

United States District Court,
S.D. California.

AMERICAN CALCAR, INC,
Plaintiff.

v.

AMERICAN HONDA MOTOR CO., INC.; Honda of America Manufacturing, Inc,
Defendants.

And Related Counterclai,
And Related Counterclaim.

No. 06cv2433 DMS (CAB)

Sept. 24, 2007.

Richard A. Clegg, Seltzer Caplan McMahon Vitek, Michael M. Rosen, Fish and Richardson, San Diego, CA, Robert L. Maier, Edward R. Tempesta, Gary M. Butter, Jennifer Cozeolino, Jeremy P. Merling, Paul A. Ragusa, Robert Neuner, Baker Botts, New York, NY, for Plaintiffs.

John T. Johnson, Irene E. Hudson, John S. Goetz, Joy M. Stanton, Michael F. Autuoro, Fish and Richardson, New York, NY, Juanita R. Brooks, Michael M. Rosen, Fish and Richardson, San Diego, CA, Ahmed Davis, Fish and Richardson, Washington, DC, Robert E. Hillman, Fish and Richrdson, Boston, MA, Stamatios Stamoulis, Fish and Richardson, Wilmington, DE, for Defendants.

ORDER CONSTRUING PATENT CLAIMS

DANA M. SABRAW, District Judge.

This matter came before the Court for a claim construction hearing on September 10, 2007. Gary Butter and Robert Maier appeared and argued on behalf of American Calcar, Inc. ("ACI"), and John Johnson and Robert Hillman appeared and argued on behalf of American Honda Motor Co., Inc. and Honda of America Manufacturing, Inc. ("Honda"). After a thorough review of the parties' claim construction briefs and all other material submitted in connection with the hearing, as well as a review of the Court's file, the Court issues the following order construing the disputed terms of the patents at issue in this case.

I.

BACKGROUND

There are fifteen patents at issue in this case that may be divided into four patent families. The first family stems from United States Patent Number 6,009,355 ('355 Patent), and includes the '355 Patent, as well as United States Patent Numbers 6,438,465 ('465 Patent), 6,542,795 ('795 Patent), 6,459,961 ('961 Patent), 6,587,759 ('759 Patent), 6,330,497 ('497 Patent), 6,577,928 ('928 Patent), and 6,542,794 ('794 Patent). The second family stems from United States Patent Number 6,275,231 ('231 Patent), and includes the '231 Patent, as well as United States Patent Numbers 6,975,932 ('2 Patent) and 7,162,370 ('370 Patent). The third family is based on United States Patent Number 6,148,261 ('261 Patent), and includes one additional patent, United States Patent Number 6,529,824 ('824 Patent). The fourth and final family stems from United States Patent Number 6,754,485 ('485 Patent), and includes one additional patent, United States Patent Number

6,987,964 ('964 Patent).

After a previous round of motions, this Court granted summary judgment of non-infringement in favor of Honda on the '355 and '231 Patents, and summary judgment of infringement in favor of ACI on the '465 Patent. Accordingly, the Court will not discuss any terms in those Patents, except to the extent they are relevant to any terms in the remaining Patents.

II.

DISCUSSION

Claim construction is an issue of law, *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 372, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996), and it begins "with the words of the claim." *Nystrom v. TREX Co., Inc.*, 424 F.3d 1136, 1142 (Fed.Cir.2005), *cert. denied*, 547 U.S. 1055, 126 S.Ct. 1654, 164 L.Ed.2d 396 (2006), (citing *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed.Cir.1996)). Generally, those words are "given their ordinary and customary meaning." *Id.* (citing *Vitronics*, 90 F.3d at 1582). This " 'is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.' " *Id.* (quoting *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed.Cir.2005), *cert. denied*, 546 U.S. 1170, 126 S.Ct. 1332, 164 L.Ed.2d 49 (2006)). "The person of ordinary skill in the art views the claim term in the light of the entire intrinsic record." *Id.* Accordingly, the Court must read the claims " 'in view of the specification, of which they are a part.' " *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed.Cir.1995)). In addition, " 'the prosecution history can often inform the meaning of the claim language by demonstrating how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower that it would otherwise be.' " *Id.* (quoting *Phillips*, 415 F.3d at 1318).

A. The '355 Family

As mentioned above, the '355 Family consists of eight patents, two of which are no longer at issue as a result of the Court's summary judgment rulings. However, the remaining patents in the '355 Family require the Court to construe a number of terms, all of which are addressed below.

1. The '795 Patent

The parties dispute two terms in Claim 1 of the '795 Patent: (1) "request," and (2) "selecting, based on the user description." FN1 ACI argues these terms should be given their plain meaning, while Honda asserts they require construction.

a. "Request"

In general, the Court agrees with ACI that this term does not require construction, but instead should be given its plain and ordinary meaning. However, when viewed in the context of the Claim, it is clear the term "request" must include a "user description of the aspect of the vehicle." Honda's position is consistent with this construction, but it adds additional language that is neither necessary nor appropriate to construe the term "request." Therefore, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "request" according to its plain and ordinary meaning, and that as used in this Claim, the term "request" must include a "user description of the aspect of the vehicle."

b. "Selecting, based on the user description"

Here, again, the Court generally agrees with ACI that this phrase does not require construction, but instead should be given its plain and ordinary meaning. In the context of the Claim, however, it is clear that the

selecting must be "based on the user description." Honda's position is generally consistent with this construction, but it adds additional language that is neither necessary nor appropriate to construe the phrase. Thus, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "selecting, based on the user description," according to its plain and ordinary meaning, and that as used in this Claim, the phrase requires the selecting be "based on the user description."

2. *The '961 Patent*

The parties dispute several terms and phrases in the '961 Patent. Specifically, they dispute the following terms: (1) "notable condition," (2) "output subsystem," (3) "a processor," and (4) "an option." They also dispute the phrases: (1) "interrupting a provision of the information concerning the at least one device with a provision of information concerning the notable condition," (2) "in response to the notable condition," and (3) "in response to the selection of the option." FN2 ACI argues these terms and phrases should be given either their plain and ordinary meaning or the construction set out by the Court in the *BMW* case. Honda asserts they require construction.

a. *"Notable condition"*

In contrast to ACI's assertion of plain meaning, Honda contends this term should be construed as "an urgent or emergency occurrence for which a warning is provided and action by the user required." To support this construction, Honda relies on specific language in the specification and the prosecution history. However, the Court has reviewed both of these documents, and finds that neither supports Honda's construction of the term. Indeed, the prosecution history demonstrates the patentee broadened the scope of the claim from an "emergency" condition to a "notable" condition. Accordingly, the Court declines to adopt Honda's proposed construction of this term, and finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "notable condition" according to its plain and ordinary meaning.FN3

b. *"Output subsystem"*

The next term at issue in Claim 1 of the '961 Patent is "output subsystem." The parties dispute whether this term should be construed under 35 U.S.C. s. 112 para. 6. Assuming that statute applies, the parties dispute the proper structure for performing the function. Regardless, Honda argues the "output subsystem" must be construed as separate from the "display element."

