

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

HEWLETT-PACKARD CO.,)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	HON.
CHRIMAR SYSTEMS, INC. d/b/a)	
CMS TECHNOLOGIES,)	DEMAND FOR JURY TRIAL
)	
Defendant.)	
)	

**HEWLETT-PACKARD CO.’S COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff Hewlett-Packard Company (“HP”), for its Complaint against Defendant ChriMar Systems, Inc. d/b/a CMS Technologies (“ChriMar”), hereby demands a jury trial and alleges as follows:

NATURE OF THE ACTION

1. HP seeks a declaratory judgment of patent noninfringement, invalidity, and unenforceability due to unclean hands, estoppel, waiver, and/or implied license of United States Patent Nos. 8,902,760 (the “760 Patent”), entitled “Network System and Optional Tethers,” and 8,942,107 (the “107 Patent”), entitled “A Piece of Ethernet Terminal Equipment,” pursuant to the Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, and such other relief as the Court deems just and proper.

2. A true and correct copy of the '760 Patent is attached hereto as Exhibit A. A true and correct copy of the '107 Patent is attached hereto as Exhibit B.

3. HP also brings an action for breach of contract by ChriMar for breach of the IEEE's patent policy and bylaws that required ChriMar to disclose through a Letter of Assurance patents or patent applications that ChriMar believed were infringed by the practice of actual and/or proposed standards of the IEEE, such as ChriMar's '760 and '107 Patent-related applications.

4. HP also brings an action under Section 17200 *et seq.* of the California Business and Professions Code for ChriMar's unfair business practices related to its conduct before the IEEE and its enforcement of the '760 Patent, the '107 Patent, and related patents.

PARTIES

5. Plaintiff Hewlett-Packard Co. is a corporation organized under the laws of Delaware with its principal place of business at 3000 Hanover Street, Palo Alto, California.

6. On information and belief, Defendant ChriMar Systems, Inc. d/b/a CMS Technologies is a Michigan corporation with its principal place of business at 36528 Grand River Avenue, Suite A-1 in Farmington Hills, Michigan.

JURISDICTION AND VENUE

7. This Court has jurisdiction over these claims pursuant to, and without limitation, 28 U.S.C. §§ 1331, 1338(a), and 1367; the Declaratory Judgment Act 28 U.S.C. §§ 2201 and 2202; and the patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

8. The Court also has supplemental jurisdiction over the state law claims asserted in this Complaint under 28 U.S.C. § 1367 because the state and federal claims arise from a common nucleus of operative facts.

9. An actual and justiciable controversy exists between ChriMar and HP as to the noninfringement, invalidity, and unenforceability of the ‘760 and ‘107 Patents. As further alleged below, ChriMar is and has been engaged in a campaign to license and enforce its patent portfolio against manufacturers and sellers of Power over Ethernet (“PoE”) networking products, including HP. In connection with ChriMar’s licensing campaign targeting PoE products, HP is currently involved in litigation against ChriMar with respect to U.S. Patent No. 7,457,250 (the “250 Patent”).¹ This litigation involves PoE products implementing the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard. HP has also brought a declaratory judgment action against ChriMar with respect to related U.S.

¹ *ChriMar Systems, Inc. v. Cisco Systems, Inc.*, No. 4:13-cv-1300-JSW (N.D. Cal.) (“*ChriMar v. Cisco*”).

Patent No. 8,155,012 (the “‘012 Patent”) in this Court.² The ‘760 Patent issued in December 2014, and ChriMar has included the ‘760 Patent in its public statements concerning its PoE licensing campaign. The ‘107 Patent issued at the end of January 2015. HP maintains that the ‘250, ‘012, ‘760, and ‘107 Patents are invalid, unenforceable, and are not infringed by HP’s PoE products capable of implementing the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard.³

10. This Court has personal jurisdiction over ChriMar at least because, on information and belief, ChriMar is a Michigan corporation having its principal place of business within the Eastern District of Michigan at 36528 Grand River Avenue, Suite A-1 in Farmington Hills, Michigan. ChriMar has made substantial business contacts in Michigan including product sales to Michigan entities, and ChriMar’s campaign to enforce and license its patent portfolio, including the ‘760 and ‘107 Patents, has a substantial relationship to Michigan. ChriMar has availed itself of the laws of this district in connection with its current portfolio licensing

² *Hewlett-Packard Co. v. ChriMar Systems, Inc.*, No. 2:14-cv-10292 (E.D. Mich.). That action is currently stayed pending resolution of the N.D. Cal. litigation.

³ In *ChriMar v. Cisco*, HP has counterclaimed for a declaratory judgment that the ‘250 patent, parent to the ‘012, ‘760, and ‘107 Patents, is invalid, unenforceable, and not infringed by HP’s PoE products, including products implementing the IEEE 802.3af and 802.3at standards.

efforts targeting PoE products, including by litigating patent infringement claims involving that portfolio in this district.

11. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1), (c) and § 1400(b) at least because ChriMar is subject to personal jurisdiction in this District and is located within this District and because a substantial part of the events that give rise to the claims herein occurred in this district.

BACKGROUND

A. CHRIMAR'S PATENTS

12. ChriMar's patent portfolio includes the '107 Patent, the '760 Patent, the '250 Patent, the '012 Patent, U.S. Patent No. 6,650,622 (the "'622 Patent'"), and U.S. Patent No. 5,406,260 (the "'260 Patent'").

13. The '107 Patent, entitled "Piece of Ethernet Terminal Equipment," reports that it was filed on February 10, 2012 as Application No. 13/370,918, and issued on January 27, 2015. The '107 Patent reports that it is a continuation of Application No. 12/239,001, filed on September 26, 2008, now the '012 Patent, which is a continuation of Application No. 10/668,708, filed on September 23, 2003, now the '250 Patent, which is a continuation of Application No. 09/370,430, filed on August 9, 1999, now the '622 Patent, which is a continuation-in-part of application No. PCT/US99/07846, filed on April 8, 1999. The inventors named on the '107 Patent are John F. Austermann, III and Marshall B. Cummings.

14. As alleged herein, the '107 Patent was not duly and legally issued.

15. On information and belief, ChriMar is the current assignee of the '107 Patent.

16. The '760 Patent, entitled "Network Systems and Optional Tethers," reports that it was filed on September 14, 2012 as Application No. 13/615,755, and issued on December 2, 2014. The '760 Patent reports that it is a continuation of Application No. 13/370,918, filed on February 10, 2012, now the '107 Patent, which is a continuation of Application No. 12/239,001, filed on September 26, 2008, now the '012 Patent, which is a continuation of Application No. 10/668,708, filed on September 23, 2003, now the '250 Patent, which is a continuation of Application No. 09/370,430, filed on August 9, 1999, now the '622 Patent, which is a continuation-in-part of application No. PCT/US99/07846, filed on April 8, 1999. The inventors named on the '760 Patent are John F. Austermann, III and Marshall B. Cummings.

17. As alleged herein, the '760 patent was not duly and legally issued.

18. On information and belief, ChriMar is the current assignee of the '760 patent.

19. The '012 Patent, entitled "System and Method for Adapting a Piece of Terminal Equipment," reports that it was filed on September 26, 2008 as Application No. 12/239,001, and issued on April 10, 2012. The '012 Patent

reports that it is a continuation of Application No. 10/668,708, filed on September 23, 2003, now the '250 Patent, which is a continuation of Application No. 09/370,430, filed on August 9, 1999, now the '622 Patent, which is a continuation-in-part of application No. PCT/US99/07846, filed on April 8, 1999. The inventors named on the '012 Patent are John F. Austermann, III and Marshall B. Cummings.

