No. 26A___

In the Supreme Court of the United States

GENUINE ENABLING TECHNOLOGY LLC,
Petitioner,

v.

SONY GROUP CORPORATION AND
SONY INTERACTIVE ENTERTAINMENT LLC,
Respondents.

APPLICATION TO EXTEND TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI FROM JULY 22, 2026, TO AND INCLUDING SEPTEMBER 18, 2026

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Under 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30, petitioner Genuine Enabling Technology LLC ("GET")[1] respectfully requests that the time to file a petition for a writ of certiorari be extended 58 days from July 22, 2026, to and including Friday, September 18, 2026. On February 19, 2026, the United States Court of Appeals for the Federal Circuit affirmed the district court's grant of summary judgment of noninfringement in favor of respondents. Addendum (Add.) A (*Genuine Enabling Technology LLC v. Sony Group Corp.*, 167 F.4th 1196 (Fed. Cir.

[1] Pursuant to Supreme Court Rule 29.6, petitioner states that Genuine Enabling Technology LLC has no parent corporation, and no publicly held company owns 10% or more of its membership interests.

2026)). On April 23, 2026, the court denied petitioner's timely petition for panel rehearing and rehearing en banc. Add. B. Without an extension, the petition for a writ of certiorari would be due on July 22, 2026. This application is being filed at least 10 days before that date. *See* Sup. Ct. R. 13.5. This Court will have jurisdiction to review the petition under 28 U.S.C. § 1254(1).

1. This case concerns U.S. Patent No. 6,219,730 ('730 Patent), which discloses an apparatus for combining two data streams from computer input devices—a user-input stream and a second input stream—into a single combined data stream transmitted over one communication link. Petitioner GET sued respondents Sony Group Corporation and Sony Interactive Entertainment LLC in the United States District Court for the District of Delaware in February 2017, alleging that Sony's PlayStation 3 and PlayStation 4 controllers and consoles infringe claims of the '730 Patent. *See* No. 1:17-cv-00135-MSG (D. Del.).

The '730 Patent issued from an application filed in 1998. At that time, a computer typically required a separate connection, and separate computer resources, for each input device—one for a mouse, another for a microphone, and so on. The patent discloses a device that combines the functions of multiple input devices—for example, a mouse and a microphone—by merging their data into a single combined data stream transmitted to the computer over a single communication link, thereby conserving computer resources. The inventor recognized, however, that the two kinds of data could not simply be mixed. A slow-varying stream, such as a mouse's button and motion data, and a higher-frequency stream, such as audio from a microphone, will run asynchronously relative to, and collide with, each other, damaging the

integrity of the data. The invention's solution to this collision problem is a structure the inventor called a "framer," which synchronizes the two data streams and encodes them into a single combined data stream that the computer receives intact over one communication link.

Petitioner's infringement claim is that Sony's PlayStation 3 and PlayStation 4 controllers use the same solution in the same way: Each controller contains a Bluetooth module that synchronizes and encodes multiple streams of controller-generated data into a single combined data stream transmitted wirelessly to the console over one communication link, and the module is a structural equivalent of the framer circuitry disclosed in the patent. Each asserted claim contains a means-plus-function limitation governed by 35 U.S.C. § 112(f) (formerly 35 U.S.C. § 112, ¶ 6).

2. Following a *Markman* hearing, the district court construed the limitation to have the function of "[s]ynchronizing the user input stream with the input stream and encoding the user input stream and the input stream into a combined data stream," and identified the corresponding structure as "[t]he logic design at block 34 in Figure 4A and equivalents thereof." Add. C, at 3 (*Genuine Enabling Tech. LLC v. Sony Corp.*, 2024 WL 1255513 (D. Del. Mar. 25, 2024) (quotation marks omitted)). Petitioner's technical expert, Dr. Kenneth Fernald, applied § 112(f)'s "equivalents thereof" requirement to both structural aspects of the claimed function—synchronizing and encoding—and opined that the accused controllers' Bluetooth modules are structurally equivalent to the disclosed logic design. Because Sony challenged only the "way" prong of that analysis, and because the district court had concluded that the synchronizing aspect "best illustrates Sony's objection," *Genuine*

Enabling Tech. LLC v. Sony Corp., 2022 WL 17325656, at *3 (D. Del. Nov. 28, 2022), the proceedings below focused only on one part of Dr. Fernald's opinion: that both structures synchronize the two data streams in the same way, by sampling both streams using a common bit-rate clock. The district court excluded Dr. Fernald's ultimate opinion of structural equivalence, reasoning that his analysis of the "way" prong of the equivalence inquiry addressed the bit-rate clock rather than each element of the disclosed circuit. On the same grounds, the court granted summary judgment of noninfringement. Add. C, at 5-6, 10-14.

The Federal Circuit affirmed in a published, precedential opinion. Add. A. The panel held that petitioner and its expert "failed to account for many of the elements in block 34" in their infringement analysis, that the expert had "neglected to address a significant fraction" of the disclosed structure, and that, without accounting for other circuit elements, petitioner "fail[ed] to present enough evidence for a reasonable jury to conclude that the accused structure and logic block 34 are structural equivalents." *Id.* at 2, 11-12. For these same reasons, the panel likewise affirmed the district court's exclusion of the expert's ultimate equivalence opinion. *Id.* at 15-16 & n.6.

3. Petitioner sought panel rehearing and rehearing en banc, which the court denied on April 23, 2026. Add. B.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended for 58 days for three reasons:

1. The forthcoming petition will present a substantial and recurring question: Whether a patentee's entitlement to "equivalents thereof" under 35 U.S.C. § 112(f) may be extinguished as a matter of law whenever its expert does not account for every element of the corresponding structure disclosed in the specification or justify its omission.

Section 112(f) provides that a claim element expressed as a means for performing a specified function "shall be construed to cover the corresponding structure, material, or acts described in the specification *and equivalents thereof*." 35 U.S.C. § 112(f) (emphasis added). Congress enacted that provision in the Patent Act of 1952 in response to this Court's decision in *Halliburton Oil Well Cementing Co. v. Walker*, 329 U.S. 1 (1946), restoring functional claiming on the condition that the patentee disclose a corresponding structure—and extending literal coverage, by statutory command, to that structure's equivalents. And this Court has long held that "[a] finding of equivalence is a determination of fact" reserved to the trier of fact. *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 339 U.S. 605, 609 (1950); *see also Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17 (1997).

There is a reasonable probability that certiorari will be granted because the Federal Circuit's interpretation of 35 U.S.C. § 112(f) defeats the purpose of protecting the patentee's rights against infringers who deploy "equivalents thereof"—the reason Congress enacted the statute to overturn *Halliburton* in the first place. Under the framework the Federal Circuit applied, a patentee whose specification discloses its corresponding structure in engineering detail must have its expert "account for each element of the claimed structure in its equivalence analysis," Add. A, at 13 (citing

Odetics, Inc. v. Storage Tech. Corp., 185 F.3d 1259, 1264, 1269-70 (Fed. Cir. 1999)), even where the expert has identified the specific components of the disclosed structure that perform the claimed function, explained how they perform it, and opined that the omitted components play no role in performing it—as Dr. Fernald did here. That turns the statutory quid pro quo on its head: The more completely an inventor discloses the corresponding structure, the narrower the "equivalents thereof" the statute affords—recreating, for detailed disclosures, like those in the '730 Patent, the very trap Congress eliminated after *Halliburton*.