Section 112, para. 6 states:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or act in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. s. 112 para. 6. To determine whether this statute applies, the court must first ascertain if the element is truly a "means-plus-function" element. When a claim uses the term "means" to describe a limitation, the court presumes " 'that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses.' " *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1375 (Fed.Cir.2003) (quoting *Sage Prods., Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1427 (Fed.Cir.1997)). In contrast, " '[a] claim term that does not use 'means' will trigger the rebuttable presumption that [35 U.S.C. s. 112 para. 6] does not apply.' " *Depuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1023 (Fed.Cir.2006), *pet. for cert. filed*, --- U.S. ---, 128 S.Ct. 58, 169 L.Ed.2d 243, 75 U.S.L.W. 3598 (U.S. Apr. 27, 2007) (No. 06-1434), (quoting *CCS Fitness v. Brunswick Corp.*, 288 F.3d 1359, 1369 (Fed.Cir.2002)). To overcome this presumption, a party must show " 'that the claim element recite[s] a

function without reciting sufficient structure for performing that function.' " *Id.* (quoting *Watts v. XL Sys. Inc.*, 232 F.3d 877, 880-81 (Fed.Cir.2000)). The Federal Circuit has made clear, " 'however, that the presumption flowing from the absence of the term 'means' is a strong one that is not readily overcome.' " *Id.* (quoting *Lighting World, Inc. v. Birchwood Lighting, Inc.*, 382 F.3d 1354, 1358 (Fed.Cir.2004)).

Here, Honda asserts there is no structure provided in the claim for performing the function of "providing information concerning at least one device in the vehicle." However, this bare assertion is insufficient to overcome the presumption that s. 112 para. 6 does not apply. Contrary to Honda's assertion, the claim provides a structure, namely, the "output subsystem." Although the parties dispute the meaning of this term, that dispute does not rebut the "strong" presumption that the term falls outside the scope of s. 112 para. 6. Accordingly, the Court finds this term is not subject to construction under s. 112 para. 6.

Notwithstanding this finding, a dispute remains about the proper construction of the term "output subsystem." ACI argues the term should be given its plain meaning, whereas Honda asserts the term should be construed as separate from the "display element." In support of its proposed construction, Honda relies primarily on the prosecution history, specifically, the patentee's amendment of the Claim to include a separate "display element" and to delete the display function from the "output subsystem." However, this amendment does not necessarily result in a finding that the two elements are mutually exclusive. In other words, the "output subsystem" is not limited to a structure that excludes the "display element." For these reasons, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "output subsystem" according to its plain and ordinary meaning.FN4

c. "A processor"

The next term at issue is "a processor." ACI argues this term should be given its plain meaning, whereas Honda asserts it should be limited to a single processor.

In patent parlance, the indefinite article "a" or "an" generally means "one or more." *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed.Cir.2000); *Abtox, Inc. v. Exitron Corp.*, 122 F.3d 1019, 1023 (Fed.Cir.1997). Only when the claims and specification indicate the inventor intended the term "a" to have its normal singular meaning does the court impose the singular meaning. *KCJ*, 223 F.3d at 1356; *Abtox*, 122 F.3d at 1023. Here, Honda requests that the Court impose the singular meaning on the processor element, but it fails to offer any evidence or argument to support its request. In the absence thereof, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "a processor" according to its plain and ordinary meaning,, *i.e.*, it is not limited to a single processor.FN5

d. "Interrupting a provision of the information concerning the at least one device with a provision of information concerning the notable condition"

Following the language of the Claim, the next dispute concerns the phrase "interrupting a provision of the information concerning the at least one device with a provision of information concerning the notable condition." Again, ACI argues this phrase should be given its plain and ordinary meaning, while Honda asserts the phrase requires construction. Specifically, Honda contends the phrase requires that the "notable condition" must relate to the same device about which the user is currently receiving information. For example, information about a "notable condition" of the vehicle's brakes is only provided when the user is receiving information about the vehicle's brakes.

To support its proposed construction of this phrase, Honda relies on the prosecution history. However, the evidence cited does not support Honda's proposed construction. There is nothing in the cited amendment that requires that the notable condition concern the same device about which other information is being

provided. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "interrupting a provision of the information concerning the at least one device with a provision of information concerning the notable condition" according to its plain and ordinary meaning, *i.e.*, the information concerning the notable condition need not be related to the information then being provided.FN6

e. "An option"

The next term at issue in Claim 1 is "an option." The question for the Court is the same as that presented on the term "a processor:" whether "an option" should be construed as singular or plural.

Again, the Court begins with the general rule that in patent parlance the indefinite article "an" means "one or more." KCI, 223 F.3d at 1356. This rule is "overcome only when 'the claim is specific as to the number of elements' or 'when the patentee evinces a clear intent to ... limit the article.'" *Free Motion Fitness, Inc. v. Cybex Int'l, Inc.*, 423 F.3d 1343, 1350 (Fed.Cir.2005) (quoting KCI, 223 F.3d at 1356). Here, Honda argues the term "an option" falls within the latter exception.

To support this argument, Honda relies primarily on the claim language and the prosecution history. However, neither of these items demonstrates a clear intent on the part of the patentee to limit "an option" to one option. Honda correctly points out that the claim itself refers first to "an option," then later refers to "the option," which suggests the term should receive a singular construction. Yet, the Federal Circuit has explicitly rejected this argument. *See id.* at 1350-51 (rejecting defendant's argument "that use of the word 'the' in connection with the word 'cable' later in the claim shows that the earlier reference to 'a' denotes singularity.") The prosecution history is likewise unhelpful to Honda as it fails to show any intent to limit "an option" to one option, much less a clear intent to do so. For these reasons, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "an option" according to its plain and ordinary meaning,, *i.e.*, it is not limited to a single option.FN7

f. "In response to the notable condition"

The next disputed phrase is "in response to the notable condition." ACI argues this phrase should be construed in accordance with the Court's summary judgment ruling on the '961 Patent in the *BMW* case to mean after the notable condition. Honda asserts the phrase means "the occurrence of the notable condition causes the display of an option, without any intervening action by the user."