20. On information and belief, ChriMar is the current assignee of the '012 Patent.

21. A true and correct copy of the '012 patent is attached hereto as Exhibit C.

22. The '250 patent, entitled "System for Communicating with Electronic Equipment," reports that it was filed on September 23, 2003, issued on November 25, 2008 and then had a reexamination certificate issued on March 1, 2011. The '250 patent reports that it is a continuation of Application No. 09/370,430, filed on August 9, 1999, now U.S. patent No. 6,650,622, which is a continuation-in-part of Application No. PCT/US99/07846, filed on April 8, 1999. The inventors named on the '250 patent are John F. Austermann, III, and Marshall B. Cummings.

23. On information and belief, ChriMar is the current assignee of the '250 patent.

24. A true and correct copy of the '250 patent is attached hereto as Exhibit D.

25. As alleged herein, on information and belief, HP believes that ChriMar asserts, and will assert, that the ‘760 and ‘107 Patents cover products with Power over Ethernet (“PoE”) functionality.

B. CHRIMAR’S LICENSING AND ENFORCEMENT EFFORTS TARGETING PRODUCTS WITH POWER OVER ETHERNET FUNCTIONALITY

26. For many years, ChriMar has actively pursued a patent licensing and enforcement campaign using its patent portfolio to target products with PoE functionality specified by certain standards promulgated by the Institute of Electrical and Electronics Engineers (“IEEE”) and sellers of such products, including numerous California-based companies.

27. ChriMar’s licensing and enforcement campaign began in 2001 when it sued manufacturers of products with PoE functionality in this district for allegedly infringing the ‘260 patent. ChriMar initially sued Cisco Systems, Inc., for alleged infringement of the ‘260 patent in 2001, accusing, for example, Cisco’s IP phones.⁴ ChriMar thereafter claimed that the ‘260 patent was “essential” to the IEEE PoE standards.⁵ ChriMar also sued D-Link Systems (“D-Link”)⁶ and Foundry

⁴ *ChriMar Sys., Inc. v. Cisco Sys., Inc.*, No. 2:01-cv-71113 (E.D. Mich.) (filed Mar. 21, 2001, terminated Sept. 15, 2005).

⁵ See ChriMar Letter of Assurance, available at http://standards.ieee.org/about/sasb/patcom/loa-802_3af-chrimar-03Dec2001.pdf.

⁶ *ChriMar Sys., Inc. v. D-Link Sys., Inc.*, No. 2:06-cv-13937 (E.D. Mich.) (filed Sept. 6, 2006, terminated Apr. 21, 2010).

Networks (“Foundry”),⁷ two other California-based companies, and also PowerDsine, Ltd. (“PowerDsine”),⁸ based on their respective sales of products with PoE functionality accusing those companies of infringing the ‘260 patent based on sales of those products. D-Link and PowerDsine took licenses to the ‘260 patent after favorable rulings were issued, and ultimately an additional claim of the ‘260 patent (claim 17) was invalidated by the court in the Foundry action, leading to dismissal of that action and summary affirmance by the Federal Circuit.

28. Shortly after issuance of the ‘250 patent, which ChriMar deliberately failed to disclose to the IEEE standards bodies that developed the PoE standards, ChriMar continued its licensing and enforcement campaign against sellers of products with PoE functionality, including HP and a number of other California-based companies. ChriMar sued Waters Network Systems, LLC for allegedly infringing the ‘250 patent in 2008, and went on to sue multiple additional sellers of products with PoE functionality (including California-based companies Danpex Corp., Garrettcom, Inc., and Edgewater Networks) in 2009.⁹ Following

⁷ *ChriMar Sys., Inc. v. Foundry Networks, Inc.*, No. 2:06-cv-13936 (E.D. Mich.) (filed Sept. 6, 2006, terminated Aug. 1, 2012).

⁸ *ChriMar Sys., Inc. v. PowerDsine LTD.*, No. 2:01-cv-74081 (E.D. Mich.) (filed Oct. 26, 2001, terminated Mar. 31, 2010).

⁹ *See ChriMar Sys., Inc. v. Waters Network Sys., LLC*, No. 2:08-cv-00453 (E.D. Tex.) (filed Nov. 25, 2008, terminated June 19, 2009); *ChriMar Sys., Inc. v. Danpex Corp.*, No. 2:09-cv-00044 (E.D. Tex.) (filed Feb. 6, 2009, terminated May (continued...))

conclusion of a reexamination proceeding involving the '250 patent, ChriMar sued HP, and also California-based Cisco Systems, Inc., Avaya, Inc., and Extreme Networks, both in the International Trade Commission,¹⁰ and in district court,¹¹ for allegedly infringing the '250 patent by selling products with PoE functionality, including among other products, IP telephones, wireless access points, and wireless network cameras.

29. ChriMar expanded its licensing and enforcement campaign against products with PoE functionality to include the '012 patent. ChriMar filed five actions in the United States District Court for the Eastern District of Texas alleging infringement of the '012 patent by various manufacturers and re-sellers of products with PoE functionality, including IP telephones, wireless access points, and wireless network cameras.

30. ChriMar brought suit against Aastra Technologies Limited and Aastra USA Inc. in the Eastern District of Texas, Case No. 6:13-cv-879, on November 8,

20, 2009); *ChriMar Sys., Inc. v. Garrettcom, Inc.*, No. 2:09-cv-00085 (E.D. Tex.) (filed Mar. 23, 2009), No. 3:09-cv-04516 (N.D. Cal.) (terminated Dec. 22, 2009); *ChriMar Sys., Inc. v. KTI Network, Inc.*, No. 2:09-cv-00230 (E.D. Tex.) (filed July 30, 2009, terminated Nov. 25, 2009).

¹⁰ *In the Matter of Certain Communication Equipment, Components Thereof, and Products Containing the same, including Power over Ethernet Telephones, Switches, Wireless Access Points, Routers and other Devices Used in LANs, and Cameras*, Inv. No. 337-TA-817 (instituted Dec. 1, 2011, terminated Aug. 1, 2012).

¹¹ *ChriMar Systems, Inc. v. Cisco Systems, Inc.*, No. 1:11-cv-01050 (D. Del.), subsequently transferred as No. 3:13-cv-1300-JSW (N.D. Cal.).

2013, alleging infringement of the '012 patent, for among other things, making, using, offering for sale, selling, and/or importing IP telephones, which, on information and belief, include PoE functionality.

31. ChriMar brought suit against Alcatel-Lucent, Inc., Alcatel-Lucent USA, Inc., and Alcatel-Lucent Holdings, Inc., in the Eastern District of Texas, Case No. 6:13-cv-880, on November 8, 2013, alleging infringement of the '012 patent, for among other things, making, using, offering for sale, selling, and/or importing wireless access points, which, on information and belief, include PoE functionality.

32. ChriMar brought suit against AMX, LLC, in the Eastern District of Texas, Case No. 6:13-cv-881, on November 8, 2013, alleging infringement of the '012 patent, for among other things, making, using, offering for sale, selling, and/or importing wireless access points, which, on information and belief, include PoE functionality.

33. ChriMar brought suit against Grandstream Networks, Inc., in the Eastern District of Texas, Case No. 6:13-cv-882, on November 8, 2013, alleging infringement of the '012 patent, for among other things, making, using, offering for sale, selling, and/or importing IP telephones and wireless network cameras, which, on information and belief, include PoE functionality.

34. ChriMar brought suit against Samsung Electronics Co, Ltd., Samsung Electronics America, Inc. and Samsung Telecommunications in the Eastern District of Texas, Case No. 6:13-cv-883, on November 8, 2013, alleging infringement of the '012 patent, for among other things, making, using, offering for sale, selling, and/or importing IP telephones, which, on information and belief, include PoE functionality.