The practical consequences of the decision below are concrete and immediate. Aside from the frequency with which this question arises under the Federal Circuit's exclusive jurisdiction, the '730 Patent is also asserted against Nintendo Co., Ltd. and Nintendo of America Inc. in the United States District Court for the Western District of Washington, *Genuine Enabling Technology LLC v. Nintendo Co.*, No. C19-0351 TSZ. The district court initially stayed resolution of Nintendo's summary-judgment motion pending GET's appeal against Sony. That court has since continued the stay through this Court's resolution of the forthcoming petition for a writ of certiorari to review the decision below. *See* Add. D (Minute Order, May 19, 2026). The disposition of the forthcoming petition will thus directly bear on the course of separate, ongoing federal litigation.

2. Petitioner has only recently retained undersigned counsel—who did not represent petitioner in the district court or in the court of appeals—to evaluate the case and prepare the petition for a writ of certiorari. The litigation has spanned more than nine years, and the record new counsel must master is extensive. It includes

motions and summary judgment proceedings in this case and the related proceeding implicating the same patent in the Western District of Washington, which itself involved petitioner's prior (successful) appeal to the Federal Circuit. *See Genuine Enabling Technology LLC v. Nintendo Co.*, 29 F.4th 1365 (Fed. Cir. 2022).

The press of other matters also necessitates additional time. Aside from this case, undersigned counsel must assist in preparing for a meeting with the Office of the Solicitor General regarding *Apple Inc. v. Epic Games, Inc.*, No. 25-1311 (cert. granted June 30, 2026), a merits case this Court recently granted for October Term 2026 and in which undersigned represents the respondent, and must also prepare respondent's brief on the merits; must prepare and file an amicus brief in related matters *Tuccori v. At World Properties LLC* and *Batton v. National Association of Realtors*, Nos. 26-1483 & 26-1644 (7th Cir.), due July 21, 2026; must prepare and file a merits amicus brief in this Court shortly thereafter in *Kian v. Florida*, No. 25-6623 (cert. granted June 15, 2026), which is due August 6, 2026; and must assist his law partner, who is counsel of record for the respondents in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (cert. granted Feb. 23, 2026), in which respondents' brief on the merits is due July 27, 2026.

Given his recent retention and these other obligations, undersigned counsel needs the additional time to provide a concise, helpful petition in this complex multi-forum case.

3. The requested extension will not prejudice any party or substantially delay resolution of the case. Whether or not the extension is granted, the petition will be

considered—and, if the petition is granted, the case will be heard on the merits—during October Term 2026.

CONCLUSION

For the preceding reasons, the time to file a petition for a writ of certiorari should be extended 58 days, to and including September 18, 2026.

Respectfully submitted,

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July 10, 2026

ADDENDUM A

United States Court of Appeals for the Federal Circuit

GENUINE ENABLING TECHNOLOGY LLC,
Plaintiff-Appellant

v.

SONY GROUP CORPORATION, SONY INTERACTIVE ENTERTAINMENT LLC,
Defendants-Appellees

2024-1686

Appeal from the United States District Court for the District of Delaware in No. 1:17-cv-00135-MSG, Judge Mitchell S. Goldberg.

Decided: February 19, 2026

DEVAN V. PADMANABHAN, Padmanabhan & Dawson PLLC, Minneapolis, MN, argued for plaintiff-appellant. Also represented by MICHELLE DAWSON, ERIN DUNGAN, BRITTA LOFTUS, PAUL J. ROBBENNOLT.

SETH W. LLOYD, Morrison & Foerster LLP, Washington, DC, argued for defendants-appellees. Also represented by CLIFFORD T. BRAZEN, ADAM PRESCOTT SEITZ, Erise IP, P.A., Overland Park, KS.

Before DYK, TARANTO, and CHEN, *Circuit Judges*.

CHEN, *Circuit Judge*.

Genuine Enabling Technology LLC (GET) appeals the U.S. District Court for the District of Delaware's grant of summary judgment of noninfringement in favor of Sony Group Corporation & Sony Interactive Entertainment LLC (collectively, Sony). *Genuine Enabling Tech. LLC v. Sony Corp.*, No. 17-CV-135, 2024 WL 1255513, at *1 (D. Del. Mar. 25, 2024) (*Decision*). The district court determined that GET raised no genuine issue of material fact as to whether Sony's Accused Products—PlayStation 3 and 4 controllers and consoles—infringe claims 10, 14, 16–18, and 21–23 of U.S. Patent No. 6,219,730 ('730 patent). *Id.* GET also appeals the district court's exclusion of testimony from its expert, Dr. Fernald. *Genuine Enabling Tech. LLC v. Sony Corp.*, No. 17-CV-135, 2022 WL 17325656, at *8 (D. Del. Nov. 28, 2022) (*Daubert Order*). The key claim limitation in this dispute is a means-plus-function limitation—"encoding means for synchronizing" two input data streams—and the specification describes FIG. 4A's logic block 34, a logic design circuit containing a multitude of elements, as the corresponding structure for performing the synchronizing function. Because GET and its expert failed to account for many of the elements in block 34 in their infringement analysis, we agree with the district court that GET presented a deficient infringement case as to this limitation and we thus *affirm*.

BACKGROUND

I

The '730 patent generally relates to input devices for a computer. At the time of invention, there were several options for user-input devices for a computer including a keyboard, mouse, or pen-based input device. Additional input data could come from sources like a microphone or modem. In order to receive data from these sources, a computer

needed dedicated resources for each input device (e.g., their own port), which created problems due to limited resources. *See* '730 patent col. 1 ll. 24–29. The '730 patent discloses a solution to the limited resources problem: combining the data streams from different input devices to minimize the number of computer resources. *Id.* col. 1 ll. 47–51.

Dependent claim 10 is representative[1] and states:

> A user input apparatus operatively coupled to a computer via a communication means additionally receiving at least one input signal, comprising:
>
> > user input means for producing a user input stream;
> >
> > input means for producing the at least one input signal;
> >
> > converting means for receiving the at least one input signal and producing therefrom an input stream; and
> >
> > *encoding means for synchronizing the user input stream with the input stream and encoding the same into a combined data stream transferable by the communication means,*
> >
> > wherein the input means is an input transducer.

Id. col. 8 ll. 26–27; *id.* col. 7 l. 61 – col. 8 l. 4 (emphasis added).

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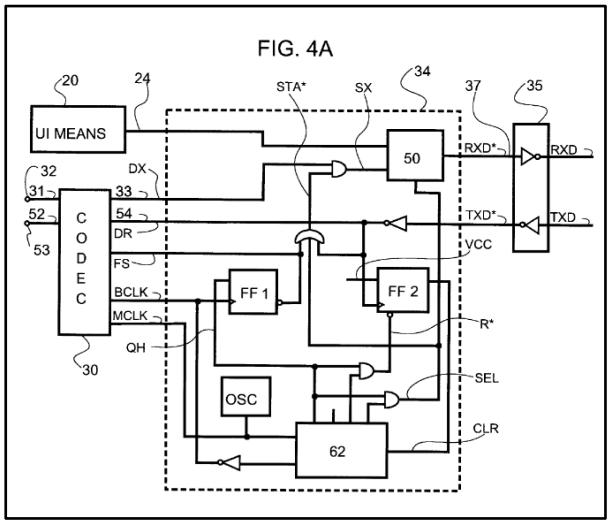
[1] Claim 10 is a dependent claim that depends from claim 1. The reproduction here incorporates the limitations of claim 1 into claim 10.