Although ACI is correct that in the *BMW* case the Court construed "in response" to mean "after," that construction is not binding in this case. In general, the Court stands by its previous construction, which requires that the option be provided "after" the notable condition. However, upon further review of the intrinsic evidence, and in light of the new arguments presented by Honda in this case, the phrase "in response to the notable condition" means something more than simply "after." As stated by Honda at oral argument, the phrase "in response to" connotes more of a cause-and-effect type of relationship rather than a straight temporal sequence. An answer, for instance, is typically provided in response to a question; one does not just follow after the other.

Applying this plain meaning in the context of the particular phrase at issue here, the causative event is the occurrence of a notable condition, and in response thereto, the processor provides an option on the display element. Consistent with Honda's position, the user need not take any action before the processor provides the option. In sum, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "in response to the notable condition" according to its plain and ordinary meaning,, *i.e.*, provision of the option on the display element occurs in response to the notable condition, not in response to any action on the part of the user.FN8

g. "In response to the selection of the option"

The final phrase at issue in Claim 1 of the '961 Patent is "in response to the selection of the option." ACI argues this phrase should be given its plain and ordinary meaning, while Honda asserts the phrase means "that selection of the option causes the information for coping to be provided, without any intervening action by the user."

As above, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "in response to the selection of the option" according to its plain and ordinary meaning, *i.e.*, provision of the selected information for coping with the notable condition occurs in response to the selection of the option, not in response to some other action on the part of the user.FN9

3. The '759 Patent

Given the overlap between the terms and phrases in the '961 and '759 Patents, there is only one remaining term at issue in the '759 Patent: "a mechanism." The parties disagree about whether this term is subject to s. 112 para. 6, and if so, what is the corresponding structure for performing the function. ACI argues the structure includes an audio or visual interface, whereas Honda asserts the structure should be limited to audio only.

As with the term "output subsystem," the Court begins with the presumption that "a mechanism" is not subject to s. 112 para. 6 because the Claim does not use the words "means." However, the Federal Circuit has stated "[t]he generic terms 'mechanism,' 'means,' 'element,' and 'device,' typically do not connote sufficiently definite structure." *Massachusetts Institute of Technology and Electronics for Imaging, Inv. v. Abacus Software*, 462 F.3d 1344, 1354 (Fed.Cir.2006). In light of this controlling authority, the Court finds Honda has overcome the presumption, and the term "a mechanism" is subject to construction under s. 112 para. 6.

Having made this finding, the Court must now identify the specific function recited by the claim. *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1321 (Fed.Cir.2003); *Altiris*, 318 F.3d at 1375. A corresponding structure is one which "the specification or prosecution history clearly links or associates ... to the function recited in the claim." *B. Braun Med., Inc. v. Abbott Labs.*, 124 F.3d 1419, 1424 (Fed.Cir.1997). Alternative structures specifically mentioned in the specification are also included in the scope of the patent. *See Serrano v. Telular Corp.*, 111 F.3d 1578, 1583 (Fed.Cir.1997).

Here, the parties agree, and the Court adopts, the recited function as "providing an alert indicating the notable condition, a provision of the information concerning the at least one device being interrupted by the alert." As stated above, the parties disagree on the corresponding structure, but after having reviewed the specification, the Court agrees with ACI's proposed definition. Honda's proposal ignores Claim 2 of the '759 Patent, which states, "The system [sic] claim 1 wherein the alert is provided via audio media." Pursuant to the doctrine of claim differentiation, the Court is prohibited from importing this express limitation from dependent Claim 2 into independent Claim 1. *Innova/Pure Water v. Safari Water Filtration*, 381 F.3d 1111, 1123 (Fed.Cir.2004). Furthermore, although the alert may ultimately be provided in audio format, the "mechanism" for providing that alert may include other structures, such as "the LCD driver, software and/or operating circuitry." Accordingly, the Court finds the corresponding structures for performing the recited function are "an audio or visual interface, the LCD driver, software and/or operating circuitry."

4. The '497 Patent

Turning to the next patent in the '355 Family, the parties dispute several terms in the '497 Patent. Specifically, they dispute the following terms and phrases: (1) "perform a function," (2) "function," (3) "displaying at least one option which is associated with the function of the vehicle," (4) "the at least one

option indicating a first status," (5) "selecting the at least one option," (6) "providing information concerning the selected at least one option," (7) "a processor for causing the device to perform the function after the selected at least one option is activated," and (8) "[t]he system of claim 1 wherein the function includes a navigation function." ACI argues these terms and phrases should be accorded their plain meaning or the construction set out by the Court in the *BMW* case, while Honda asserts they require construction.

a. "Perform a function"

In contrast to ACI's assertion that this phrase should be afforded its plain and ordinary meaning, Honda argues the phrase should be construed as "carrying out the ultimate operation of the function." (Honda's Responsive *Markman* Br. at 19.) However, Honda fails to cite any evidence, intrinsic or otherwise, to support this construction. In the absence thereof, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "perform a function" according to its plain and ordinary meaning.

b. "Function"

It is unclear whether there remains a dispute about this term. Initially, Honda argued it should be construed to mean the same as "aspect," but in its responsive brief, Honda appeared to retreat from that position, and it did not address the term during oral argument. To the extent there is a dispute, however, the Court agrees with ACI that this term should be given its plain and ordinary meaning. Honda fails to cite any evidence to support its proposed construction, and there is no apparent reason for equating the term "function" with "aspect." Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "function" according to its plain and ordinary meaning.

c. "Displaying at least one option which is associated with the function of the vehicle"

With the exception of the phrase "associated with," which the parties appear to agree should be construed as it was in the *BMW* case, ACI asserts this phrase should be afforded its plain and ordinary meaning. In contrast, Honda argues the phrase should be construed to mean "displaying a description or designation of at least one function to enable selection of the function which the user desires to be performed." Honda raised a similar argument in its opposition to ACI's motion for summary judgment of infringement on the '497 Patent, namely, that the term "option" means a designation of a vehicle function. The Court rejected that argument then because it read an unwarranted limitation in the claim, and rejects it now for the same reason. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "displaying at least one option which is associated with the function of the vehicle" according to its plain and ordinary meaning. As set out by the Court in the *BMW* case, the phrase "associated with" means "related to."

d. "The at least one option indicating a first status"

