



THINK FORWARD

Federal Circuit Modifies Means-Plus-Function Presumption

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On June 16, 2015 the Federal Circuit decided *en banc* to overturn a panel decision of the Federal Circuit that held the term “module” in the context of a computer software patent did not invoke means-plus-function claiming under 35 U.S.C. § 112, para. 6 and, consequently, was not indefinite for failure to disclose corresponding structure in the specification, i.e., an algorithm. *Williamson. v. Citrix Online, LLC*, 2013-1130 (Fed. Cir. 2015). The *en banc* decision, however, went further than simply overturning the previous panel decision. In holding that the claims at issue did invoke mean-plus-function interpretation and consequently were indefinite, the *en banc* decision overturned more than a decade’s worth of case law that held there exists a strong presumption that claims not employing the term “means” did not invoke the provisions of 35 U.S.C. § 112, para. 6. The presumption still exists but is no longer “strong.”

Section 112, para. 6 (now § 112, para. f as re-designated in the American Invents Act) authorized claims in the form of “a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.”

The patent in *Williamson* disclosed and claimed methods for distributed learning that employ industry standard hardware and software to generate a “virtual classroom” permitting interaction between a presenter and remote audience members. The patent included claims reciting, in part, a “distributed learning control module” that performed three functions: (1) receiving communications transmitted between the presenter and the audience member computer systems; (2) relaying the communications to an intended receiving computer system; and (3) coordinating the operation of the streaming data module.

The majority held that the term “module” is merely a nonce word, i.e., a construction that by itself signifies nothing because one of skill in the art would not understand “module” to “have a sufficiently definite meaning as the name for structure.” While a claim that lacks the term “means” still benefits from the presumption that the claim does not invoke mean-plus-function limitations, this presumption is no longer “strong.” As before, a challenger can rebut the presumption by showing that the claim fails to recite “sufficiently definite structure” or else recites “function without reciting sufficient structure for performing that function.” The majority held that the patent failed to disclose sufficient structure in the specification and, consequently, held the relevant claims indefinite.

The *Williamson* decision affects the interpretation of many software related patents and claims that employ functional limitations and arguably do not disclose an algorithm or flow charts of “sufficiently definite structure.” The majority decision explained that, like “module,” other “[g]eneric terms such as “mechanism,” “element,” “device,” and other nonce words that reflect nothing more than verbal constructs may be . . . tantamount to using the word “means” because they “typically do not connote sufficiently definite structure” and therefore may invoke § 112, para. 6.” *Williamson* will likely affect all

technologies and all patents that employ claims with functional limitations.

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If you have any questions or wish to discuss how the Court's decision may impact your company, please feel free to contact one of our [attorneys](#).