Each of claims 10, 14, 16–18, and 21–23 (Asserted Claims) includes an "encoding means"[2] limitation, emphasized above. The '730 patent specification states that the claimed structure "keeps [user input] stream 24 and input stream 33 in synchrony and encodes[3] them into [a] combined data stream 37 in accordance with the protocol of the communication means." *Id.* col. 4 ll. 12–15 (cleaned up).



Id., FIG. 4A.

The '730 patent discloses a representative embodiment of the "encoding means" (also referred to as a "framer"):

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[2] Terms used in the Asserted Claims include "encoding means," "framer," and "means for synchronizing and encoding." Both parties agree these terms refer to the same means-plus-function limitation, and the district court gave them all the same construction. *See* Appellant Br. 6–7; Appellee Br. 14 n.1; *Decision*, 2024 WL 1255513, at *1. For simplicity, we refer to all versions as the "encoding means" limitations.

[3] We focus on the synchronize function in this opinion because, as the district court noted, it "best illustrates" the issues. *See Daubert Order*, 2022 WL 17325656, at *3.

logic block 34 in FIG. 4A as depicted above. *See id.* col. 5 ll. 4–6. Several components of logic block 34 are depicted as boxes including data selector 50, clock generator 62, and oscillator OSC. *Id.* col. 5 ll. 47–50, 59–62.

The specification includes a detailed description of block 34's multi-step synchronization process. *See generally id.* col. 5 ll. 35–64. According to the specification, clock generator 62 divides the signal from oscillator OSC to create bit-rate clock signal BCLK. Clock generator 62 feeds signal BCLK into codec 30, which converts input signal 31 into input stream 33. Input stream 33 is further converted into digital input stream SX. Clock generator 62 also forms control signal SEL, used by data selector 50. Using control signal SEL, data selector 50 "samples" bits from (i.e., selects between) user input stream 24 and input stream SX, storing the data in a single output signal RXD*—thereby synchronizing the two data streams.

II

On February 8, 2017, GET filed a complaint against Sony, alleging that Sony directly and indirectly infringes the Asserted Claims via the Accused Products. For the "encoding means" limitations, GET alleged that the Bluetooth module within the Accused Products synchronized user input from controller buttons with input from controller sensors (e.g., accelerometers).

In a March 9, 2020 *Markman* order, the district court construed the "encoding means" limitations as means-plus-function limitations. *Genuine Enabling Tech., LLC v. Sony Corp.*, No. CV 17-135, 2020 WL 1140910, at *14, *20–21 (D. Del. Mar. 9, 2020) (*Markman Order*). The court did so because the claim terms "encoding means" and "framer" failed to sufficiently denote structure to a skilled artisan, and thus 35 U.S.C. § 112(f) applied. *Id.* The court construed the "encoding means" limitations' function as "[s]ynchronizing the user input stream with the input stream and encoding the user input stream and the input stream

into a combined data stream." And it construed the corresponding structure as "[t]he logic design at block 34 in Figure 4A and equivalents thereof." *Id.* No party ever suggested that the corresponding structure should be only some portion of block 34.

On the final day of fact discovery, January 22, 2021, GET served subpoenas on three of Sony's manufacturing partners, seeking discovery on the internal structure of the Bluetooth module in the Accused Products. *See* J.A. 1459; *see also* J.A. 43. The district court denied GET's request to extend the close of fact discovery, *see* J.A. 3212, and thus GET and Dr. Fernald never analyzed a schematic of the Bluetooth module.

At the end of discovery, the parties filed competing *Daubert* motions, and the district court excluded Dr. Fernald's "ultimate conclusion that Block 34 of Figure 4A and the accused Bluetooth modules meet the function-way-result test for structural equivalency." *Daubert Order*, 2022 WL 17325656, at *8. Omitting the other elements in logic block 34, Dr. Fernald's expert report identified only the data selector, codec,[4] and bit-rate clock as the elements involved in performing the claimed function.[5] *Id.* at *3 (citing J.A. 1605 at ¶¶ 125–26 & 126 n.39). However, at the *Daubert* hearing, GET argued that Dr. Fernald's position was that the "way" the "encoding means" structure

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[4] While codec 30 is not within logic block 34, the specification and testimony from Dr. Fernald demonstrate that logic block 34 synchronizes input stream 33 to the bit-rate clock by "feeding [bit-rate clock signal] BCLK to the codec, causing its output stream to clock on rising edges of BCLK." J.A. 1605 ¶ 126 n.39; *see also* '730 patent col. 5 ll. 10–11, 33–35.

[5] Dr. Fernald's expert report identified no additional elements in logic block 34 for the "encoding" portion of the claimed function. *See* J.A. 1591 ¶ 102; J.A. 1598–99 ¶ 114.

synchronized the two streams was by "synchroniz[ing] each of the bits of the input stream and user input stream . . . to the rising edge of the [bit-rate] clock," effectively dropping each component in block 34 except for the BCLK signal. *Id.* at *4. This narrow focus on just the bit-rate clock signal BCLK from block 34 enabled Dr. Fernald to argue that the claimed and accused structures were equivalent without ever viewing a Bluetooth module schematic. *See id.* at *5.

The court stated that while it was permissible for the "way" a structure operates to be framed at a high level, the proposition needed factual support. *Id.* at *7. The court faulted Dr. Fernald's position as lacking discussion about what level of generality was appropriate to assess the "way" block 34 synchronized the data, or whether the elements he had previously identified, such as the data selector and codec, were sufficiently insubstantial as to be omitted from the "way." *Id.* at *8. Because Dr. Fernald's testimony that the claimed and accused structures were equivalent was unsupported by his limited analysis of solely the bit-rate clocks, the district court excluded his "ultimate conclusion." *Id.*

GET filed a motion for reargument of the *Daubert* motion. *Genuine Enabling Tech. LLC v. Sony Corp.*, No. 17-CV-135, 2023 WL 4686024, at *1 (D. Del. July 20, 2023) (*Reargument Order*). In denying the motion, the court found that Dr. Fernald still failed to explain why the omitted parts of block 34 from his "way" analysis were "insubstantial" or why his simplified description of the "way" matched the specificity of the '730 patent's disclosure. *Id.* at *6.

A summary judgment motion followed. And, in a March 25, 2024 opinion, the district court granted Sony summary judgment of noninfringement. *Decision*, 2024 WL 1255513, at *1. The court determined that "the same principles that warranted the partial exclusion of Dr. Fernald's equivalency analysis compel the conclusion that

[GET] lacks sufficient evidence to prove that block 34 and the accused Bluetooth module synchronize signals in substantially the same 'way.'" *Id.* at *5.

GET timely appealed. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

STANDARD OF REVIEW

This court reviews decisions on motion for summary judgment under the law of the regional circuit, which in the Third Circuit is de novo. *MobileMedia Ideas LLC v. Apple Inc.*, 780 F.3d 1159, 1164 (Fed. Cir. 2015) (citing *Gonzalez v. Sec'y of Dep't of Homeland Sec.*, 678 F.3d 254, 257 (3d Cir. 2012)). "[I]f the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law," summary judgment is proper. *Traxcell Techs., LLC v. Sprint Commc'ns Co.*, 15 F.4th 1121, 1127 (Fed. Cir. 2021) (quoting FED. R. CIV. P. 56(a)).