35. ChriMar's website, www.cmspatents.com, confirms that ChriMar's licensing and enforcement campaign targets products with PoE functionality for allegedly infringing ChriMar's patents. ChriMar's website includes a number of public statements concerning ChriMar's licensing of the '760, '012, and '250 patents. References to the '760 Patent were added shortly after its issuance. Specifically, ChriMar publicly states on that website that its licensing campaign involves the '760, '012, and '250 patents, and targets "PoE equipment." ChriMar states on that website that it "is engaged in active licensing with vendors of *PoE equipment*. Licenses for our *patents* are being offered to manufacturers and resellers of *PoE equipment*."¹² As of December 15, 2014, this same page specifically identifies the '760 Patent, the '012 Patent, the '250 Patent, and the '622 Patent as U.S. Patents awarded to ChriMar. The '107 Patent, which issued

¹² *EthernetConnect Program*, <http://www.cmspatents.com/index.html> (emphasis added).

approximately a month ago, is part of this same patent family that ChriMar publicly states covers products supporting PoE functionality and which includes multiple patents that ChriMar is actively enforcing against manufacturers of such products, including HP. Additionally, ChriMar lists Avaya, Inc. and Extreme Networks, Inc. as licensees to the '012 Patent, the '250 Patent, and patents pending, under the heading "***PoE Licensees and Products Include:***".¹³ As alleged above, Avaya, Inc. and Extreme Networks, Inc. were previously named parties in the '250 Patent litigation. Further, ChriMar's website describes ChriMar's "EthernetConnect Program," which ChriMar states "allows for certain vendors of ***PoE products*** to receive special terms under ***the Patent Licensing Program***, the EtherLock Reseller Program and/or the EtherLock OEM Program."¹⁴ Finally, ChriMar's website www.cmstech.com includes the statement that "CMS Technologies is the innovator in putting a DC current signal to the 802.3i connection. In April of 1995 CMS received a US Patent for impressing a DC current signal onto associated current loops The IEEE 802.3af Standards Committee now refers to this important technique as Power over Ethernet."¹⁵ ChriMar's actions and statements all make clear that ChriMar is targeting products

¹³ www.cmspatents.com/licensees.html.

¹⁴ *EthernetConnect Program*, <http://www.cmspatents.com/index.html>.

¹⁵ www.cmstech.com/power.htm.

with PoE functionality for allegedly infringing ChriMar's patents, including the '60 and '107 Patents, as well as the '012 and '250 Patents.

C. CHRIMAR'S PATENT PORTFOLIO AND THE POWER OVER ETHERNET STANDARDS

1. STANDARDS IN GENERAL

36. A technical standard is an established set of specifications or requirements that either provides or is intended to provide for interoperability among products manufactured by different entities. Once a standard is established, competing manufacturers can offer their own products and services that are compliant with the standard.

37. "Industry standards are widely acknowledged to be one of the engines driving the modern economy." (See U.S. Dep't of Justice and U.S. Fed'l Trade Comm'n, *Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition* (2007) at 33.) Standards, such as those related to Power over Ethernet-enabled products, allow U.S. enterprises to create data and voice communications networks knowing that the different elements of the network will work together. Standards help drive innovation by making new products available and ensuring interoperability of components.

38. Technical standards serve an important role in developing technologies and have the potential to encourage innovation and promote competition. As the technical specifications for most standards are published and

broadly available, entities interested in designing, manufacturing and producing products that comply with a standard are more willing to invest heavily in the development of such products because they will operate effectively and be compatible with other products from third parties so long as their products are compliant with the published technical standard.

39. One goal of a typical standards-setting body is to create a standard that everyone in the industry can practice without the threat of patent infringement lawsuits that would prevent a company from practicing the standard. In furtherance of this goal, most standards-setting organizations have adopted intellectual property rights policies to address the problems that may arise from patent hold-up. A patent hold-up situation can occur where, after a standard is set and compliant products are being manufactured/sold, a patentee then claims rights to the technology covered by the standard. Typically, the royalty that a patentee may obtain from a patent license for its technology is limited in part by the availability of alternative technical approaches to perform that function. If, however, an issued standard requires the use of that patented technology, other technological approaches are generally no longer available as substitutes and will no longer serve to limit the patentee's ability to demand royalties far in excess of what is warranted by the intrinsic value of the technology. This is compounded because companies that have designed, had made and sold standards-compliant

products, such as HP, invest significant resources in developing innovative, new products that also comply with the technical standard. Even if there were an alternative standard, the costs and disruption associated with switching is typically prohibitively expensive. Such high switching costs result in “lock-in” where companies become locked into manufacturing and selling products that are in compliance with the standard. Indeed, the public comes to rely upon standards-compliant equipment which can make it prohibitively difficult to subsequently switch to alternative, non-infringing substitutes once the standard has been issued. The high cost of switching applies to all elements of the standard regardless of how small the marginal contribution of the element would be (if not required by the standard) to the functionality of a standards-compliant product.

40. To address these concerns, standards-setting organizations typically have policies that set forth requirements concerning, among other things: (a) the timely and prompt disclosure of intellectual property such as patents or patent applications that may claim any portion of the specifications of the standard in development (i.e., are believed to be infringed by implementing the standard (also sometimes referred to as “Essential Patent Rights”)); and (b) a process of assurance by which members or participants in the standard setting organization who hold purported Essential Patent Rights commit to licensing those rights on RAND

terms, or at minimum indicate that they will not provide such licenses to any Essential Patent Rights.

41. The timely disclosure of any arguably Essential Patent Rights and whether the holder of those rights will license them on RAND terms by individuals participating in the standards-setting organization is critical so that those participating in the development of the standard may evaluate any and all technical proposals with knowledge of the potential licensing costs that might be incurred by anyone developing standards-compliant products.

42. Any non-disclosure of arguably Essential Patent Rights and/or breach of RAND commitments, as ChriMar has done here, undermine the safeguards that standard setting organizations put in place to guard against abuse and to prevent patent hold-up. By seeking to unfairly exploit intellectual property rights to technology by permitting a standard to be issued with non-disclosure of arguably Essential Patent Rights and/or breach of RAND commitments, the intellectual property owner violates the industry practice and the very commitment that led to incorporation of that technology in the first place.

43. Failure to disclose Essential Patent Rights, as ChriMar has done here, also may lead to anti-competitive patent hold-up, where after the industry and the public have become locked into the standard, the patentee seeks to extract exorbitant, unreasonable or otherwise improper royalties through its improperly

obtained power over the market for the technology used in standards-compliant equipment.

2. THE HISTORY OF THE IEEE'S POWER OVER ETHERNET STANDARDS

44. The IEEE is a standards setting organization for a broad range of disciplines, including electric power and energy, telecommunications, and consumer electronics. In or about March 1999, there was a call for interest in the IEEE 802.3 working group - which sets standards for physical layer and data link layer's media access control (MAC) of wired Ethernet - to begin developing what would become the IEEE 802.3af Data Terminal Equipment (DTE) Power via Media Dependent Interface (MDI) Enhancement to the IEEE 802.3 standard ("the IEEE 802.3af amendment"). A task force was formed to field technical proposals from the industry and to create a draft standard to present to the IEEE 802.3 working group. As part of this process, the task force held a number of meetings and received input from multiple industry participants.

45. In or about November 2004, there was a call for interest in the IEEE 802.3 working group to begin what would become the IEEE 802.3at Data Terminal Equipment (DTE) Power via Media Dependent Interface (MDI) Enhancement to the IEEE 802.3 standard ("the IEEE 802.3at amendment"). Subsequently, a task force was formed to field technical proposals from the industry and to create a draft standard to present to the IEEE 802.3 working group. As part of this process,

the task force held a number of meetings and received input from multiple industry participants.