The next phrase at issue in the '497 Patent is "the at least one option indicating a first status." ACI argues this phrase should be given its plain meaning, while Honda asserts it should be construed as "a visual or audible signal that the option is available for selection." After reviewing the claims of the '497 Patent, specifically Claim 8, the Court finds that one of ordinary skill in the art would construe the phrase "the at least one option indicating a first status" according to its plain and ordinary meaning, *i.e.*, the first status of the option may be indicated audibly or visually.FN10

e. "Selecting the at least one option"

Next, the parties dispute whether the phrase "selecting the at least one option" should be afforded its plain meaning or some other construction. ACI argues the former, while Honda asserts the phrase should be

construed as "selecting the function of the vehicle which the user desires to be performed." Honda's argument follows from the argument asserted above in Section II(A)(4)(c), namely, that the term "option" be equated with a vehicle function. For the reasons set out above, the Court again rejects this argument, and Honda's proposed construction of this phrase. Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "selecting the at least one option" according to its plain and ordinary meaning.

f. "Providing information concerning the selected at least one option"

On this phrase, it appears the parties agree the term "information" should be construed to mean the same thing as the term "content" in the '355 Patent, which the Court previously held means "a preview or purpose." Honda goes on to argue, however, that the preview or purpose must be "of the function of the vehicle to which the option relates," and that it must "enable the user to determine whether the selected option in fact corresponds to the function he or she desires to be performed, as opposed to alphanumeric data records, such as telephone numbers, street addresses, restaurant names and calendar entries used in the performance of the function." Honda's proposed construction, however, ignores this Court's ruling that the term "option" is not equated with the term "function," and it would conflict with the Court's finding above that the term "function" is not equated with the term "aspect." The plain language of the Claim requires that the "output element" provide information concerning an option that is associated with a vehicle function, not information about the function directly. The remaining language in Honda's proposed construction is redundant considering the parties' agreement that "information" means "a preview or purpose." Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "providing information concerning the selected at least one option" to mean "providing a preview or purpose concerning the selected at least one option."

g. "A processor for causing the device to perform the function after the selected at least one option is activated"

Next, the parties dispute the meaning of the phrase "a processor for causing the device to perform the function after the selected at least one option is activated." ACI argues this phrase should be given its plain meaning, while Honda asserts it means "the function is performed after the option is activated without any additional action by the user."

To support its proposed construction, Honda points to several examples in the '497 specification. However, one of these examples demonstrates the fallibility of Honda's proposed construction. In this example, the user activates the climate function of the vehicle, but the processor cannot perform the climate function until the user selects the desired temperature. Because Honda's proposed construction would exclude this example, the Court cannot adopt it. *See Vitronics*, 90 F.3d at 1584 (stating interpretation of claim term that excludes embodiment in specification "is rarely, if ever, correct [.]") Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "a processor for causing the device to perform the vehicle function after the selected at least one option is activated" according to its plain and ordinary meaning.

h. "The system of Claim 1 wherein the function includes a navigation function"

The final phrase at issue in the '497 Patent is found in Claim 16, which states: "The system of claim 1 wherein the function includes a navigation function." The Court notes the only evidence of a dispute about this phrase is found in the parties' Joint Claim Construction Worksheet. Neither party addressed the phrase either in its briefs or at oral argument. Nevertheless, to the extent there is a dispute, the Court agrees with ACI that this phrase should be given its plain and ordinary meaning. Honda presents no evidence or argument for the Court to do otherwise.

5. The '928 Patent

The next patent in the '355 Family is the '928 Patent. There are two phrases at issue in this Patent: (1) "identifying one of the plurality of providers in response to the vehicle condition," and (2) "providing information concerning the identified provider from the memory when a location of the identified provider is within a predetermined distance from a current location of the vehicle." ACI argues these phrases should be given their plain meaning, while Honda asserts they require construction.

a. "Identifying one of the plurality of providers in response to the vehicle condition"

In contrast to ACI's assertion that this phrase should be given its plain meaning, Honda argues the phrase should be construed to mean "the occurrence of the need for the selected service causes the processing element to identify one of the plurality of service providers, without any intervening action by the user." To support this construction, Honda relies on the specification and the prosecution history. However, neither speaks to the primary disagreement here, which concerns the phrase "in response to."

Nevertheless, as the Court explained above in connection with the '961 Patent, the phrase "in response to" does not simply mean "after." Rather, it connotes more of a cause-and-effect type relationship. Here, the cause is the vehicle condition, in response to which the processing element identifies a provider. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "in response to the vehicle condition" according to its plain and ordinary meaning, *i.e.*, the processing element identifies a provider in response to a vehicle condition, not in response to any action on the part of the user.FN11

b. "Providing information concerning the identified provider from the memory when a location of the identified provider is within a predetermined distance from a current location of the vehicle"

Here, again, ACI argues this phrase should be given its plain meaning, while Honda argues it requires construction. Honda contends the phrase means the user is first informed of the identified provider when the provider is within a predetermined distance from the vehicle, and the provision of information is triggered by the distance between the vehicle and the provider, not "any intervening action by the user."

The parties' disagreement about the meaning of this phrase may be resolved by reference to the term "when." The plain meaning of that term supports Honda's proposed construction that information about the provider is not provided until the vehicle comes within a predetermined distance of the provider. Although this construction is consistent with Honda's "first informed" language, the Court finds the phrase is just as easily construed by reference to the plain meaning of the term "when." Furthermore, the language following "when" describes what must happen before the information is provided to the user. There is no need for the user to take any action before the information is provided, but that is clear from the plain language of the Claim. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "providing information concerning the identified provider from the memory when a location of the identified provider is within a predetermined distance from a current location of the vehicle" according to its plain and ordinary meaning, *i.e.*, the information is provided after it is determined that the provider is within a predetermined distance from the vehicle and without any intervening action by the user.FN12

6. The '794 Patent

The final patent at issue from the '355 Family is the '794 Patent. There are two disputed phrases in this Patent: (1) "selecting at least one service provider for servicing the vehicle when the vehicle needs a service," and (2) "monitoring a distance between the at least one service provider and the vehicle." ACI argues these phrases should be given their plain meaning, while Honda asserts they require construction.

a. "Selecting at least one service provider for servicing the vehicle when the vehicle needs a service"

The parties' arguments on this phrase are the same as those raised with respect to the first phrase at issue in the '928 Patent. While ACI argues plain meaning, Honda asserts the phrase means "that the occurrence of the need for service causes the processor to select at least one service provider, without any intervening action by the user."