The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] . . . which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). On an issue where the nonmoving party bears the burden of proof, "[a] movant may prevail by pointing out the absence of evidence to support the nonmoving party's case." *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1389 (Fed. Cir. 1992) (citing *Celotex*, 477 U.S. at 325).

Though we "view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor," the nonmoving party cannot defeat summary judgment "with conclusory allegations, unsupported assertions, or only a scintilla of evidence." *Traxcell Techs.*, 15 F.4th at 1127–28 (internal citations removed).

DISCUSSION

I

GET appeals the district court's determination that it failed to make a showing that the claimed and accused structures are structurally equivalent. The parties agree that "encoding means" is a means-plus-function claim limitation.

"A means-plus-function limitation recites a function to be performed rather than definite structure or materials for performing that function. Such a limitation must be construed to cover the corresponding structure . . . described in the specification and equivalents thereof." *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 324 F.3d 1308, 1318 (Fed. Cir. 2003) (internal citations removed). "The duty of a patentee to clearly link or associate structure with the claimed function is the quid pro quo for allowing the patentee to express the claim in terms of function under section [112(f)]." *Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1211 (Fed. Cir. 2003).

"Literal infringement of a [means-plus-function] limitation requires that the relevant structure in the accused device perform the identical function recited in the claim and be identical or equivalent to the corresponding structure in the specification." *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed. Cir. 1999). "Once the relevant structure in the accused device has been identified, a party may prove it is equivalent to the disclosed structure by showing that the two perform the identical function in substantially the same way, with substantially the same result." *Traxcell Techs.*, 15 F.4th at 1128 (internal citation removed). This is called the "function-way-result test" for structural equivalence of a means-plus-function limitation. *Id.*

Determination of structural equivalence does not require a component-by-component analysis. *Odetics*, 185

F.3d at 1267–68. Instead, "[t]he appropriate degree of specificity is provided by the statute itself; the *relevant structure* is that which 'corresponds' to the claimed function. . . . Further deconstruction or parsing is incorrect." *Id.* at 1268 (emphasis added).

GET argues Dr. Fernald's testimony about the "way" the structures in the '730 patent and the Bluetooth modules of the Accused Products synchronize data streams demonstrates structural equivalence. Appellant Br. 56–61. GET attempts to recast Dr. Fernald's analysis of logic block 34, arguing that, though the '730 patent contains an extensive disclosure relating to FIG. 4A, very little relates to synchronization.

GET's infringement analysis failed to meet its burden in describing the "way" the "encoding means" structure in the '730 patent performs its function. The district court identified logic block 34 as the structure for the '730 patent's "encoding means," a decision which GET did not dispute below and does not attempt to relitigate here. *See generally* Appellant Br. As discussed above, block 34 contains many different elements, but GET and Dr. Fernald's analysis ignored most of those elements without any substantive explanation for why that was appropriate. Moreover, Dr. Fernald provided inconsistent testimony as to which subset of elements matter to the structural equivalence analysis. GET's post-hoc attorney argument cannot fill these gaps in Dr. Fernald's analysis.

Dr. Fernald's expert report originally described the "way" logic block 34 performs the function of synchronization at a fairly detailed level. He highlighted portions of the '730 patent's specification to explain that (1) the codec uses BCLK to generate the input stream and (2) the data selector "samples" both the user-input stream and input stream on the rising edge of BCLK to create the synchronized output. *See* J.A. 1605 ¶ 126 n.39 (citing '730 patent col. 5 ll. 33–35); *id.* ¶ 125 (citing '730 patent col. 5 ll. 47–

50). He reiterated in his declaration attached to GET's motion for reargument that the data selector and codec "play roles in the synchronization of the user input stream and the input stream as described in the '730 Patent." J.A. 1806–07 ¶ 9.

However, in the *Daubert* hearing, GET pared down Dr. Fernald's description of the "way," describing the role of the bit-rate clock and nothing else. *See Daubert Order*, 2022 WL 17325656, at *4. In his declaration attached to GET's motion for reargument, Dr. Fernald also reasserted his new position that the "way" block 34 synchronized the two data streams is by "synchronizing both to a common bit-rate clock." *Decision*, 2024 WL 1255513, at *3.

Despite these shifting positions, Dr. Fernald offers no meaningful explanation of why the bit-rate clock is the only part of logic block 34 that matters. GET does not argue now, nor did it attempt to argue before the district court, that the other elements of logic block 34 are, e.g., devoted to only the encoding function and therefore may be ignored for the purposes of synchronization. Thus, the district court found that Dr. Fernald was deficient in his explanation of why he had considerably curbed his analysis of logic block 34 to just one of its elements. *See Decision*, 2024 WL 1255513, at *3. We agree.

In *Traxcell Technologies*, we held that a patent owner had failed to meet its burden to show structural equivalence of a means-plus-function limitation when its expert "neglected to address a significant fraction" of a "'very detailed' algorithm" identified in the patent specification as the corresponding structure. *Traxcell Techs.*, 15 F.4th at 1129. In doing so, the expert improperly "focus[ed] on function and results but elid[ed] the way those results are achieved." *Id.* We upheld the district court's determination that the patent owner did not "provide enough evidence for a reasonable jury to conclude that the accused structure performs the claimed function in 'substantially

the same way' as the disclosed structure." *Id*. (internal citation removed). We for that reason affirmed summary judgment of no infringement.

Here, we have a similarly detailed circuit in logic block 34, containing various signal paths and elements analogous to the algorithm in *Traxcell Technologies*. *See id*. Yet, Dr. Fernald's analysis of the "way" logic block 34 synchronizes the two streams relies solely on the bit-rate clock. Like the expert in *Traxcell Technologies*, Dr. Fernald has "neglected to address a significant fraction" of logic block 34. 15 F.4th at 1129. Moreover, Dr. Fernald has suggested at various points in GET's filings that the data selector and codec "play roles" in the synchronization process. *See*, *e.g.*, J.A. 1806–07 ¶ 9. Without further explanation of why, at least, these two elements of the structure may be ignored, GET fails to present enough evidence for a reasonable jury to conclude that the accused structure and logic block 34 are structural equivalents.

Our decision in *Dawn Equipment Co. v. Kentucky Farms Inc.*, 140 F.3d 1009 (Fed. Cir. 1998) also supports the district court's analysis. We note that though *Dawn* is a doctrine of equivalents case, the "'way' and 'result' prongs are the same" for both literal infringement of a means-plus-function and doctrine of equivalents. *Kemco Sales, Inc. v. Control Papers Co.*, 208 F.3d 1352, 1364 (Fed. Cir. 2000). In *Dawn*, the structure of the means-plus-function limitation claim was construed as "the rotatable shaft 52, the pin 54, and the slot 72" depicted in FIGs. 1 and 2 of the asserted patent, and the accused structure consisted of a movable pin and holes to affix the pin. 140 F.3d at 1015; *id.* at 1013–14.

We remarked that, though the patent owner "presented substantial expert testimony on infringement, the experts, in testifying with regard to these two mechanisms, merely compared the pins in the two mechanisms" and made no reference to the rotatable shaft or the slot. *Id.* at

1017. We concluded that "[m]ere comparison of the pins [was] insufficient to establish that the devices operate in substantially the same way," because the "relevant structure disclosed in the [asserted patent] included at least the rotatable shaft, pin and slot—not merely a pin." *Id.*

Dr. Fernald's testimony regarding the bit-rate clock suffers from a similar issue. Logic block 34, the relevant structure, consists of several elements—some identified by GET as part of *how* block 34 synchronizes the two streams—that are absent from his description of the "way" the structure functions. *See* J.A. 1806–07 ¶ 9. Like the expert's incomplete, pin-only analysis in *Dawn*, merely comparing the bit-rate clock of the "encoding means" structure, as GET attempts to do here, is insufficient to demonstrate that the claimed and accused *structures* are equivalent. *See Dawn*, 140 F.3d at 1017.