46. The IEEE 802.3af amendment allows for the supply of data and power over Ethernet cables to certain devices such as VoIP phones, switches, wireless access points (“WAPs”), routers, and security cameras. Generally, the IEEE 802.3af amendment defines the electrical characteristics and behavior of both Power Sourcing Equipment (“PSE”), which provide up to 15.4 watts of power, and Powered Devices (“PD”), which draw power. The IEEE 802.3at amendment is a standard meant to enhance the capabilities provided by the IEEE 802.3af amendment by allowing a PSE to provide power in excess of 30 watts to a PD.

47. The success of the IEEE’s standards-setting process depends on the disclosure by participants as to whether they possess any patents or applications which they believe may be infringed by any proposed standard and whether the participant is willing or unwilling to grant licenses on RAND terms. As such, the IEEE has a “patent disclosure policy” that requires participants in the standards-setting process to disclose patents or patent applications they believe to be infringed by the practice of the proposed standard. This policy is set forth in the IEEE-SA Standards Board Bylaws and the IEEE-SA Standards Board Operations Manual. Further, the IEEE’s patent disclosure policy requires members and participants to disclose intellectual property rights through a “Letter of Assurance.”

See, e.g., IEEE, IEEE-SA Standards Board Operations Manual 22 (1998) (“patent holders shall submit letters of assurance to the IEEE Standards Department (to the attention of the Staff Administrator, Intellectual Property Rights) before the time of IEEE-SA Standards Board review for approval.”); see also IEEE, IEEE-SA Standards Board Bylaws 12 (1998). The IEEE’s patent disclosure policy also requires those submitting a Letter of Assurance to affirmatively elect whether or not it would “enforce any of its present or future patent(s) whose use would be required to implement the proposed IEEE standard against any person or entity using the patent(s) to comply with the standard,” or provide a license “to all applicants without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination.” IEEE, *IEEE-SA Standards Board Bylaws 12 (1998)*.

48. The IEEE 802.3af amendment was set on or around June 18, 2003, and the IEEE 802.3at amendment was set on or around September 11, 2009.

49. Power over Ethernet devices that are compliant with the IEEE 802.3af and/or IEEE 802.3at amendments to the IEEE 802.3 standard include network switches that supply data and Power over Ethernet to devices such as VoIP phones, switches, WAPs, routers, and security cameras (previously referred to as “Power over Ethernet-enabled products.”). This allows buildings and other physical infrastructure to be designed so that electrical plugs do not need to be located near

where network devices are used. Moreover, because Power over Ethernet-enabled switches that distribute power using Power over Ethernet are often supported by uninterruptible power supplies or other redundant power sources, the use of Power over Ethernet permits devices like VoIP phones to continue to receive power from a Power over Ethernet switch in the event of power outages. The availability of this method of delivering power has driven government and private enterprise to design not only their networks, but also their physical infrastructure around Power over Ethernet-enabled products.

**3. CHRIMAR'S DELIBERATE NON-DISCLOSURE,
MISREPRESENTATION OF AND FALSE COMMITMENTS
CONCERNING ITS PURPORTED ESSENTIAL
INTELLECTUAL PROPERTY**

50. ChriMar illegally exploited the IEEE standard-setting process with respect to the IEEE 802.3af and IEEE 802.3at amendments by deliberately failing to disclose to the IEEE (a) the '760 and '107 Patent-related applications,¹⁶ (b) ChriMar's belief of their applicability to the IEEE 802.3af or IEEE 802.3at amendments, and (c) ChriMar's unwillingness to license the '760 Patent, the '107 Patent, or their applications on RAND terms, in order to intentionally and

¹⁶ The phrase "the '760 and '107 Patent-related applications" as used throughout HP's Complaint refers to the applications resulting in U.S. Patent No. 8,902,760, U.S. Patent No. 8,942,107, or any application to which either patent may purport to claim priority, including without limitation Application Nos. 13/615,755, 13/370,918, 12/239,001, 10/668,708, 09/370,430, PCT/US99/07846, or Provisional Application No. 60/081,279.

knowingly induce the IEEE 802.3 working group to set the IEEE 802.3af and IEEE 802.3at amendments based upon technology that is purportedly covered by ChriMar's intellectual property. ChriMar only made its intentions clear after the IEEE 802.3af and IEEE 802.3at amendments were ratified, and after the industry and consumers were locked-in to the standards.

51. John Austermann, III, President and Chief Executive Officer of ChriMar and named inventor on the '760 Patent, the '107 Patent, and their applications,¹⁷ attended certain IEEE meetings regarding the setting of the IEEE 802.3af and IEEE 802.3at amendments. The IEEE conducted a "call for patents" at each meeting attended by Mr. Austermann in accordance with its policies, as discussed above. During the meetings leading up to the setting of the IEEE 802.3af and IEEE 802.3at amendments, Mr. Austermann, on behalf of ChriMar, made presentations at least at the July 11-12, 2000 IEEE 802.3af task force meeting in La Jolla, California, as well as the January 26-27, 2005 PoE-Plus Study Group. Mr. Austermann failed to disclose the '760 and '107 Patent-related applications to the IEEE and those members and participants in attendance during

¹⁷ The phrase "the '760 Patent, the '107 Patent, or their applications" as used throughout HP's Complaint refers to U.S. Patent No. 8,902,760, U.S. Patent No. 8,942,107, or any application to which either patent may purport to claim priority, including without limitation Application Nos. 13/615,755, 13/370,918, 12/239,001, 10/668,708, 09/370,430, PCT/US99/07846, or Provisional Application No. 60/081,279.

at least those meetings. Mr. Austermann also failed to disclose to the IEEE, and those members and participants in the standards-setting process, any belief that any proposals for the IEEE 802.3af or IEEE 802.3at amendments would be covered by the ‘760 Patent, the ‘107 Patent, or their applications.

52. ChriMar was familiar with the patent policy of the IEEE and knew it was obligated to comply with the patent policy, as evidenced by ChriMar’s submission of a Letter of Assurance to the IEEE on or about December 3, 2001. *See* Letter from John Austermann, ChriMar Systems, Inc., to Secretary, IEEE-SA Standards Board Patent Committee (Dec. 3, 2001), (“Letter of Assurance”) *available at* http://standards.ieee.org/about/sasb/patcom/loa-802_3af-chrimar-03Dec2001.pdf. In this letter, ChriMar promised to “grant a license to an unrestricted number of applicants on a world-wide non-discriminatory basis.” *Id.* at 1. But in furtherance of its deceptive scheme, this letter disclosed only U.S. Patent No. 5,406,260 — a patent that was unrelated to the ‘760 and ‘107 Patent-related applications because it was in a different patent family than the ‘760 and ‘107 Patent-related applications. ChriMar continued to hide the ‘760 and ‘107 Patent-related applications from the IEEE and intentionally did not identify the ‘760 and ‘107 Patent-related applications in its December 3, 2001 letter.

53. ChriMar’s plan at the time of this deception was to draft the claims of its pending ‘760 and ‘107 Patent-related applications to cover the standard and

then hold producers and consumers of Power over Ethernet standardized technologies hostage to ChriMar's demands for supracompetitive royalty rates once industry participants and consumers became "locked-in" to the standards.

54. ChriMar deceptively concealed from and failed to disclose to the IEEE the '760 and '107 Patent-related applications. ChriMar deceptively concealed from and failed to disclose to the IEEE that the '760 and '107 Patent-related applications covered any proposals for the IEEE 802.3af amendment. ChriMar deceptively concealed from and failed to disclose to the IEEE that the '760 and '107 Patent-related applications covered any proposals for the IEEE 802.3at amendment. ChriMar deceptively concealed from and failed to disclose to the IEEE ChriMar's unwillingness to license the '760 Patent, the '107 Patent, or their applications on RAND terms.