Although the Court agreed with Honda's proposed construction for the '928 Patent, the '794 Patent does not include the same language as the '928 Patent. Whereas the '928 Patent stated the identification of the provider occurred "in response to" to a vehicle condition, the '794 Patent states the selection of the service provider occurs "when" the vehicle needs a service. As discussed above, the term "when" means the selection of the service provider occurs after it is determined that the vehicle needs a service. The plain language of the claim also indicates there is no need for the user to take any action before the processor selects the service provider. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "selecting at least one service provider for servicing the vehicle when the vehicle needs a service" according to its plain and ordinary meaning, *i.e.*, the processor selects the service provider after it determines that the vehicle needs a service and without any intervening action by the user.FN13

b. "Monitoring a distance between the at least one service provider and the vehicle"

Here, again, ACI argues this phrase should be given its plain meaning, while Honda asserts the phrase means "regularly comparing the vehicle's current GPS location information with that of each of the selected service providers." Although the Court agrees that Honda's proposed construction is encompassed by the claim language, the Court agrees with ACI that the phrase is not so limited. Rather, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase according to its plain and ordinary meaning.FN14

B. The '231 Family

The next family of patents at issue in this case stem from the '231 Patent. There are two patents at issue from this family, the '2 Patent and the '370 Patent, both of which are addressed below.

1. The '2 Patent

There is one disputed term at issue in the '2 Patent, and one disputed phrase. ACI argues the term should be given its plain meaning, while Honda asserts it requires construction. The parties offer competing constructions of the phrase.

a. "Indicator"

The only term at issue in the '2 Patent is "indicator." In contrast to ACI's assertion that this term be given its plain meaning, Honda argues the term means "a graphical symbol on the display that can be moved by the user." To support this proposed construction, Honda relies on the plain language of the Claim, specifically the phrase "manipulation of the indicator." However, this phrase also supports ACI's position that the term does not require construction, and should be given its plain meaning. Honda also relies on the specification, and the distinction drawn between manipulating an indicator and selecting an option. Although the patentee did draw this distinction, the Court declines to limit the term based solely thereon. Indeed, as mentioned above, this limitation appears clearly from the claim language itself. Finally, Honda cites the prosecution history and the patentee's stated examples of indicators to support its proposed construction. The Federal Circuit has stated, however:

[w]e do not import limitations into claims from examples or embodiments appearing only in a patent's written description, even when a specification describes very specific embodiments of the invention or even

describes only a single embodiment, unless the specification makes clear that 'the patentee ... intends for the claims and the embodiments in the specification to be strictly coextensive.

JVW Enterprises, Inc. v. Interact Accessories, Inc., 424 F.3d 1324, 1335 (Fed.Cir.2005). The same may be said for examples cited in the prosecution history. Thus, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "indicator" according to its plain and ordinary meaning.FN15

b. "Allowing a manipulation of the indicator on the display element to adjust a first distance relative to a reference distance to define a second distance, the first distance being established by a user of the system, the manipulation of the indicator being restricted from effecting an adjustment of the first distance to be less than zero"

As indicated, the disputed phrase in the '2 Patent is a long one. Within this phrase, Honda argues the phrase "manipulation of the indicator on the display element" means "moving the indicator to graphically show an increased or decreased separation." For the reasons set out in the preceding section, the Court declines to adopt Honda's proposed construction of this phrase.FN16

Honda goes on to argue the first two clauses of this phrase mean "that the user adjusts the first distance by manipulating the indicator[.]" Although the Court agrees with Honda's proposed construction, this construction is apparent from the language of the Claim. Thus, the Court declines to adopt Honda's proposed construction over the plain language.

Next, Honda asserts the "second distance" is defined by "combining the first distance with the reference distance." ACI offers an alternative construction, namely, that "second distance" be construed as "the distance specified by the user as the physical extent of the comfort zone." FN17 However, ACI concedes Honda's proposed construction is correct. (*See* ACI's Opening Claim Construction Br. at 64) (stating the claim language "describes 'a first distance being established by a *user*' (emphasis added), which along with a reference distance defines a second distance.") Accordingly, the Court adopts Honda's proposed construction of "second distance."

Following up on this term, Honda contends the "second distance" is set by the system, as opposed to the user. ACI disagrees. Although the Court agrees with Honda's proposed construction, that construction is evident from the plain language of the Claim. Thus, the Court finds it unnecessary to adopt Honda's proposed construction.

The only other terms at issue from this phrase are "distance" and "reference distance." It appears the parties do not dispute the construction of "distance," which the Court construed in the BMW case as "the length of a straight line between the subject vehicle and a detectable object." Accordingly, the Court adopts that construction in this case, as well. It is unclear whether there is a dispute about the term "reference distance." Although the Court construed that term in the BMW case, ACI urges the Court to eschew that construction, and instead construe the term as "the minimum distance that may be specified by the user, as set by the manufacturer." In the absence of any opposing argument or evidence, the Court agrees that ACI's proposed construction is more consistent with the intrinsic evidence. Thus, the Court adopts that construction of the term "reference distance." FN18

2. The '370 Patent

There are essentially two terms at issue in the '370 Patent: (1) "defined separation" and (2) "reference separation." It appears the parties agree that "defined separation" should be construed as "the separation specified by the user as the extent of the comfort zone." Accordingly, the Court adopts that construction of this term.FN19 On the term "reference separation," the parties engage in a role reversal with ACI arguing

for construction and Honda asserting plain meaning. However, given the relationship between the '932 Patent and the '370 Patent, the Court agrees with ACI that this term should be construed consistent with the term "reference distance" in the '932 Patent. Accordingly, the Court construes "reference separation" as "the minimum separation that may be specified by the user, as set by the manufacturer."

C. The '261 Family

The next family of patents at issue in this case includes the '261 Patent and the '824 Patent. The Court addresses these Patents below.

1. The '261 Patent

There are several terms and phrases at issue in this Patent. First, the parties dispute the meaning of the term "personal digital communicator device." Second, the parties dispute the meaning of the phrase "the processor being programmed to format requests for specified data regarding unspecified locations within a geographic area from a data provider and to process responsive data to the requests." Third, the parties dispute the meaning of the term "a communications means." Fourth, the parties dispute the meaning of the term "a means." Finally, the parties dispute the meaning of the term "external map information." For the most part, ACI argues these terms and phrases should be given their plain meaning or the meaning given to them by the Court in the *BMW* case, while Honda asserts they require construction.

a. "Personal digital communicator device"

The first disputed term in the '261 Patent is "personal digital communicator device." There are two issues concerning this term. First is whether the term is limiting given its placement in the preamble. Second is the proper construction of the term.