GET argues that the district court incorrectly required Dr. Fernald to perform the type of component-by-component analysis which this Court has deemed unnecessary to demonstrate structural equivalence. *See* Appellant Br. 52–56 (citing *Odetics*, 185 F.3d at 1268). This argument is unavailing.

First, in its denial of the reargument motion, the district court explicitly noted that it did *not* conduct a component-by-component analysis; instead, the district court faulted GET, like we do today, for its lack of explanation regarding its omissions of a significant fraction of the block 34 structure. *See Reargument Order*, 2023 WL 4686024, at *8.

Second, though we articulated a component-by-component analysis was unnecessary in *Odetics*, the patentee must still account for each element of the claimed structure in its equivalence analysis. *See Odetics*, 185 F.3d at 1264, 1269–70 (discussing the patentee's "theory of equivalence" which focused on how the claimed structure's rotation of "the rod, gear, and rotary loading and loading mechanisms"

compared to the rotation in the accused "bin array" structure). As *Odetics* and our caselaw demonstrate, each element of the identified structure in the specification does not need its own equivalence mapping to a respective element in the accused product. *See, e.g.*, *Caterpillar Inc. v. Deere & Co.*, 224 F.3d 1374, 1380 (Fed. Cir. 2000) (holding the district court erred when it found no structural equivalence because the accused products "lacked a front axle, a spherical bearing, and angled struts" but had not compared "the overall structure"). But where the patentee elects to focus its equivalence analysis on something less than the whole structure that is disclosed in the specification, the patentee has an obligation to meaningfully explain why it is permissible to discard the other elements. GET failed to do so here.

Though "[o]ur case law allows for greater weight to be given to individual components that play a central role in the identified structure," *Solomon Techs., Inc. v. Int'l Trade Comm'n*, 524 F.3d 1310, 1317 (Fed. Cir. 2008) (citing *Toro Co. v. Deere & Co.*, 355 F.3d 1313, 1324 (Fed. Cir. 2004)), this does not excuse the patentee's obligation to account for all the elements of that identified structure and make the case for why certain elements are more central to the infringement analysis than others. In this case, GET never supplied any evidence for why many elements of its identified structure should be treated as having little to no weight in the infringement analysis.

II

While we base our decision on GET's incomplete analysis of the identified structure in the '730 patent, we note that GET and Dr. Fernald's analysis of the Bluetooth modules in the Accused Products was even more sparse. *See Decision*, 2024 WL 1255513, at *5 (stating that GET offered "essentially no information regarding how the accused Bluetooth module operates" other than the involvement of a bit-rate clock). Dr. Fernald first inferred, based on

knowledge of Bluetooth protocol, that the Accused Products' Bluetooth module synchronizes input streams from the Accused Products using a bit-clock. *See* J.A. 1606 ¶ 129. Dr. Fernald then posited that structural equivalence in logic design circuits "relies on a comparison *of the operation performed* . . . rather than a gate-by-gate and connection-by-connection comparison." *Daubert Order*, 2022 WL 17325656, at *5 (emphasis added). Effectively he argues that because both structures synchronize streams to a bit-rate clock, and all logic designs performing this operation are structurally equivalent, the structure in the Accused Products, whatever they may be, must be equivalent to the patent's identified structure. Driving this very broad infringement theory was GET's failure to review schematics of the Accused Products' Bluetooth module, causing the Accused Products to be left as something of a black box.

We detect no error in the district court's rejection of this testimony. First, we agree with the district court that this testimony is conclusory. *See Daubert Order*, 2022 WL 17325656, at *5–6. GET and Dr. Fernald use the theory to bridge the gap between the "black box" accused structure and logic block 34, but a party cannot defeat summary judgment "with conclusory allegations, unsupported assertions, or only a scintilla of evidence." *Traxcell Techs.*, 15 F.4th at 1128 (internal citations removed). Second, as the district court noted, the suggestion that an, essentially, infinite number of "ways" to accomplish a function are equivalent collapses the function-way-result test into a function-result test—an outcome that would clash with our precedent. *See Reargument Order*, 2023 WL 4686024, at *8. And finally, this argument is inconsistent with the patent's specification, which reveals a detailed logic circuit for performing the claimed function, and its prosecution history, in which the inventor stressed the claimed invention's synchronization scheme was "unique and novel." *See* '730 patent FIG. 4A; *Markman Order*, 2020 WL 1140910, at *13.

CONCLUSION

We have reviewed GET's remaining arguments[6] and find them unpersuasive. For the foregoing reasons, we *affirm* the district court's summary judgment grant.

AFFIRMED

[6] GET also appeals the district court's exclusion of Dr. Fernald's ultimate conclusion. *See* Appellant Br. 61. Because the "same principles" which led to the district court's exclusion of Dr. Fernald's conclusion also "compel[led]" the district court to grant summary judgment, we need not separately address this argument. *See Decision*, 2024 WL 1255513, at *5.

ADDENDUM B

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

GENUINE ENABLING TECHNOLOGY LLC,
Plaintiff-Appellant

v.

SONY GROUP CORPORATION, SONY INTERACTIVE ENTERTAINMENT LLC,
Defendants-Appellees

2024-1686

Appeal from the United States District Court for the District of Delaware in No. 1:17-cv-00135-MSG, Judge Mitchell S. Goldberg.

ON PETITION FOR PANEL REHEARING AND REHEARING EN BANC

Before MOORE, *Chief Judge*, LOURIE, DYK, PROST, REYNA, TARANTO, CHEN, HUGHES, and STOLL, *Circuit Judges*.[1]

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[1] Circuit Judge Newman, Circuit Judge Cunningham, and Circuit Judge Stark did not participate.

PER CURIAM.

O R D E R

Genuine Enabling Technology LLC filed a combined petition for panel rehearing and rehearing en banc. The petition was referred to the panel that heard the appeal, and thereafter the petition was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

FOR THE COURT

April 23, 2026
Date

Jarrett B. Perlow
Clerk of Court

ADDENDUM C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GENUINE ENABLING TECHNOLOGY LLC, ***Plaintiff,*** ***v.*** **SONY CORPORATION et al.,** ***Defendants.***	**Civil Action** **No. 17-cv-135**

MEMORANDUM OPINION

GOLDBERG, J.[1] **March 25, 2024**

In this patent infringement dispute, Plaintiff Genuine Enabling Technology LLC ("Genuine Enabling") asserts that video game hardware sold by Defendants Sony Corporation and Sony Interactive Entertainment LLC (collectively "Sony") infringes U.S. Patent No. 6,219,730 (the '730 patent). A more fulsome recitation of the facts is set forth in my November 28, 2022 Opinion, wherein I addressed the parties' motions under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

Sony has now moved for summary judgment of noninfringement. Sony argues that Genuine Enabling lacks sufficient evidence to establish that a certain component of the accused controllers (a Bluetooth module) is structurally equivalent to a logic diagram disclosed in Genuine Enabling's '730 patent. For the reasons set out below, Sony's motion will be granted.