55. Pursuant to IEEE standards policies applicable to ChriMar, in light of ChriMar's attendance at IEEE meetings and ChriMar's belief as to the applicability of the '760 and '107 Patent-related applications to the IEEE 802.3af and 802.3at amendments, ChriMar was under a duty to disclose to the IEEE (a) the '760 and '107 Patent-related applications, (b) ChriMar's belief of their applicability to the IEEE 802.3af or IEEE 802.3at amendments, and (c) ChriMar's unwillingness to license the '760 Patent, the '107 Patent, or their applications on RAND terms. ChriMar intentionally failed to do so.

56. ChriMar breached its obligations that arose from its participation in the standards-setting process and those laid out in the IEEE's patent disclosure policy, as well as standard industry norms and practices, when it failed to disclose the '760 and '107 Patent-related applications to the IEEE and also when it did not inform the IEEE that it is unwilling to license such intellectual property rights on RAND terms.

57. ChriMar's failure to disclose the '760 and '107 Patent-related applications was done knowingly and with intent to deceive and induce the IEEE and participants in the standards-setting process for the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard to adopt those standards to include technology that ChriMar contends is covered by its patents.

58. Due to ChriMar's knowing and intentional deception, the industry adopted the present form of the IEEE 802.3af and IEEE 802.3at amendments to include functionality that ChriMar now alleges infringes its patents, and due to the widespread implementation and adoption of the standards, the industry is now locked-in to the current implementation thereof for Power over Ethernet-enabled products. Such knowing and intentional deception was for the purpose of acquiring monopoly power over the Power over Ethernet Technologies Markets, as defined below. ChriMar expected that, were the standard to issue with technology that it believed to be covered by its patent rights, it would have an opportunity to

become an indispensable technology licensor to anyone in the world seeking to produce Power over Ethernet-enabled products, while also unencumbered by a RAND commitment.

59. Because of ChriMar's unlawful deception, ChriMar has the ability to demand and extract supracompetitive royalties, far in excess of any intrinsic value of the technology allegedly covered by the patents, by enforcing its '760 Patent, '107 Patent, and other patents. ChriMar's unlawful conduct has had, and will continue to have, a substantial anticompetitive effect on the Power over Ethernet Technologies Markets.

60. In developing the IEEE 802.3af and IEEE 802.3at amendments, IEEE participants sought to select technologies to provide each individual function within the standard. IEEE participants evaluated whether to incorporate a particular proposed technology or whether instead to include viable alternative competing technologies into the standard. They made these decisions based on a variety of considerations, including cost. With respect to cost, a primary consideration was whether the proposed technology was covered by disclosed intellectual property rights and, if so, whether the party claiming such intellectual property rights had committed to license those rights on RAND terms.

61. Various companies were attempting to have their technologies, which were viable alternatives to that which ChriMar now claims is covered by its

patents, considered for incorporation into the IEEE 802.3af and IEEE 802.3at amendments. For example, for the “detection” function specified by the IEEE 802.3af/at amendments, which is a functionality that ChriMar contends is covered by its patents, the IEEE considered the following viable alternative technologies that were proposed by the following companies on or around the listed dates: (a) Broadcom and Level One (September 28, 1999); (b) TDK Semiconductor (November 10, 1999); (c) Hewlett Packard (January 21, 2000); (d) Cisco Systems (January 21, 2000); (e) Nortel Networks (January 21, 2000 and May 25, 2000); (f) Circa Communications (March 8, 2000); (g) Broadcom (November 10, 1999 and March 8, 2000); (h) Level One (March 8, 2000 and May 25, 2000); (i) PowerDsine (March 8, 2000); and (j) Agilent Technologies (May 25, 2000). For the “classification” function specified by the IEEE 802.3af/at amendments, which is a functionality that ChriMar contends is covered by its patents, the IEEE considered the following viable alternative technologies that were proposed by the following companies on or around the listed dates: (a) Avaya (September 25, 2001); (b) Ixia (May 19, 2005 and July 20, 2005); (c) Silicon Magike (July 20, 2005); (d) JSI Microelectronics (July 20, 2005); (e) Gordon Kapes, Inc. (September 14, 2005); and (f) PowerDsine (November 14, 2005). These alternative technologies are viable alternatives to ChriMar’s purported technology,

and ChriMar's purported technology is not inherently better in terms of technical merit than any of these alternatives.

62. Given the availability of a number of alternative technologies during the standards-setting process, and consistent with the IEEE's policies as described above, had the IEEE known about the '760 and '107 Patent-related applications and ChriMar's positions regarding the same, the IEEE would have incorporated one or more of the existing and known viable alternative technologies described in paragraph 61 into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard instead of the functionalities that ChriMar contends infringe its patents. ChriMar's deceptive conduct therefore caused the standard to be drafted differently than it otherwise would have been.

63. Once the IEEE selected the technologies that ChriMar now claims are covered by its patents and industry and consumers became "locked-in" to the standard, the IEEE lost the option to instead include or use the alternative technologies proposed during the standards-setting process described in paragraph 61. Each of these alternatives was capable of performing the same functions accused by ChriMar, and ChriMar's deceptive conduct excluded such technologies from the Power over Ethernet Technologies Markets (defined below). Accordingly, to the extent that either the '760 Patent, the '107 Patent, or both are essential to the IEEE 802.af and/or IEEE 802.3at amendments, it was ChriMar's

unlawful and deceptive conduct in concealing its patent rights and its beliefs concerning those rights — not any intrinsic value of its purportedly essential technologies or the uncorrupted operation of the standards-setting process — that conferred monopoly power on ChriMar with respect to the technologies that perform the functions included in the standard that are allegedly covered by ChriMar's patents.

D. AN ACTUAL AND JUSTICIABLE CONTROVERSY EXISTS

64. ChriMar's conduct demonstrates that it will seek to prevent HP from manufacturing, importing, offering for sale or selling products with PoE functionality, including IP telephones, wireless access points, and wireless network cameras by alleging infringement of the claims of the '760 and '107 Patents. For example, ChriMar's actions and course of conduct against HP thus far with respect to the '260, '250, and '012 Patents, and ChriMar's actions and course of conduct on its licensing website and against other manufacturers of products with PoE functionality, including IP telephones, wireless access points, and wireless network cameras, are sufficient affirmative acts to create an actual and justiciable controversy.

65. Further, in light of ChriMar's enforcement conduct including its website and patent infringement suits against manufacturers of products with PoE functionality, including IP telephones, wireless access points, and wireless network

cameras, HP fully expects to be confronted with similar allegations from ChriMar on the newly issued '760 Patent against HP's PoE products, as confirmed by ChriMar's licensing website, as well as the '107 Patent.

66. ChriMar's allegations of infringement of the '250 Patent against HP in *ChriMar v. Cisco* and the ITC investigation, coupled with ChriMar's enforcement activities against similar products in the Eastern District of Texas cases, further create an actual and justiciable controversy. The '250 Patent and '012 Patent are in the same patent family as the '760 and '107 Patents, and ChriMar alleges that the '760 Patent, the '107 Patent, the '012 Patent, and the '250 Patent are directed to the same technology. HP expects to be confronted with similar allegations from ChriMar as to the '760 and '107 Patents against its products as it has been with respect to the '250 and '012 Patents.

67. A declaration concerning the invalidity, noninfringement, and unenforceability of the claims of the '760 and '107 Patents is necessary in light of the present controversy between the parties.

COUNT I

(Declaratory Judgment Action for a Declaration of Noninfringement of U.S. Patent No. 8,902,760)

68. HP incorporates herein by reference the allegations of paragraphs 1 through 67 above as though fully set forth herein.

69. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy between HP and ChriMar regarding noninfringement of the '760 Patent for at least HP's IP telephones, wireless access points, and wireless network cameras.

70. HP has not infringed and does not infringe (directly, indirectly, or in any other manner) any valid, enforceable claim of the '760 Patent, either literally or under the doctrine of equivalents.

