

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

MALIKIE INNOVATIONS LTD., KEY
PATENT INNOVATIONS LTD.,
Plaintiffs,

v.

NINTENDO CO., LTD.,
NINTENDO OF AMERICA INC.,
Defendants.

NO. 2:24-cv-01490-JLR

Claim Construction Report by Gavin T. Garner, PhD

Introduction

1. I have been retained by Plaintiffs Malikie Innovations Limited and Key Patent Innovations Limited in support of litigation in case number 2:24-cv-01490 in the Western District of Washington. I have been asked to offer opinions on the meaning of certain terms in some of the patents being asserted in that action, including how a person of ordinary skill in the art (POSITA) would have understood them.
2. I am being compensated at a rate of \$300 per hour for work performed on this case. My compensation does not depend on the outcome of this litigation.

Qualifications

3. I am an Associate Professor of Mechanical and Aerospace Engineering at the University of Virginia and serve as the Director of Experiential Learning for the School of Engineering and Applied Science at the University of Virginia. I have been teaching engineering students since 2002. I hold an undergraduate degree in Physics from Colby College and Master's and PhD degrees in both Mechanical Engineering and Aerospace Engineering from the University of Virginia.
4. I am not an expert in patent law. The opinions expressed in this report are limited to how I believe a person of ordinary skill in the art at the time of the respective inventions (a POSITA) would have understood the disclosures and claim language in the patents discussed.
5. A copy of my CV that includes my publications for the last 10 years is attached as Exhibit 1. I have not testified at trial or by deposition in the last 4 years.

U.S. Patent 8,545,247

6. The '247 Patent claims a type of docking station and various features thereof for use with electronic devices. I understand that the defendants in this case have proposed that certain terms in some of the claims of the '247 Patent require construction in order to convey how a person of ordinary skill in the art would have understood them at the time of the invention. I have also been asked to evaluate the relationship between certain terms in the claims.

7. In my opinion, a person with ordinary skill in the field of the invention (POSITA), at the time the invention of the '247 patent (2011), would have been someone with a bachelor's degree in mechanical engineering or mechanical arts with one year of relevant experience or the equivalent.

“support”

Plaintiffs' Proposal	Defendants' Proposal
<i>No construction required.</i>	a structure that limits movement in a direction

8. I understand that the defendants have proposed that the term “support” in claims 1, 2, and 12 through 16 should be construed as “a structure that limits movement in a direction.” Based on my review of the claims and the '247 Patent, I disagree.

9. I believe that a POSITA at the time of the '247 Patent invention would have understood “support” in the context of the claims to have its ordinary meaning of a structure that helps to keep something (in this case, the connector) in some desired orientation, in other words something that “supports.” My opinion is consistent with the patent's specification, including column 5 rows 62 through 65 of the specification: “The connector support assembly 308 may be any support that is coupled to the housing 200 and includes a portion that elastically deforms in response to movement of the connector 400.” It is my opinion that a POSITA would not have required further definition of “support” in order to understand the claims.

10. The defendants' proposal is inconsistent with the disclosures in the specification that “allow[s] movement” by the support. Column 2, lines 15 through 18 states that, “[t]he dock includes a support for a connector including an elastically deformable portion for allowing movement of the connector relative to the dock when a force is applied.” It is my opinion that a POSITA would not understand a “support” to limit movement when the specification describes the invention as including a support that allows movement.

“inner wall”

Plaintiffs' Proposal	Defendants' Proposal
<i>No construction required.</i>	internal upright or vertical structure enclosing a space

11. I understand that the defendants have proposed that the term “inner wall” in claims 1, and 12 through 15 should be construed as “internal upright structure enclosing a space.” Based on my review of the '247 Patent, I disagree.

12. Firstly, the proposed construction is vague and ambiguous because it does not identify what the structure is internal to. Secondly, it improperly adds the limitation of “enclosing a

space,” which is not a required characteristic of a “wall”; moreover, “enclosing” itself is vague and ambiguous because there may be varying degrees of enclosure.

13. For their proposed construction, I understand that the defendants are relying on the separate definitions of “inner” and “wall” in the Webster’s New World College Dictionary from 2005. There, “inner” is defined as “located farther within; interior; internal” and “wall” is defined as “an upright structure of wood, stone, brick, etc., serving to enclose, divide, support, or protect.” In my opinion, a POSITA’s understanding of the term “support” would not come from a generalist dictionary but instead would derive from the context of the claims and the specification, neither of which require the claimed “wall” to be “upright or vertical” nor that it “enclose a space.”