"Whether to treat a preamble as a limitation is a determination resolved only on review of the entire[] ... patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim." *Poly-Am., L.P. v. GSE Lining Tech., Inc.*, 383 F.3d 1303, 1309 (Fed.Cir.2004) (quoting *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed.Cir.1989)). There is no litmus test for determining when a preamble limits the invention. *Poly-Am.*, 383 F.3d at 1309; *Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed.Cir.2002). There are, however, some general guidelines. The preamble limits the claims when it "recites essential structure or steps, or if it is 'necessary to give life, meaning, and vitality' to the claim." *Catalina Mktg.*, 289 F.3d at 808 (quoting *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed.Cir.1999)). Similarly, "[w]hen limitations in the body of the claim rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention." *NTP, Inc. v. Research in Motion Ltd.*, 418 F.3d 1282, 1306 (Fed.Cir.2005), *cert. denied*, 546 U.S. 1157, 126 S.Ct. 1174, 163 L.Ed.2d 1141 (2006), (quoting *Eaton Corp. v. Rockwell Int'l Corp.*, 323 F.3d 1332, 1339 (Fed.Cir.2003)). In contrast, the preamble does not limit when the "patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention." *Poly-Am.*, 383 F.3d at 1310 (quoting *Rowe v. Dror*, 112 F.3d 473, 478 (Fed.Cir.1997)).

In the *BMW* case, the Court found the preamble of Claim 26 of the '261 Patent was not limiting, and ACI urges the Court to maintain that finding here. However, upon further review of the '261 Patent and consideration of Honda's arguments, the Court cannot maintain its previous position. Like the patent at issue in *Poly-Am.*, the specification of the '261 Patent "is replete with reference to the invention" as a "personal communication device." *See* 383 F.3d at 1310. The term is also repeated in dependent Claims 27 through 40 of the Patent. Furthermore, as in *NTP*, the antecedent basis for the limitation "the device" is the "personal digital communicator device" recited in the preamble. For these reasons, the Court finds the preamble of Claim 26 is limiting.

In light of this finding, the Court must now determine whether the term "personal digital communicator device" should be given its plain meaning, as asserted by ACI, or should be construed as "a portable cellular-phone-sized electronic device," as asserted by Honda.

Although words in a claim are generally given their ordinary and customary meaning, a patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, as long as the special definition of the term is clearly stated in the patent specification or file history.

Vitronics, 90 F.3d at 1582 (citations omitted). Here, the patentee specifically defined "personal communication device" in the specification as "a cellular-phone-sized electronic device." Accordingly, this definition controls. The only remaining issue is whether the Court should incorporate Honda's additional limitation that the device be "portable." Given the patentee's specific definition of the device as being "cellular-phone-sized," the Court finds that limitation is inherent in the patentee's definition. Therefore, the Court declines to expressly include that limitation in its construction of the term. Rather, the Court construes "personal digital communicator device" in accordance with the patentee's definition as "a cellular-phone-sized electronic device." FN20

b. "The processor being programmed to format requests for specified data regarding unspecified locations within a geographic area from a data provider and to process responsive data to the requests"

The next dispute in the '261 Patent concerns the phrase "the processor being programmed to format requests for specified data regarding unspecified locations within a geographic area from a data provider and to process responsive data to the requests." Honda argues this language requires "that the processor is part of the personal digital communicator, and it performs the function of requesting and receiving data from a data provider." The first part of Honda's proposal is obvious from the plain language of the claim, and thus the Court declines to adopt Honda's proposal over the plain meaning. The Court also declines to adopt the second part of Honda's proposal because it imports limitations into the Claim. Contrary to Honda's proposal, there is nothing in the Claim language or the intrinsic evidence that requires the processor to perform "the function of requesting and receiving data from a data provider."

Honda also proposes that the term "specified data regarding unspecified locations" be construed as "location information that differs from 'map information.'" However, the Court fails to find any evidence to support this construction of the term. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "the processor being programmed to format requests for specified data regarding unspecified locations within a geographic area from a data provider and to process responsive data to the requests" according to its plain and ordinary meaning.

v. "A communications means"

The next term at issue in the '261 Patent is "a communications means." The parties agree this term should be construed according to s. 112 para. 6, and they agree on the structure. Where they diverge is on the function. ACI's position on function is unclear, and Honda's position appears to be that the function of the "communications means" is to "receive[] the responsive specified data regarding unspecified locations from a data provider external to the vehicle." Notably, Honda does not cite any evidence to support its position that the data provider be "external to the vehicle." In the absence thereof, the Court cannot adopt Honda's position. Instead, the Court finds the function of the "communications means" is as stated in the plain language of the Claim: to receive data responsive to the requests. Based on the parties' agreement, the Court adopts its previous construction of the structure from the *BMW* case.

d. "A means"

The next term at issue is "a means." The parties dispute whether this term should be construed under s. 112

para. 6, and if so, what the corresponding structure is for performing the recited function.

As stated above, when a claim uses the term "means" to describe a limitation, the court presumes " 'that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses.' " Altiris, 318 F.3d at 1375 (quoting Sage Prods., 126 F.3d at 1427). Here, ACI argues the term should not be construed as a means-plus-function limitation, but it fails to explain why not. In the absence of any explanation, the Court follows the presumption that this term is subject to construction under s. 112 para. 6.

Having made this finding, the Court must first identify the function recited by the claim. On this issue, the parties appear to agree that the recited function is requesting and receiving map information from digital map storage devices.

Identifying the structure, however, is not as easy. ACI argues the corresponding structure "is shown in Figure 4 of the '261 Patent and consists of a processor and data bus (24)." Meanwhile, Honda asserts the corresponding structure is the same as for the "communications means," and "consists of a processor, data bus (24) and one or more of modem (29N), cellular transceiver (29C), radio transceiver (29D) or infrared port (29E)." However, Honda's proposed construction is based on a misreading of the claim language. Honda argues all of these elements are necessary "to request and receive information from *remote data providers*," (*see* Honda's Opening *Markman* Br. at 57) (emphasis added), but this is not the function of the Claim. As ACI points out, the function recited in the Claim is "requesting and receiving map information from *digital map storage devices*." (emphasis added). A CD-ROM drive is one example of this kind of device, and the only structures necessary to access that device would be the processor and the data bus. Accordingly, the Court adopts ACI's proposed construction of the structure to consist of "a processor and data bus" as shown in Figure 4 of the Patent.

e. "External map information"

The final term at issue in the '261 Patent is "external map information." ACI argues this term should be given its plain meaning, while Honda asserts it means "map information received from a source external to the vehicle." For the reasons set out above, the Court disagrees with Honda's proposed construction. As indicated in the Claim, "external map information" may be received from "digital map storage devices," and one such device is a CD-ROM drive that could be located inside the vehicle. ACI's assertion of plain meaning, however, is no more helpful. Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "external map information" as "information that is not in computer memory." (*See* ACI's Opening Claim Construction Br. at 21.)