71. A judicial declaration of noninfringement is necessary and appropriate in order to resolve this controversy.

COUNT II
(Declaratory Judgment Action for a Declaration
of Noninfringement of U.S. Patent No. 8,942,107)

72. HP incorporates herein by reference the allegations of paragraphs 1 through 71 above as though fully set forth herein.

73. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy between HP and ChriMar regarding noninfringement of the '107 Patent for at least HP's IP telephones, wireless access points, and wireless network cameras.

74. HP has not infringed and does not infringe (directly, indirectly, or in any other manner) any valid, enforceable claim of the '107 Patent, either literally or under the doctrine of equivalents.

75. A judicial declaration of noninfringement is necessary and appropriate in order to resolve this controversy.

COUNT III
(Declaratory Judgment Action for a Declaration
of Invalidity of U.S. Patent No. 8,902,760)

76. HP incorporates herein by reference the allegations of paragraphs 1 through 75 above as though fully set forth herein.

77. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy between HP and ChriMar regarding invalidity of the '760 Patent.

78. The claims of the '760 Patent are each invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 101 *et seq.*, including, but not limited to, sections 101, 102, 103, 112, and/or 116, or judicially-created doctrines of invalidity, including but not limited to obviousness-type double patenting or the Rules and Regulations of the United States Patent and Trademark Office relating thereto.

79. By way of example only, and without limitation, and in consideration of ChriMar's improper application of the claims of the '760 Patent, the claims of the '760 Patent are invalid under 35 U.S.C. §§ 102 and/or 103 in view of at least the following prior art, either alone or in combination with one or more of the prior art references listed below:

- U.S. Pat. No. 4,173,714
- U.S. Pat. No. 5,568,525
- U.S. Pat. No. 5,991,885
- U.S. Pat. No. 5,994,998
- International Publication No. WO 96/23377

80. Depending on the scope of the claims of the '760 Patent or contentions in connection therewith, the asserted claims may be invalid for failure to provide an adequate written description and/or enabling disclosure or for indefiniteness under 35 U.S.C. § 112, subparagraph 2.

81. A judicial declaration of invalidity is necessary and appropriate in order to resolve this controversy.

COUNT IV

(Declaratory Judgment of Invalidity of U.S. Patent No. 8,942,107)

82. HP incorporates herein by reference the allegations of paragraphs 1 through 81 above as though fully set forth herein.

83. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy between HP and ChriMar regarding invalidity of the '107 Patent.

84. The claims of the '107 Patent are each invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 101 *et seq.*, including, but not limited to, sections 101, 102, 103, 112,

and/or 116, or judicially-created doctrines of invalidity, including but not limited to obviousness-type double patenting or the Rules and Regulations of the United States Patent and Trademark Office relating thereto.

85. By way of example only, and without limitation, and in consideration of ChriMar's improper application of the claims of the '107 Patent, the claims of the '107 Patent are invalid under 35 U.S.C. §§ 102 and/or 103 in view of at least the following prior art, either alone or in combination with one or more of the prior art references listed below:

- U.S. Pat. No. 3,983,338
- U.S. Pat. No. 4,173,714
- U.S. Pat. No. 5,568,525
- U.S. Pat. No. 5,675,813
- U.S. Pat. No. 5,991,885
- U.S. Pat. No. 5,994,998
- International Publication No. WO 96/23377

86. Depending on the scope of the claims of the '107 Patent or contentions in connection therewith, the asserted claims may be invalid for failure to provide an adequate written description and/or enabling disclosure or for indefiniteness under 35 U.S.C. § 112, subparagraph 2.

87. A judicial declaration of invalidity is necessary and appropriate in order to resolve this controversy.

COUNT V
(Declaratory Judgment Action for a Declaration
of Patent Unenforceability of U.S. Patent No. 8,902,760 Due To Estoppel)

88. HP incorporates herein by reference the allegations of paragraphs 1 through 86 above as though fully set forth herein.

89. The '760 Patent is unenforceable against HP due to estoppel, including without limitation the doctrine of equitable estoppel.

90. Despite having a duty to disclose to the IEEE: (a) the '760 Patent-related applications,¹⁸ (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '760 Patent or its applications on RAND terms in connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so. ChriMar did so with the intention of precluding other existing viable alternatives that were equivalent, superior, or lower-costing from being implemented and with the expectation that were the standard to issue with technology that it considered covered by its patent rights, ChriMar would have an

¹⁸ The phrase "the '760 Patent-related applications" as used throughout HP's Complaint refers to U.S. Patent No. 8,902,760 or any application to which it may purport to claim priority, including without limitation Application Nos. 13/615,755, 13/370,918, 12/239,001, 10/668,708, 09/370,430, PCT/US99/07846, or Provisional Application No. 60/081,279.

opportunity to become an indispensable licensor to anyone in the world seeking to produce a product compliant with the IEEE 802.3af and IEEE 802.3at amendments.

91. As alleged above, the IEEE and HP relied to their detriment upon ChriMar's above-referenced failures to disclose to the IEEE. Based on such reliance, participants in the IEEE standards development process, including HP's representatives, approved the issuance of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard in their issued form.

92. As alleged above, the issued standards cover Power over Ethernet Technology that ChriMar now indicates is covered by the '760 Patent, and that HP believes, consistent with ChriMar actions on the '250 patent, ChriMar is unwilling to extend licenses on RAND terms. If known, the participants in the IEEE standards development process, including HP representatives, may have approved viable alternative technologies that were available during the standards-setting process.

93. HP, other implementers of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and members of the public that purchase products that implement those amendments, have been materially prejudiced by their reliance on ChriMar's failures to disclose in contravention of the IEEE's patent policy as set forth above. HP and other implementers of the IEEE 802.3af

and IEEE 802.3at amendments to the IEEE 802.3 standard have made very significant investments in designing, manufacturing, and selling products certified as compliant with the IEEE 802.3 standard that ChriMar now indicates are covered by the '760 Patent.

94. ChriMar knew or should have reasonably expected that its above-referenced nondisclosures and/or misrepresentations to the IEEE would induce the IEEE to set the IEEE 802.3af and 802.3at amendments to the IEEE 802.3 standard and that vendors of Power over Ethernet-enabled products, like HP, would rely upon ChriMar's representations, including nondisclosures as to its intellectual property rights, and develop, have made and sell Power over Ethernet-enabled products.

95. HP and others developed, had made, and marketed their products and services in reliance on ChriMar's nondisclosures and/or misrepresentations, as described above, including developing, having made and marketing Power over Ethernet-enabled products.

96. As a result, ChriMar is estopped from bringing any infringement claims under the '760 Patent, and the '760 Patent is unenforceable against HP.

97. A judicial declaration of unenforceability due to estoppel is necessary and appropriate in order to resolve this controversy.

98. In the event ChriMar is not estopped from enforcing the ‘760 Patent, in light of a December 2001 assurance letter supplied by ChriMar to the IEEE, ChriMar should be obligated to offer a license to HP on RAND terms under the ‘760 Patent.

99. In the alternative, ChriMar’s failure to disclose the ‘760 Patent or its applications should be construed as an admission by ChriMar that the ‘760 Patent does not apply to implementations that practice the 802.3af and 802.3at amendments to the IEEE 802.3 standard, and ChriMar should be precluded from asserting the ‘760 Patent against such implementations.

COUNT VI
(Declaratory Judgment Action for a Declaration
of Patent Unenforceability of U.S. Patent No. 8,942,107 Due To Estoppel)

100. HP incorporates herein by reference the allegations of paragraphs 1 through 99 above as though fully set forth herein.

101. The ‘107 patent is unenforceable against HP due to estoppel, including without limitation the doctrine of equitable estoppel.

