Cal. June 16, 2017) (construing the term “support” to mean a “structure that
24 holds or positions something,” albeit without any reference to Section 112(6)). In *Fargo*
25 *Electronics*, the term “support” was defined as either a “bore[.]” or an “aperture[.]” in some of the
26 claims but was used without any recitation of structure in others. 2005 WL 3241851, at *11. The
27 court concluded that, although the term “support” was arguably too broad, it was not a means-plus
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1 function limitation. *Id.* (explaining that a term that has “a reasonably well understood meaning in
2 the art” is not a means-plus-function limitation).

3 Nintendo’s expert testified that the term “support” has been used in the gaming industry
4 for decades and “generally include[s] a member or other component on the first device that holds
5 the second device in place.” Kitchen Decl. ¶ 78. The term “a support portion configured to,” as
6 used in the ’514 patent, also includes certain physical limitations. In particular, this “support
7 portion” must be physically detachable and must hold the display device in a particular direction
8 relative to the other parts of the invention. These are not merely functional limitations; they denote
9 a physical structure that positions one device relative to another. *Fargo Electronics*, 2005 WL
10 3241851, at *11 (recognizing that “the fact that the disputed term is derived from the function
11 performed does not necessarily indicate that it fails to indicate a structure.”). Accordingly, the
12 term “a support portion configured to,” as used in the ’514 patent, is not a means-plus-function
13 limitation. Neither party requests independent construction of this term. Accordingly, seeing as the
14 Section 112(6) dispute has been resolved, there is no need to construe this term further.

15 **C. The ’806 Patent**

16 The ’806 patent describes a combination of two devices: a game controller that connects to
17 and holds a separate electronic device. The parties request construction of three terms from this
18 patent.

- 19 1. *“such that the main surface of the electronic device is visible to the user while the*
20 *user grasps the gaming device” (and similar phrases)*

21 The aforementioned phrase, and similar related phrases listed in the parties’ Joint Claim
22 Construction and Prehearing Statement (collectively, “Main Surface Limitations”), appear in
23 independent claims 1, 16, and 20, and dependent claims 17, 18, and 24. For example, claim 1
24 refers to “a support configured to detachably hold at least two sides of the electronic device
25 located on opposite sides of the main surface of the electronic device *such that the main surface of*
26 *the electronic device is visible* to the user while the user grasps the gaming device.” Patent ’806 at
27 26:1-5 (emphasis added). The parties’ primary dispute relates to whether these phrases should be
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1 construed to mean that “all portions” of the main surface can be seen by the user.

2 These phrases shall be construed to mean “such that all portions of the main surface of the
3 electronic device can be seen by the user while the user grasps the gaming device.” Claim 24 of
4 the ’806 patent, which is dependent on claim 1 by way of claims 2 and 3, describes a support
5 “configured to detachably hold the electronic device *such that at least a portion of the main*
6 *surface* of the electronic device that is visible to the user is located between the first directional
7 input device and the second directional input device.” Patent ’806 at 28:31-34. The fact that claim
8 24 refers to “at least a portion of the main surface” being visible suggests the unqualified reference
9 to the “main surface of the electronic device” in the Main Surface Limitations means *all portions*
10 of that surface must be visible. The embodiments described in the specification are consistent with
11 such an interpretation. Accordingly, the Main Surface Limitations are construed to mean “such
12 that all portions of the main surface of the electronic device can be seen by the user while the user
13 grasps the gaming device.”

14 2. “*a first shoulder*” / “*the first shoulder*” / “*a second shoulder*”

15 The terms “a first shoulder” / “the first shoulder” / “a second shoulder” appear in claims 13
16 and 20-22 of the ’806 patent. Gamevice contends these terms are indefinite. Nintendo responds
17 that the terms are not indefinite and that no construction is necessary. In the alternative, Nintendo
18 recommends construing these terms to mean a “position at the top of the gaming device, when the
19 gaming device is held upright, that is accessible to the index or middle finger.” The
20 aforementioned terms are not indefinite and will be construed in accordance with Nintendo’s
21 alternate recommendation.

22 Nintendo’s expert testified that shoulder buttons are ubiquitous in the gaming industry, and
23 that a person of skill in the art would understand the meaning of this term. Kitchen Decl. ¶¶ 89, 90
24 (testifying that the term “shoulder” has been an industry standard term since before the time of
25 invention, and that the term “denotes the part of the controller or system located on the top of the
26 controller or system that is accessible by the index or middle fingers of the user”). Recent
27 Gamevice accessories have also included “shoulder buttons” and current and former Gamevice
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1 employees had no difficulty providing a similar definition for the term.

2 Although recent use of the term “shoulder” and “shoulder button” does not necessarily
3 show the term was well understood *at the time of invention*, Nintendo’s expert testified that this
4 term was in fact in common use in the industry at that time. Therefore, because the meaning of the
5 term “shoulder” would be clear to a person skilled in the art at the time invention, the subject
6 terms are not indefinite. The terms “a first shoulder” / “the first shoulder” / “a second shoulder”
7 are, accordingly, construed to mean a “position at the top of the gaming device, when the gaming
8 device is held upright, that is accessible to the index or middle finger.”

9 3. “a support configured to . . .”

10 The term “a support configured to” appears in independent claims 1, 16, and 20. For
11 example, claim 1 refers to “a support configured to detachably hold at least two sides of the
12 electronic device located on opposite sides of the main surface of the electronic device such that
13 the main surface of the electronic device is visible to the user while the user grasps the gaming
14 device.” Patent ’806 a 26:1-5. Claims 16 and 20 similarly refer to a support which must hold at
15 least two sides of the electronic device located on opposite sides of the main surface. The primary
16 dispute between the parties is whether the phrase “a support configured to” is a means-plus-
17 function limitation subject to construction under 35 U.S.C. § 112(6).

18 As explained in Part III.B.3, *supra*, the first step in assessing a purported means-plus-
19 function limitation is to determine whether the word “means” appears in the claim. The absence of
20 the word “means” to describe a limitation creates a rebuttable presumption that Section 112(6)
21 does not apply. *Zeroclick*, 891 F.3d at 1007. The party seeking application of Section 112(6) bears
22 the burden of showing the claim term “fails to recite sufficiently definite structure or else recites
23 function without reciting sufficient structure for performing that function.” *Id.* (quotation omitted).

24 The term “support configured to,” as used in the ’806 patent, is not a means-plus function
25 limitation. The claim language describes this term as a detachable part which attaches to the left
26 and right-hand sides of the game controller and physically holds the electronic device in place by
27 gripping the two sides of the electronic device. This is not merely a functional description—rather

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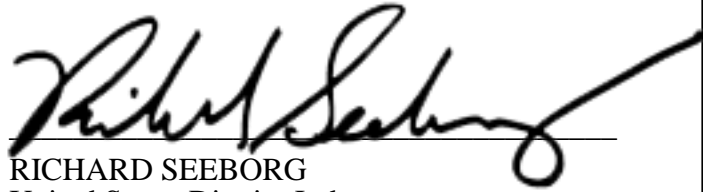
it provides specific physical features of the “support,” such as where the support attaches to, or grips, the various devices. Neither party requests independent construction of this term. Accordingly, because the dispute regarding Section 112(6) has been resolved, there is no need for further construction of this term.

IV. CONCLUSION

The disputed claim terms of the patents-in-suit are construed as set forth above. A further Case Management Conference shall be held on September 5, 2019 at 10:00am. The parties shall file a Joint Case Management Statement at least one week prior to the Conference.

IT IS SO ORDERED.

Dated: August 2, 2019



RICHARD SEEBORG
United States District Judge