2. The '824 Patent

There are several terms and phrases at issue in the '824 Patent. The first is the phrase "map data for geographic areas and non-map data, with the non-map data in linked data fields concerning specific locations within the geographic areas for which map data is available, the non-map data tagged to the map data." The second is the term "sorting application module." The third is the term "searching." The fourth is the phrase "receiving a request from a user for a specified number of listings of non-map data." The fifth and final is the phrase "automatically transmitting." ACI argues these terms and phrases should be given their plain meaning, while Honda asserts they require construction.

a. "Map data for geographic areas and non-map data, with the non-map data in linked data fields concerning specific locations within the geographic areas for which map data is available, the non-map data tagged to the map data"

In contrast to ACI's assertion of plain meaning, Honda argues this phrase means "that map and non-map data are stored together on a computer memory that is external to the vehicle." The plain language of the

Claim confirms the data is stored together on a computer memory. It does not, however, confirm that the computer memory be external to the vehicle. Indeed, for the reasons set out above with respect to the term "external map information," the Court declines to adopt that construction.FN21

Honda also proposes that "map data" and "non-map data" be construed as different information. However, the Court finds that construction is clear from the plain language of the Claim. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "map data for geographic areas and non-map data, with the non-map data in linked data fields concerning specific locations within the geographic areas for which map data is available, the non-map data tagged to the map data" according to its plain and ordinary meaning.FN22

b. "Sorting application module"

The issue on this term is the same as for "computer memory," *i.e.*, is the "sorting application module" inside or outside the vehicle. Honda argues it is "external to the vehicle," while ACI asserts the term should be given its plain meaning. Although Honda did not address this issue in either of its claim construction briefs, it did raise the issue in the Joint Claim Construction Worksheet and at oral argument. At oral argument, Honda cited to specific portions of the specification to support its proposed construction. However, the Court finds this evidence does not warrant imposition of Honda's requested limitation. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "sorting application module" according to its plain and ordinary meaning.

b. "Receiving a request from a user for a specified number of listings of non-map data"

The next phrase at issue in the '824 Patent is "receiving a request from a user for a specified number of listings of non-map data." ACI argues this phrase should be given its plain meaning, and Honda asserts it "requires that a user make the request through a personal digital communication device." Although Honda's position holds some initial appeal, a thorough review of the specification leads this Court to conclude the phrase is not so limited. For example, the specification refers to "non-PCD based computer users" and "the non-device base[d] computer user." ('824 Patent, col. 15, line 66-col. 16, line 5.) In light of this language, the Court declines to adopt Honda's proposed construction, and instead finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "receiving a request from a user for a specified number of listings of non-map data." according to its plain and ordinary meaning.

d. "Automatically transmitting"

The last phrase at issue in the '824 Patent is "automatically transmitting." ACI argues this phrase should be given its plain meaning, while Honda asserts it means "transmitting together both the map and non-map data in response to the request, without any additional action by the user." Notably, Honda fails to offer any argument or evidence to support its proposed construction of this phrase. In the absence thereof, the Court declines to adopt it, and instead finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase "automatically transmitting" according to its plain and ordinary meaning.

D. The '485 Family

The last patent family at issue in this case includes the '485 Patent and the '964 Patent. The Court addresses these Patents below.

1. The '485 Patent

There are several terms and one phrase at issue in this Patent. The first phrase at issue is "electronically

sending, to vehicles, messages about a faulty condition of the vehicles, the messages including identifiers of the vehicles, respectively." The second term is "vehicle service providers." The third term is "a mechanism." The fourth and final term is "an interface." ACI argues this phrase and these terms should be given their plain meaning, while Honda asserts they require construction.

a. "Electronically sending, to vehicles, messages about a faulty condition of the vehicles, the messages including identifiers of the vehicles, respectively"

This phrase raises several issues. The first concerns the term "faulty condition." ACI argues this term should be given its plain meaning, while Honda argues it should be construed as "a vehicle recall condition wherein a mechanical or electrical component is defective and thus not properly working as designed or intended." In support of this proposed construction, Honda relies on the specification and the prosecution history. However, that evidence clearly describes an exemplary embodiment of the invention, which cannot serve as a limitation on the claim language. *See* JWV, 424 F.3d at 1335. Furthermore, Claim 5 of the '485 Patent specifically limits the messages provided in Claim 1 to "recall notices." Pursuant to the doctrine of claim differentiation, the Court is prohibited from importing this express limitation from dependent Claim 5 into independent Claim 1. *Innova*, 381 F.3d at 1123. For these reasons, the Court declines to adopt Honda's proposed construction of the term "faulty condition," and instead finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term according to its plain and ordinary meaning.FN23

The second issue raised by this phrase is whether the messages must be sent "over the Internet," as Honda contends. Claim 4 of the '485 Patent limits the method of transmission of messages to those "electronically sent via the Internet." In light of this dependent claim, the Court cannot adopt Honda's proposed construction.

The third issue raised by this phrase is whether the messages are limited to "car-mail messages," as Honda contends. ACI argues this proposed construction is simply an attempt to import a limitation from an embodiment in the specification. However, it is unclear what other kinds of messages could be "electronically sent" to vehicles, as required by the plain language of the Claim. Indeed, the remainder of the phrase, which states the messages must include "identifiers of the vehicles" supports Honda's position that the messages referred to in the Claim are "car-mail" messages. Accordingly, the Court adopts Honda's proposed construction of the term "messages" as "car-mail messages."

Next, Honda argues this phrase requires that each message communicate information about the faulty condition and also the vehicle identifier to the vehicle.FN24 However, the word "communicate" appears nowhere in the Claim. Rather, all that is required according to the plain language of the Claim is that the message be "about" a faulty condition of the vehicle, and that it "include" the vehicle identifier. Because Honda fails to provide any persuasive argument or evidence to support this proposed construction, the Court declines to adopt it.