102. Despite having a duty to disclose to the IEEE: (a) the ‘107 Patent-related applications,¹⁹ (b) ChriMar’s belief of their applicability to the 802.3af or

¹⁹ The phrase “the ‘107 Patent-related applications” as used throughout HP’s Complaint refers to U.S. Patent No. 8,942,107 or any application to which it may purport to claim priority, including without limitation Application Nos.

(continued...)

802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '107 Patent or its applications on RAND terms in connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so. ChriMar did so with the intention of precluding other existing viable alternatives that were equivalent, superior, or lower-costing from being implemented and with the expectation that were the standard to issue with technology that it considered covered by its patent rights, ChriMar would have an opportunity to become an indispensable licensor to anyone in the world seeking to produce a product compliant with the IEEE 802.3af and IEEE 802.3at amendments.

103. As alleged above, the IEEE and HP relied to their detriment upon ChriMar's above-referenced failures to disclose to the IEEE. Based on such reliance, participants in the IEEE standards development process, including HP's representatives, approved the issuance of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard in their issued form.

104. As alleged above, the issued standards cover Power over Ethernet Technology that ChriMar now indicates is covered by the '107 Patent, and that HP believes, consistent with ChriMar actions on the '250 Patent, ChriMar is unwilling

13/370,918, 12/239,001, 10/668,708, 09/370,430, PCT/US99/07846, or Provisional Application No. 60/081,279.

to extend licenses on RAND terms. If known, the participants in the IEEE standards development process, including HP representatives, may have approved viable alternative technologies that were available during the standards-setting process.

105. HP, other implementers of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and members of the public that purchase products that implement those amendments, have been materially prejudiced by their reliance on ChriMar's failures to disclose in contravention of the IEEE's patent policy as set forth above. HP and other implementers of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard have made very significant investments in designing, manufacturing, and selling products certified as compliant with the IEEE 802.3 standard that ChriMar now indicates are covered by the '107 Patent.

106. ChriMar knew or should have reasonably expected that its above-referenced nondisclosures and/or misrepresentations to the IEEE would induce the IEEE to set the IEEE 802.3af and 802.3at amendments to the IEEE 802.3 standard and that vendors of Power over Ethernet-enabled products, like HP, would rely upon ChriMar's representations, including nondisclosures as to its intellectual property rights, and develop, have made and sell Power over Ethernet-enabled products.

107. HP and others developed, had made, and marketed their products and services in reliance on ChriMar's nondisclosures and/or misrepresentations, as described above, including developing, having made and marketing Power over Ethernet-enabled products.

108. As a result, ChriMar is estopped from bringing any infringement claims under the '107 Patent, and the '107 Patent is unenforceable against HP.

109. A judicial declaration of unenforceability due to estoppel is necessary and appropriate in order to resolve this controversy.

110. In the event ChriMar is not estopped from enforcing the '107 Patent, in light of a December 2001 assurance letter supplied by ChriMar to the IEEE, ChriMar should be obligated to offer a license to HP on RAND terms under the '107 Patent.

111. In the alternative, ChriMar's failure to disclose the '107 Patent or its applications should be construed as an admission by ChriMar that the '107 Patent does not apply to implementations that practice the 802.3af and 802.3at amendments to the IEEE 802.3 standard, and ChriMar should be precluded from asserting the '107 Patent against such implementations.

COUNT VII
(Declaratory Judgment Action for a Declaration
of Patent Unenforceability of U.S. Patent No. 8,902,760 Due To Waiver)

112. HP incorporates herein by reference the allegations of paragraphs 1 through 111 above as though fully set forth herein.

113. The '760 Patent is unenforceable against HP due to the doctrine of waiver (including without limitation implied waiver).

114. As alleged above, ChriMar's above-referenced failures to disclose to the IEEE indicate that ChriMar intentionally relinquished its rights to enforce the '760 Patent, and/or its conduct was so inconsistent with an intent to enforce its rights as to induce a reasonable belief that such rights have been relinquished. ChriMar intentionally failed to disclose to the IEEE: (a) the '760 Patent-related applications, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '760 Patent or its applications on RAND terms, with the expectation and anticipation that its nondisclosure and misrepresentations would result in incorporation into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard of technology over which ChriMar now claims patent rights. ChriMar did so with the intention of precluding other existing viable alternatives that were equivalent, superior, or lower-costing from being implemented and with the expectation that were the standard to issue with technology that it considered

covered by its patent rights, ChriMar would have an opportunity to become an indispensable licensor to anyone in the world seeking to produce a product compliant with the IEEE 802.3af and IEEE 802.3at amendments. The IEEE, as well as participants in the standards-setting process including HP, relied upon ChriMar's above-referenced nondisclosures and misrepresentations leading to the issuance of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, as opposed to implementing alternatives available during the standards-setting process.

115. Vendors of Power over Ethernet-enabled products, including HP as well as the public, which have come to rely upon Power over Ethernet-enabled products, are materially prejudiced as a result of ChriMar's conduct discussed above. As a result, ChriMar has waived any claims under the '760 Patent.

116. A judicial declaration of unenforceability due to waiver is necessary and appropriate in order to resolve this controversy.

COUNT VIII
(Declaratory Judgment Action for a Declaration
of Patent Unenforceability of U.S. Patent No. 8,942,107 Due To Waiver)

117. HP incorporates herein by reference the allegations of paragraphs 1 through 116 above as though fully set forth herein.

118. The '107 patent is unenforceable against HP due to the doctrine of waiver (including without limitation implied waiver).

119. As alleged above, ChriMar's above-referenced failures to disclose to the IEEE indicate that ChriMar intentionally relinquished its rights to enforce the '107 Patent, and/or its conduct was so inconsistent with an intent to enforce its rights as to induce a reasonable belief that such rights have been relinquished. ChriMar intentionally failed to disclose to the IEEE: (a) the '107 Patent-related applications, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '107 Patent or its applications on RAND terms, with the expectation and anticipation that its nondisclosure and misrepresentations would result in incorporation into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard of technology over which ChriMar now claims patent rights. ChriMar did so with the intention of precluding other existing viable alternatives that were equivalent, superior, or lower-costing from being implemented and with the expectation that were the standard to issue with technology that it considered covered by its patent rights, ChriMar would have an opportunity to become an indispensable licensor to anyone in the world seeking to produce a product compliant with the IEEE 802.3af and IEEE 802.3at amendments. The IEEE, as well as participants in the standards-setting process including HP, relied upon ChriMar's above-referenced nondisclosures and misrepresentations leading to the issuance of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3

standard, as opposed to implementing alternatives available during the standards-setting process.

120. Vendors of Power over Ethernet-enabled products, including HP as well as the public, which have come to rely upon Power over Ethernet-enabled products, are materially prejudiced as a result of ChriMar's conduct discussed above. As a result, ChriMar has waived any claims under the '107 Patent.

121. A judicial declaration of unenforceability due to waiver is necessary and appropriate in order to resolve this controversy.

COUNT IX

(Declaratory Judgment Action for a Declaration of Patent Unenforceability of U.S. Patent No. 8,902,760 Due To Implied License)

122. HP incorporates herein by reference the allegations of paragraphs 1 through 121 above as though fully set forth herein.

123. HP has an implied license to the '760 Patent rendering it unenforceable against HP.

124. For example, and without limitation, if the claims of the '760 Patent are covered by the practice of the standard as alleged by ChriMar, HP has a license to the '760 Patent because of the covenants and representations ChriMar made during the IEEE 802.3 standards-setting process, as alleged above. During that process, ChriMar made an irrevocable guarantee that it would "grant a license to an unrestricted number of applicants on a worldwide non-discriminatory basis and

on reasonable terms and conditions to comply with the [Proposed] IEEE standard” with respect to any “granted patent(s) and for pending applications that it believes may be infringed by compliance with the Proposed IEEE Standard).” Letter from John Austermann, ChriMar Systems, Inc., to Secretary, IEEE-SA Standards Board patent Committee (December 3, 2001), *available at* http://standards.ieee.org/about/sasb/patcom/loa-802_3af-chrimar-03Dec2001.pdf.