14. The dictionary definition of “wall” is directed to buildings and other civil structures, not the electronic product that is the subject of the ’247 Patent. Thus, adding a restriction that the wall be “upright” is not something a POSITA would have considered in an object whose orientation can be manipulated by hand. It is therefore my opinion that adopting the defendants’ proposed construction would be incorrect and would add improper restrictions to the term, contrary to how a POSITA would have understood it, in view of the patent’s disclosures.

15. It is also my opinion that a POSITA at the time the ’247 Patent was filed (2011) would have understood “inner wall” in this context to have its ordinary meaning of the wall of the housing to which a support is coupled. Column 4, rows 14 through 32 of the specification supports my opinion.

The housing 200 may be molded plastic, machined metal or wood, for example. The housing may be a single part or may be an assembly of multiple parts.

The dock 150 includes a connector support assembly 308 that is coupled to an inner surface of the housing 200. In general, components are coupled to one another when movement of one component affects movement in the other component. Coupling may be permanent, such as by welding for example, or may be reversible. Such as connection by fasteners, for example. Coupling may include direct contact between the two components or the components may be spaced from one another with additional components being provided to achieve coupling between the two components. In one example, screws 310 couple lugs 312 of the support assembly 308 to screw-receiving components 314, which extend from an underside surface 316 of the seat 302, to couple the support assembly 308 to the housing 200.

It is therefore also my opinion that a POSITA would not have needed further definition to understand the meaning of “inner wall” in the context of the claims.

“housing”

Plaintiffs’ Proposal	Defendants’ Proposal
<i>a housing</i>	See longer phrase ..., indefinite as to full scope

16. A “housing” is a structure present in each of the claims of the ’247 Patent. It is labeled as structure 200 in some of the figures as well. It is clear that the housing referred to throughout the ’247 Patent refers to the structure of the dock, as distinct from the dock’s electronic components.

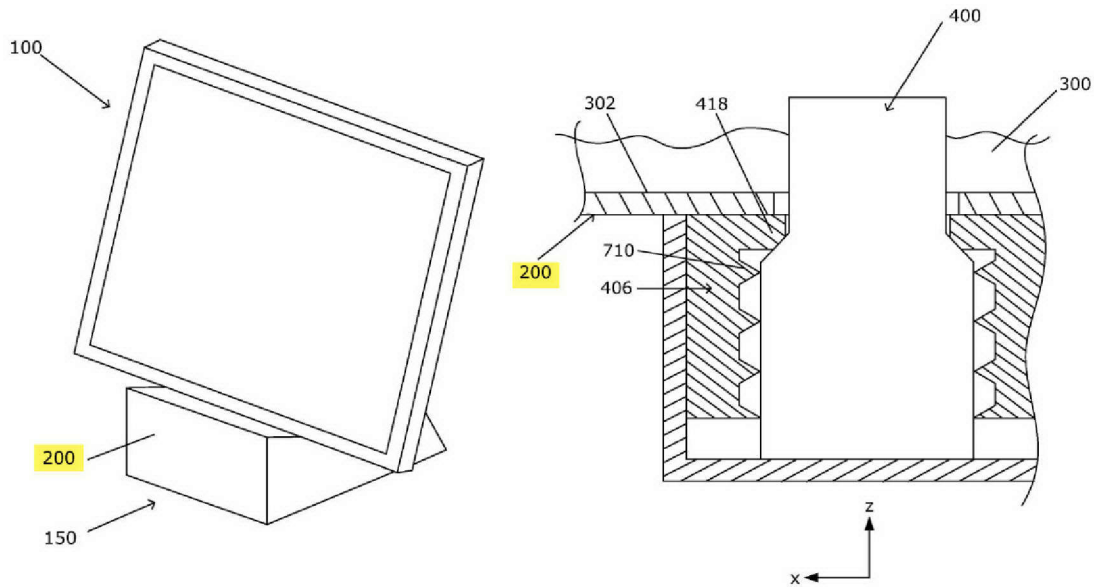


FIG. 2

FIG. 7

17. Claims 14 and 19 refer to “the housing” without first introducing “a housing.” I understand that it is routine in patent drafting to first introduce structures with an indefinite article to provide antecedent basis. Based on my understanding of “housing” from the specification and other claims in the ’247 Patent, it is clear that “the housing” in claims 14 and 19 is referring to the same structure as “a housing” refers to in other claims and not some other structure. It is therefore my opinion that a POSITA would understand “the housing” to mean “a housing” in the context of claims 14 and 10.

“aperture”

Plaintiffs’ Proposal	Defendants’ Proposal
<i>an</i> aperture	See longer phrase ..., indefinite as to full scope

18. An “aperture” is a structure present in almost all of the claims of the ’247 Patent. It is labeled as structure 402 in some of the figures as well. It is clear that the aperture referred to throughout the ’247 Patent refers to a particular opening and passageway in the housing.