The last issue raised by this phrase is whether the "identifiers" of the vehicles must be unique to each vehicle, as Honda asserts. ACI disputes this construction of the term, but based on this Court's review and understanding of the '485 Patent, Honda's proposed construction is correct. Accordingly, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "identifier" as being unique to each vehicle.FN25

b. "Vehicle service providers"

The next term at issue in the '485 Patent is "vehicle service providers." ACI argues this term should be given its plain meaning, while Honda asserts it means "an auto repair facility or dealer repair shop." In support of its proposed construction, Honda relies on the specification. However, the Court agrees with ACI that

Honda's proposed construction is too narrow. Although the specification does refer to "auto repair services," the Claim does not. Instead, it refers to "vehicle service providers." Based on this Court's review of the intrinsic evidence, one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "vehicle service providers" according to its plain and ordinary meaning.

c. "A mechanism"

The next term at issue in the '485 Patent is "a mechanism." As they did with the same term in the '759 Patent, the parties disagree about whether this term should be construed under s. 112 para. 6. They also disagree about the function recited by the Claim, and the corresponding structure for performing that function.

For the reasons set out above with respect to the term "mechanism" in the '759 Patent, the Court agrees with Honda that this same term in the '485 Patent must be construed under s. 112 para. 6. In light of the Court's discussion in Section II(D)(1)(a) above, the recited function of this claim term is "electronically sending, to vehicles, car-mail messages about a faulty condition of the vehicles, the messages including identifiers of the vehicles, respectively." ACI argues the structure for performing this function is an access server and wireless communication network as set out in Figure 2 of the Patent. Honda, by contrast, asserts the structure includes "at least one server, the Internet, a Wireless Communications network, with a Communications subsystem (which includes a Transceiver and a modem), together with one or more processors." Based on this Court's review of the intrinsic evidence, and in light of the recited function as found by the Court, the Court agrees with ACI's proposed structure. Accordingly, the Court finds the corresponding structures for performing the recited function are an access server and a wireless communications network.FN26

d. "An interface"

The final term at issue in the '485 Patent is "an interface." As with the term "mechanism" above, the parties dispute whether this term is subject to construction under s. 112 para. 6. Assuming it is, the parties agree on both the function and the structure.

As discussed above, there is a presumption that s. 112 para. 6 does not apply in a claim that does not use the word "means." That presumption applies here, and Honda has not overcome that presumption with its bare assertion that the presumption does not apply. Accordingly, the Court declines to construe the term "an interface" under s. 112 para. 6, and instead finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the term "an interface" according to its plain and ordinary meaning.

III.

CONCLUSION

For the reasons stated above, the disputed terms are interpreted as set forth in this Order.

IT IS SO ORDERED.

FN1. The parties agree on a construction of the term "aspect," and the Court construed "user description" in its order denying ACI's motion for summary judgment of infringement on the '795 Patent. Therefore, the Court will not address those terms here.

FN2. It appears the parties agree that the phrase "prompting a user to select the option" should be construed in accordance with the Court's construction in the *BMW* case as "moving a user to action." Therefore, the

Court will not construe this phrase further in this Order.

FN3. This construction applies equally to the term "notable condition" in Claims 1, 15 and 28 of the '759 Patent.

FN4. The parties' arguments on the term "output subsystem" are the same for the term "output element" in Claim 1 of the '759 Patent and Claim 1 of the '497 Patent. For the reasons set out above, the Court finds the term "output element" is not subject to construction under s. 112 para. 6, and it should be given the same plain and ordinary meaning as "output subsystem," *i.e.*, it is not limited to a structure that excludes the "display element."

FN5. This construction applies with equal force to the term "a processor" in Claim 1 of the '759 Patent.

FN6. This construction applies with equal force to the phrase "providing an alert indicating the notable condition, a provision of the information concerning the at least one device being interrupted by the alert" in Claims 1, 15 and 28 of the '759 Patent.

FN7. This construction applies equally to the term "an option" in Claims 1, 15 and 28 of the '759 Patent.

FN8. This construction applies equally to the phrase "in response to the notable condition" in Claims 1, 15 and 28 of the '759 Patent.

FN9. To the extent the parties are disputing the term "selection," with Honda asserting that "selection" must occur after the user takes some initial action, and ACI contending that "selection" may require more than one action on the part of the user, the Court agrees with ACI that "selection" is not so limited.

FN10. This construction applies equally to the phrases "selected at least one option indicating a second status," and "activated option indicating a third status," which appear later in Claim 1 of the '497 Patent. As to the latter phrase, the Court declines to include Honda's additional proposed language, "to begin performance of the function," because it imposes an unwarranted limitation on the Claim.

FN11. This construction applies equally to the same and similar phrases in Claims 7, 10 and 16 of the '928 Patent, and Claims 11 and 29 of the '794 Patent.

FN12. This construction applies equally to the same and similar phrases in Claims 7, 10 and 16 of the '928 Patent, and Claims 1, 11, 20 and 29 of the '794 Patent.

FN13. This construction applies equally to the same phrase in Claim 20 of the '794 Patent.

FN14. This construction applies equally to the same and similar phrases in Claims 11, 20 and 29 of the '794

Patent.

FN15. This construction applies equally to the same term in the '370 Patent.

FN16. This ruling also applies to the same and similar phrases in Claims 1 and 16 of the '370 Patent.

FN17. This is how the Court construed the term "defined distance" in United States Patent Number 6,703,944 ("the '4 Patent"), another patent in the '231 Family, in the *BMW* case.

FN18. This construction applies equally to the same phrase in Claim 14 of the '2 Patent.

FN19. In addition, Honda asks the Court to construe the phrase "the defined separation being indicated on the display element" as "the separation shown on the display as a result of the manipulations." The Court declines to adopt this proposal, however, because it simply reiterates the plain language of the Claim. Instead, the Court finds that one of ordinary skill in the art, after reading the claims and consulting the intrinsic evidence, would construe the phrase according to its plain and ordinary meaning.

FN20. This construction applies equally to the term "personal digital communication device" in Claim 1 of the '824 Patent.

FN21. The Court also declines to adopt Honda's proposed construction of the term "searching" in Claim 1 of the '824 Patent for the same reasons.

FN22. This construction applies equally to the same phrase in Claim 8 of the '824 Patent.

FN23. This construction applies equally to the same term in Claim 1 of the '964 Patent. In addition, in light of the Court's finding that the term "faulty condition" is not limited to a vehicle recall condition, the Court declines to adopt Honda's further limitation on this phrase as requiring that the messages be sent only to the category of vehicles to which the recall applies.

FN24. In its briefs, Honda argued each message must "display" this information, but at oral argument it shifted its position to "communicate" rather than "display."

FN25. The Court's findings on this phrase apply equally to the same phrase in Claim 16 of the '485 Patent, and the similar phrase in Claim 1 of the '964 Patent.

FN26. The Court's findings here apply equally to the same term in Claim 12 of the '964 Patent.

S.D.Cal.,2007.

American Calcar, Inc. v. American Honda Motor Co. Inc.

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