[1] Pursuant to 28 U.S.C. § 292(b), I have been designated to serve as a visiting judge for the District of Delaware to handle this matter and other District of Delaware cases.

I. FACTUAL AND PROCEDURAL BACKGROUND

The material facts, which are essentially undisputed, are presented below in the light most favorable to Genuine Enabling as the non-moving party.

A. The '730 Patent

The '730 patent claims an apparatus for sending multiple streams of information to a computer over a single communication link. The patent gives the example of a user-input device—such as a computer mouse—that can also receive speech input. ('730 patent, cols. 1-2.) By sending both voice and button presses over a single communication link instead of two, the invention "utilize[es] the computer resources efficiently." (Id.)

Genuine Enabling accuses Sony's products of infringing claims 10, 14, 16-18, and 21-23 of the '730 patent. Claim 10 is illustrative of these claims and reads, with independent claim 1 inserted:

> A user input apparatus operatively coupled to a computer via a communication means additionally receiving at least one input signal, comprising:
>
> user input means for producing a user input stream;
>
> input means for producing the [sic] at least one input signal;
>
> converting means for receiving the [sic] at least one input signal and producing therefrom an input stream; and
>
> encoding means for synchronizing the user input stream with the input stream and encoding the same into a combined data stream transferable by the communication means[;]
>
> wherein the input means is an input transducer.

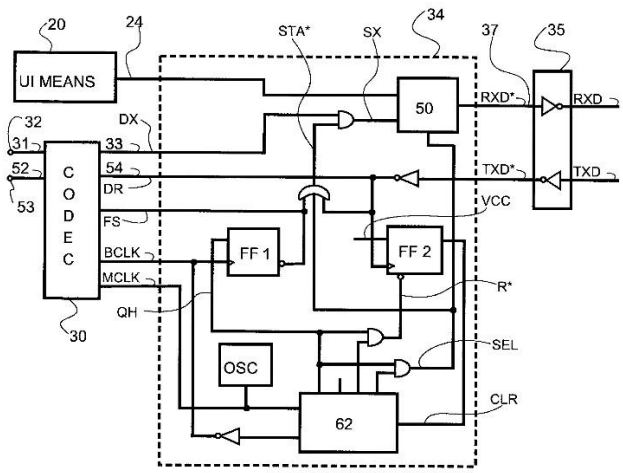
('730 patent, claim 10 (emphasis added).)

As noted above, the two streams of information are referred to as the "user input stream" and the "input stream." Using the example from the patent of a mouse with voice input, the "user input stream" could be button presses on the mouse and the "input stream" could be sound data from a microphone. (See '730 patent, Fig. 1B.) The "encoding means" synchronizes the two data

streams, combines them, and sends the combined data stream to the computer via the "communication means."

Each of the asserted claims requires the claimed invention to include an "encoding means," "means for synchronizing and encoding," or a "framer." Following a Markman hearing, I construed these terms synonymously as "means-plus-function terms" under 35 U.S.C. § 112(f) (codified as § 112, ¶ 6 at the time the '730 patent issued). A means-plus-function term consists of a "function" and a set of possible "structures" for performing that function, the latter of which are taken from the patent's specification. See § 112(f); Odetics, Inc. v. Storage Tech. Corp., 185 F.3d 1259, 1266-67 (Fed. Cir. 1999). I construed the term "framer" and its synonyms to have a function of "[s]ynchronizing the user input stream with the input stream and encoding the user input stream and the input stream into a combined data stream" and a structure of "[t]he logic design at block 34 in Figure 4A and equivalents thereof." (Claim Construction Opinion, ECF No. 112, at 27.)

Figure 4A depicts the following:



('730 patent, Fig. 4A.) "Block 34" of this figure, which corresponds to the "framer," is denoted by the dashed line. Other components of this figure that have been the subject of expert testimony are block 50, which is a "data selector"; block 62, a "clock generator"; and block 30 (not part of the framer), which is a "CODEC." An accompanying text in the patent's specification describes how

block 34 uses these components to synchronize the user input stream with the input stream to create a combined data stream. ('730 patent, col. 5.)

B. The Accused Product

The accused products are video game consoles and controllers. Genuine Enabling asserts that Sony uses the patented technology to send multiple streams of information—such as button presses, motion sensor data, and voice—to the game console over a single wireless communication link.

According to Genuine Enabling, Sony's accused products contain a "user input stream" that consists of button presses and various "input streams" that include data from motion sensors (accelerometers) and a microphone. Genuine Enabling asserts that a Bluetooth module in the accused video game controllers acts as a "framer": it synchronizes the button data stream (i.e., the "user input stream") with data from the motion sensors or microphone (i.e., the "input stream") and combines these into a single data stream that may be transmitted to the video game console over a wireless communication link. (See Genuine Enabling's Response Brief at 8-10.)

C. Dr. Fernald's Opinion and the Court's Subsequent Daubert Ruling

To support its theory that the accused Bluetooth module acts as a "framer," Genuine Enabling produced a report from its engineering expert Dr. Kenneth Fernald. Dr. Fernald asserts that certain steps in the Bluetooth protocol (called "whitening" and "CRC generation") require data that has been synchronized to a "bit-rate clock." Dr. Fernald further reasons that the data from button presses and the accelerometer must "be synchronized" to a common bit-rate clock for these steps to work correctly. Thus, Dr. Fernald concludes that the accused Bluetooth module, like block 34 of Figure 4A, synchronizes data streams to a common bit-rate clock. However, Dr. Fernald's report does not describe how the Bluetooth module causes the button presses and accelerometer

data to become synchronized to a common bit-rate clock. The report only explains that such synchronization must occur for the product to use Bluetooth as it does. (Fernald Report ¶¶ 128-31.)

On October 11, 2021, Sony moved to exclude Dr. Fernald's opinion pursuant to Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993), based on Dr. Fernald's alleged failure to analyze whether the accused Bluetooth module performed synchronization in substantially the same "way" as block 34 of Figure 4A, which is required under the "function-way-result test" for structural equivalency. See Traxcell Tech. LLC v. Sprint Comms. Co., 15 F.4th 1121, 1128 (Fed. Cir. 2021). I granted Sony's motion in part, agreeing with Sony that Dr. Fernald's analysis was incomplete and excluding Dr. Fernald's ultimate conclusion that the accused Bluetooth module was equivalent to block 34 of Figure 4A. However, I did not preclude Dr. Fernald from testifying that the accused Bluetooth module does in fact synchronize certain data streams to a common bit-rate clock. (Daubert Opinion, ECF No. 303, at 15.)

On December 12, 2022, Genuine Enabling moved to reargue Sony's Daubert motion. Genuine Enabling attached a declaration from Dr. Fernald stating that the "way" block 34 of Figure 4A synchronizes the two data streams is by synchronizing both to a common bit-rate clock, and the "way" the accused Bluetooth module synchronizes data streams is also by synchronizing them to a common bit-rate clock. In other words, the two structures operate in the same "way." Based on that clarification, Genuine Enabling asked that Dr. Fernald be permitted to testify to his ultimate conclusion that block 34 of Figure 4A and the accused Bluetooth module are equivalent. I denied Genuine Enabling's reargument motion, determining that Dr. Fernald had provided no information about how the accused Bluetooth module caused the two data streams to become synchronized to a common bit-rate clock, and it was therefore impossible to tell whether any conceivable variation from block 34 was "substantial." Notably, block 34 of Figure 4A included more details than simply

the presence of a bit-rate clock (e.g., a data selector, a clock generator, and a signal sent to a CO-DEC), and Dr. Fernald had performed no analysis of whether those details or the corresponding unknown details in the accused Bluetooth module should be viewed as substantial from the perspective of one of ordinary skill in the art. (Reargument Opinion, ECF No. 316, at 10-12.)