19. Claim 14 refers to “the aperture” without first introducing “an aperture.” For the same reasons as my opinion regarding “housing,” it is my opinion that a POSITA would understand “the aperture” to mean “an aperture” in the context of claim 14.

“connector”

Plaintiffs’ Proposal	Defendants’ Proposal
<i>The first instance of “the connector” should be construed as “a connector” and vice versa.</i>	<i>No construction required.</i>

20. A “connector” is a structure present in all of the claims of the ’247 Patent. It is labeled as structure 400 in some of the figures as well. It is clear that the connector referred to throughout the ’247 Patent refers to a structure carrying electronic connections situated in the dock to which the removeable device connects (for the purposes of data communication and/or powering/charging) via the dock.

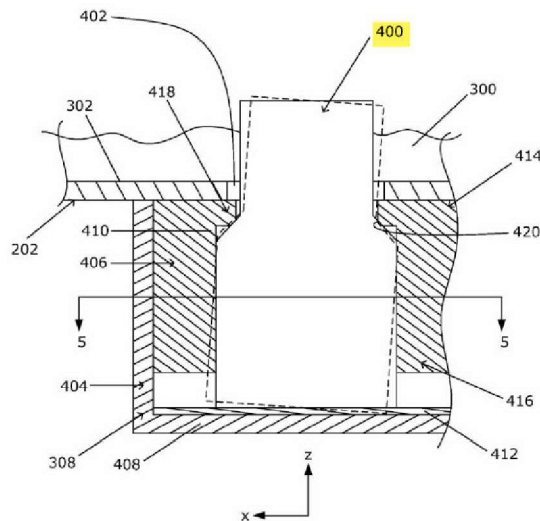


FIG. 4

21. Claims 12 and 13 refer to “the connector” without first introducing “a connector.” For the same reasons as my opinion regarding “housing” and “aperture,” it is my opinion that a POSITA would understand the first instance of “the connector” in those claims to mean “a connector” and the first instance of “a connector” to mean “the connector.

“the top end being located adjacent the aperture of the housing”

Plaintiffs’ Proposal	Defendants’ Proposal
<i>No construction required.</i>	<i>Indefinite as to full scope</i>

22. I understand that the defendants have proposed that the term “the top end being located adjacent the aperture of the housing” in claim 14 renders the claim indefinite. Based on my review of the ’247 Patent, I disagree.

23. For the reasons above, the terms “housing” and “aperture” are not indefinite.

24. It is my opinion that a person of ordinary skill in the art of the '247 Patent would have readily understood “the top end” in the above phrase refers to the top end of the “support element.” The surrounding text makes this clear:

wherein the passage comprises ribs for contacting the connector and a cross-sectional area of the ribs is reduced between **a top end of the spring component** and a bottom end of the spring component, **the top end** being located adjacent the aperture of the housing.

U.S. Patent 8,115,731

“a direction substantially parallel or substantially perpendicular to the orientation”

Plaintiffs' Proposal	Defendants' Proposal
<i>No construction required.</i>	<i>Indefinite as to full scope</i>

25. The '731 Patent relates to control of an electronic device by sensing orientation. I understand that the defendants in this case have taken the position that the phrase in claim 1 of the patent, “a direction substantially parallel or substantially perpendicular to the orientation,” is indefinite. I have also been asked to provide my opinion on how a POSITA at the time of the invention (2005) would have understood that phrase.

26. In my opinion, a person with ordinary skill in the field of the invention (POSITA), at the time the invention of the '731 patent, would have been someone with a bachelor's degree in mechanical engineering or mechanical arts with one year of relevant experience or the equivalent.

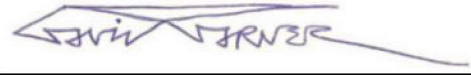
27. For context, that phrase at issue includes the following surrounding text:

wherein the operating system comprises processor-executable instructions that cause the graphical element to move by the amount of displacement in a direction substantially parallel or substantially perpendicular to the orientation.

28. The '730 Patent discusses the orientation of an electronic device throughout the specification. It is clear to me, especially through reference to figures 2 through 5, that the “direction” of the “orientation” is the direction in which the handheld device is tilted relative to a neutral position. In the context of the patent, a tilt of the device to the right is an example of the device being oriented in the right direction, in which case a graphical element might move to the right of the screen, thus moving in parallel to the new orientation of the device. Therefore, it is my opinion that a POSITA would have understood the phrase “a direction substantially parallel or substantially perpendicular to the orientation” with reasonable certainty, as meaning that something will move on the screen in a direction that is substantially parallel or perpendicular to the direction that the device is being physically oriented or reoriented.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed: August 6, 2025

A handwritten signature in blue ink, appearing to read "Gavin T. Garner", written over a horizontal line.

Gavin T. Garner, PhD