D. Sony's Summary Judgment Motion and Mr. Nguyen's Declaration

On September 11, 2023, Sony filed the instant motion for summary judgment. Sony asserts that Genuine Enabling cannot prove that the accused Bluetooth modules are equivalent to block 34 of Figure 4A and, for that reason, Genuine Enabling lacks evidence that any accused product contains the "framer" limitation or its synonyms.

In response, Genuine Enabling attached a declaration from the inventor of the '730 patent, Nghi Nho Nguyen. There, Mr. Nguyen provides additional grounds for inferring that the accused Bluetooth modules must synchronize data streams to a common bit-rate clock. For example, Mr. Nguyen observes that data is fed into the Bluetooth modules using an interface called "UART," which will not work unless the data is synchronized to a bit-rate clock. (Nguyen Dec. ¶ 23.)

Mr. Nguyen also opines that the accused Bluetooth module is equivalent to block 34 of Figure 4A. In Mr. Nguyen's view, this is true because both devices synchronize data streams to a common bit-rate clock, and therefore function in the same way. (Nguyen Dec. ¶ 22.) Mr. Nguyen further clarifies that there are other ways of synchronizing two data streams that are different from synchronizing to a common bit-rate clock, such as "by detecting edges in the other data stream and synchronizing the one data stream to those edges." (Nguyen Dec. ¶ 41.)

Sony objects to consideration of Mr. Nguyen's declaration on the ground that it contains undisclosed expert opinion testimony, as confirmed by Mr. Nguyen's statement in deposition that he had not tested the accused product and relied on his lawyers' investigation. (Reply at 2-3.)

II. LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is "genuine" if there is evidence from which a reasonable factfinder could return a verdict for the non-moving party, and a dispute is "material" if it might affect the outcome of the case under governing law. Kaucher v. County of Bucks, 455 F.3d 418, 423 (3d Cir. 2006) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). The court must view the evidence in the light most favorable to the non-moving party. Galena v. Leone, 638 F.3d 186, 196 (3d Cir. 2011). However, "unsupported assertions, conclusory allegations or mere suspicions" are insufficient to overcome a motion for summary judgment. Schaar v. Lehigh Valley Health Servs., Inc., 732 F. Supp. 2d 490, 493 (E.D. Pa. 2010) (citing Williams v. Borough of W. Chester, Pa., 891 F.2d 458, 461 (3d Cir. 1989)).

The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the moving party's initial Celotex burden can be met by showing that the non-moving party has "fail[ed] to make a showing sufficient to establish the existence of an element essential to that party's case." Id. at 322.

After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party fails to rebut the moving party's claim by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations …, admissions, interrogatory answers, or other materials" that show a

genuine issue of material fact or by "showing that the materials cited do not establish the absence or presence of a genuine dispute." Fed. R. Civ. P. 56(c)(1)(A).

III. DISCUSSION

Sony's primary argument is that Genuine Enabling cannot prove that any accused product satisfies the "framer" limitation (and the synonymous limitations "encoding means" and "means for synchronizing and encoding"), found in every asserted claim.

As described above, these are means-plus-function terms with a function of "[s]ynchronizing the user input stream with the input stream and encoding the user input stream and the input stream into a combined data stream" and a structure of "[t]he logic design at block 34 in Figure 4A and equivalents thereof." (Claim Construction Opinion, ECF No. 112, at 27.) In analyzing infringement, a means-plus-function term encompasses any structure that performs the same function recited in the claim and that is the same as or equivalent to a structure disclosed in the specification. Odetics, 185 F.3d at 1267. "The word 'equivalent' in section 112 invokes the familiar concept of an insubstantial change which adds nothing of significance." Valmont Indus., Inc. v. Reinke Mfg. Co., 983 F.2d 1039, 1043 (Fed. Cir. 1993). "Structural equivalence under [§ 112(f)] is met only if the differences are insubstantial …; that is, if the assertedly equivalent structure performs the claimed function in substantially the same way to achieve substantially the same result as the corresponding structure described in the specification." Odetics, 185 F.3d at 1267. This is called the "function-way-result test" for structural equivalence. Traxcell, 15 F.4th at 1128.

In applying the function-way-result test, "[t]he appropriate degree of specificity is provided by the statute itself; the relevant structure is that which 'corresponds' to the claimed function. … Further deconstruction or parsing is incorrect." Odetics, 185 F.3d at 1268. Each "individual component[]" of a disclosed structure is not in itself a "claim limitation[]" required to be present

(literally or as an equivalent) in the accused device. Id. "Rather, the claim limitation is the overall structure corresponding to the claimed function." Id.

By limiting the scope of a means-plus-function term to disclosed structures and their equivalents, § 112(f) "prevents an overly broad claim construction by requiring reference to the specification, and at the same time precludes an overly narrow construction that would restrict coverage solely to those means expressly disclosed in the specification." Symbol Techs., Inc. v. Opticon, Inc., 935 F.2d 1569, 1575 (Fed. Cir. 1991). A patentee does not obtain ownership of "every conceivable way or means to perform the [claimed] function"—just those ways that are substantially the same as the way the patentee invented and disclosed. Mas-Hamilton Grp. v. LaGard, Inc., 156 F.3d 1206, 1214 (Fed. Cir. 1998). But by the same token, the patentee is not limited to structures that replicate every detail disclosed in the specification—so long as the details that vary are insubstantial. Odetics, 185 F.3d at 1267.

Sony argues that summary judgment is appropriate because Genuine Enabling cannot prove that the Bluetooth module is equivalent to block 34 of Figure 4A under the function-way-result test. There is no dispute that Genuine Enabling could prove that the accused Bluetooth module performs the same "function" as block 34 of Figure 4A: that is, synchronizing and combining the two data streams. It is also not disputed that Genuine Enabling could prove that the Bluetooth module achieves substantially the same "result" as block 34 of Figure 4A: a combined data stream. Rather, Sony's position focuses on Genuine Enabling's inability to prove that the accused Bluetooth module synchronizes the two data streams in substantially the same "way" as block 34 of Figure 4A. See Odetics, 185 F.3d at 1267. Sony presses that absent Dr. Fernald's now-excluded opinion that the two devices do operate in substantially the same way, Genuine Enabling cannot

meet its burden at trial to prove structural equivalence. See AquaTex Indus., Inc. v. Techniche Sols., 479 F.3d 1320, 1329 (Fed. Cir. 2007) (proof of equivalence requires expert testimony).

Genuine Enabling responds that it will prove that the accused Bluetooth module and block 34 of Figure 4A synchronize data streams in the same "way" because both synchronize data streams to a common bit-rate clock as opposed to by some other method, such as synchronizing the data streams directly to each other without a clock. Sony does not dispute the factual accuracy of this assertion, and, indeed, my prior Daubert ruling did not preclude Dr. Fernald from offering this testimony. Sony also does not take issue with the assertion in Dr. Fernald's declaration (repeated in Mr. Nguyen's declaration) that synchronizing to a bit-rate clock is not the only way to synchronize signals. Noting all of the above, Sony's contention is that proving the shared feature of a bit-rate clock is insufficient as a matter of law to show that the "way" in which these devices synchronize data streams is substantially the same. Specifically, Sony presses that each device consists of more than just a bit-rate clock, and proving only that the bit-rate clock is similar sheds no light on whether any other differences that might exist are "substantial."

While the legal principles underlying the present summary judgment motion substantially overlap with issues addressed in my prior Daubert ruling, the standard for evaluating summary judgment is different than the standard for evaluating evidentiary motions. Thus, my prior Daubert ruling is not necessarily dispositive of the outcome here. See Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1069-70 (3d Cir. 1990) (describing the difference between an evidentiary motion and a motion for summary judgment, the latter of which allows "the nonmovant [to] marshal his or her evidence to show that there is a genuine issue of material fact"). Nevertheless, I agree with Sony that the same principles that warranted the partial exclusion of Dr. Fernald's equivalency

analysis compel the conclusion that Genuine Enabling lacks sufficient evidence to prove that block 34 and the accused Bluetooth module synchronize signals in substantially the same "way."

Genuine Enabling proposes to prove equivalence by framing the "way" the claimed and accused structures operate at such a high level of generality that it is impossible to tell how they are similar or different. In denying Genuine Enabling's motion to reconsider my Daubert ruling, I used the analogy of a paperclip and a paperweight, which are similar in that they both apply pressure to paper but different in that one uses bent metal while the other uses gravity. (ECF No. 316 at 10.) To say that the "way" both devices work is by applying pressure to paper just begs the question of whether the omitted details (bent metal and gravity) are insubstantial. Here, analogously, Genuine Enabling argues that block 34 and the Bluetooth module are equivalent because both synchronize data streams using a bit-rate clock. But Genuine Enabling does not explain why a person of ordinary skill in the art would view other details about the two structures as less significant. In particular, Genuine Enabling has pointed to essentially no information regarding how the accused Bluetooth module operates other than that a bit-rate clock is involved somehow. Missing is any explanation of how the Bluetooth module differs from block 34 or why a person of ordinary skill in the art would view these unknown differences as "insubstantial." Valmont, 983 F.2d at 1043. A factfinder would be left with no basis to draw the inference that block 34 and the accused Bluetooth module synchronize data streams in substantially the same way.

The Federal Circuit's recent decision in VLSI Tech. LLC v. Intel Corp., 87 F.4th 1332 (Fed. Cir. 2023), supports this conclusion. While VLSI Tech. rested in part on policy concerns with the "doctrine of equivalents" (e.g., public notice) that do not apply to a literal infringement case such as this one, its discussion of the "way" prong of the function-way-result test is nevertheless instructive. See Kemco Sales, Inc. v. Control Papers Co., 208 F.3d 1352, 1364 (Fed. Cir. 2000)

("[T]he 'way' and 'result' prongs are the same under both the [§ 112(f)] and doctrine of equivalents tests … ."). In VLSI Tech., the accused product differed from the claim elements in how it performed a request to change clock frequency: in the claim, "the request function [was] performed by one component ... and the receipt and output functions [were] performed by a distinct component." In the accused product, the request and receipt "[were] performed not by distinct physical components but by different software 'modules'" within the same physical component. 87 F.4th at 1344. The plaintiff's expert characterized this difference as a "design choice" but did not otherwise explain why it should be viewed as "insubstantial." Id. In granting judgment as a matter of law to the defendant, the Federal Circuit concluded that such testimony was insufficient, as the label "design choice" "does not indicate whether, or begin to explain why, the options in the choice are substantially different or substantially the same: In both circumstances, the choice between the options is a design choice." Id.

Here, the evidence that the differences between the claimed and accused structures is insubstantial is even less specific. In VLSI Tech., the plaintiff's expert had at least narrowed the difference between the claim and the accused product to whether a request was transmitted between distinct physical components or software modules within the same physical component. Here, Genuine Enabling has provided essentially no information about how the accused Bluetooth module differs from block 34 of Figure 4A, much less why any differences should be viewed as insubstantial. For example, block 34 of Figure 4A feeds both data streams into a data selector that alternates between them to produce a combined data stream. (Fernald Report ¶ 125.) It is unknown whether the Bluetooth module does the same thing, or, if it does not, whether the choice to forego a data selector is substantial. A factfinder would be left entirely in the dark as to these issues.

Dr. Fernald's observation that there are other ways to synchronize data streams, without using a bit-rate clock, does not cure this problem. That block 34 and the accused Bluetooth module do not differ in every conceivable way sheds no light on whether the ways in which they do differ are insubstantial. Using again the analogy of a paperclip and a paperweight, a plaintiff might be able to prove that the two function in substantially the same "way" if it can convince a factfinder that the difference between bent metal and gravity is insubstantial in the context of the invention at hand. But absent such an explanation, the fact that there are other ways to hold paper together without pressure (e.g., a folder) does not bridge the necessary evidentiary gap. Just as it was insufficient in VLSI Tech. to show that both the claimed and accused devices transmitted a request to change clock frequency, the identification of one common feature, be it pressure or a bit-rate clock, is insufficient to explain why the "overall structure[s]" function in substantially the same way. Odetics, 185 F.3d at 1268.

Finally, Genuine Enabling notes that "[t]he 'way' … prong[] of a function-way-result test … [is a] factual inquir[y] that [is] not subject to construction by the Court." Marvell Semiconductor v. Commonwealth Sci. & Indus. Rsch. Organisation, No. 07-cv-204, 2010 WL 11531186, at *6 (E.D. Tex. Apr. 27, 2010). Although the "ways" the claimed and accused structures operate are indeed factual questions, it is still the plaintiff's burden at summary judgment to come forward with "concrete evidence" to "support[]" its factual contentions. Nitkin v. Main Line Health, 67 F.4th 565, 571 (3d Cir. 2023). Genuine Enabling has not pointed to "evidence on which the jury could reasonably find" that the differences between the way block 34 and the accused Bluetooth module synchronize signals are insubstantial. Anderson, 477 U.S. at 252.

For these reasons, I conclude that Genuine Enabling has failed to raise a dispute of fact as to whether the accused Bluetooth module satisfies the "framer" limitation and the synonymous

limitations "encoding means" and "means for synchronizing and encoding." As at least one of those limitations is present in every asserted claim, and Genuine Enabling has not advanced an argument under the doctrine of equivalents, Sony is entitled to summary judgment of noninfringement.[2]

IV. CONCLUSION

For the reasons set out above, Sony's motion for summary judgment will be granted.

An appropriate order follows.

[2] Sony offers four other grounds for summary judgment. Because I agree with Sony on its first ground, I do not reach Sony's alternative grounds.

ADDENDUM D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GENUINE ENABLING TECHNOLOGY LLC,

Plaintiff,

v.

NINTENDO CO., LTD.; and NINTENDO OF AMERICA INC.,

Defendants.

C19-0351 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Having reviewed the parties' Joint Status Report, docket no. 161, the Court concludes that this case should remain stayed until further order. The parties are hereby DIRECTED to file another Joint Status Report (i) within seven (7) days after the deadline expires for filing a petition for a writ of certiorari, if no such petition is filed, relating to *Genuine Enabling Tech. LLC v. Sony Grp. Corp.*, 167 F.4th 1196 (Fed. Cir. 2026); (ii) within seven (7) days after the United States Supreme Court rules on any petition for a writ of certiorari; or (iii) by December 31, 2026, whichever occurs earlier.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Dated this 19th day of May, 2026.

Joshua C. Lewis
Clerk

s/Grant Cogswell
Deputy Clerk