125. A judicial declaration of unenforceability due to implied license is necessary and appropriate in order to resolve this controversy.

COUNT X

(Declaratory Judgment Action for a Declaration of Patent Unenforceability of U.S. Patent No. 8,942,107 Due To Implied License)

126. HP incorporates herein by reference the allegations of paragraphs 1 through 125 above as though fully set forth herein.

127. HP has an implied license to the ‘107 Patent rendering it unenforceable against HP.

128. For example, and without limitation, if the claims of the ‘107 Patent are covered by the practice of the standard as alleged by ChriMar, HP has a license to the ‘107 Patent because of the covenants and representations ChriMar made during the IEEE 802.3 standards-setting process, as alleged above. During that process, ChriMar made an irrevocable guarantee that it would “grant a license to an unrestricted number of applicants on a worldwide non-discriminatory basis and

on reasonable terms and conditions to comply with the [Proposed] IEEE standard” with respect to any “granted patent(s) and for pending applications that it believes may be infringed by compliance with the Proposed IEEE Standard).” Letter from John Austermann, ChriMar Systems, Inc., to Secretary, IEEE-SA Standards Board patent Committee (December 3, 2001), *available at* http://standards.ieee.org/about/sasb/patcom/loa-802_3af-chrimar-03Dec2001.pdf.

129. A judicial declaration of unenforceability due to implied license is necessary and appropriate in order to resolve this controversy.

COUNT XI
(Declaratory Judgment Action for a Declaration of Patent Unenforceability of U.S. Patent No. 8,902,760 Due To Unclean Hands)

130. HP incorporates herein by reference the allegations of paragraphs 1 through 129 above as though fully set forth herein.

131. The ‘760 Patent is unenforceable against HP due to the doctrine of unclean hands.

132. Despite having a duty to disclose to the IEEE (a) the ‘760 Patent-related applications, (b) ChriMar’s belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard and (c) ChriMar’s unwillingness to license the ‘760 Patent or its applications on RAND terms connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so.

133. As alleged above, ChriMar's above-referenced failures to disclose to the IEEE directly harmed HP because HP relied upon the standard and assurance process, and therefore ChriMar's non-disclosure, to its detriment.

134. ChriMar now actively seeks licenses, damages and injunctive relief against manufacturers and re-sellers of products that implement the PoE functionality of the IEEE 802.3af/at standards. ChriMar's wrongful conduct affects the balance of equities between the litigants and equity dictates that ChriMar cannot enforce the '760 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

135. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the '760 Patent, which directly relates to the matter at issue, rendering the '760 Patent unenforceable.

136. A judicial declaration of unenforceability due to unclean hands is necessary and appropriate in order to resolve this controversy.

COUNT XII
(Declaratory Judgment Action for a Declaration of Patent Unenforceability of U.S. Patent No. 8,942,107 Due To Unclean Hands)

137. HP incorporates herein by reference the allegations of paragraphs 1 through 136 above as though fully set forth herein.

138. The '107 Patent is unenforceable against HP due to the doctrine of unclean hands.

139. Despite having a duty to disclose to the IEEE (a) the ‘107 Patent-related applications, (b) ChriMar’s belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard and (c) ChriMar’s unwillingness to license the ‘107 Patent or its applications on RAND terms connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so.

140. As alleged above, ChriMar’s above-referenced failures to disclose to the IEEE directly harmed HP because HP relied upon the standard and assurance process, and therefore ChriMar’s non-disclosure, to its detriment.

141. ChriMar now actively seeks licenses, damages and injunctive relief against manufacturers and re-sellers of products that implement the PoE functionality of the IEEE 802.3af/at standards. ChriMar’s wrongful conduct affects the balance of equities between the litigants and equity dictates that ChriMar cannot enforce the ‘107 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

142. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the ‘107 Patent, which directly relates to the matter at issue, rendering the ‘107 Patent unenforceable.

143. A judicial declaration of unenforceability due to unclean hands is necessary and appropriate in order to resolve this controversy.

COUNT XIII
(Breach of Contract)

144. HP incorporates herein by reference the allegations of paragraphs 1 through 143 above as though fully set forth herein.

145. As alleged above, as a participant in the IEEE standards-setting process, the IEEE's patent policy and bylaws required ChriMar to disclose through a Letter of Assurance patents or patent applications that ChriMar believed were infringed by the practice of the proposed standard. ChriMar was also required in that Letter of Assurance to affirmatively elect whether or not it would "enforce any of its present or future patent(s) whose use would be required to implement the proposed IEEE standard against any person or entity using the patent(s) to comply with the standard," or provide a license "to all applicants without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination."

146. HP is a third-party beneficiary to the IEEE's patent policy because industry participants who manufacture or sell Power over Ethernet-enabled products, including HP, are the intended beneficiaries of the IEEE's patent policy, which includes being informed as to whether owners of essential intellectual property rights will license such rights on RAND terms.

147. In light of the above-alleged failures to disclose to the IEEE, ChriMar has breached its contractual obligations, memorialized in the IEEE's patent policy to which HP is both a party and an intended beneficiary.

148. HP has been, and will continue to be, damaged by ChriMar's breach of contract. HP has invested considerable sums in bringing Power over Ethernet-enabled products to market, which is now in jeopardy in light of ChriMar's infringement allegations due to HP's reliance upon the standards and assurance process and ChriMar's failures to disclose to the IEEE as alleged above.

COUNT XIV
(Unfair Business Practices Under Section 17200 of
California Business & Professions Code)

149. HP incorporates herein by reference the allegations of paragraphs 1 through 148 above as though fully set forth herein.

150. By the acts alleged, ChriMar has engaged in unfair competition within the meaning of Section 17200 of the California Business and Professions Code.

151. ChriMar's conduct constitutes: (1) unlawful business acts or practices; (2) unfair business acts or practices; and (3) fraudulent business acts or practices.

152. HP is located in California, and one or more of ChriMar's illegal, unfair, and fraudulent acts occurred in California. For example, and without limitation, ChriMar's President and CEO, John Austermann III, made presentations on ChriMar's behalf at least at the July 11-12, 2000 IEEE 802.3af

task force meeting in La Jolla, California. As alleged, ChriMar was required to disclose (a) the '760 and '107 Patent-related applications, (b) ChriMar's belief of their applicability to the 802.3af amendments to the IEEE 802.3 standard and (c) ChriMar's unwillingness to license the '760 Patent, the '107 Patent, or their applications on RAND terms at that meeting within the State of California, but failed to do so. ChriMar's illegal, unfair and fraudulent acts have harmed and threaten to further harm California customers, consumers, and competition within California, including by seeking to increase the prices California consumers would pay for communication devices that are compliant with the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard or disrupt California consumers' ability to obtain Power over Ethernet-enabled products.

153. The relevant markets in which to assess the anticompetitive effects of ChriMar's anticompetitive conduct are the markets for technologies that, before the standard was implemented and HP and other implementers of the IEEE 802.3af and IEEE 802.3at amendments were locked-in, were competing to perform each of the functions in the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard allegedly covered by ChriMar's '760 Patent, '107 Patent, and other patents, including the alternative technologies identified in paragraph 61. Each function allegedly covered by ChriMar's '760 Patent, '107 Patent, and other patents, for which viable technologies competed during the standardization

process, comprises its own relevant market for antitrust purposes. Specifically, the aspects of the detection function that ChriMar contends are covered by its patents and reasonable substitutes for that technology comprise the “Detection Technology Market.” The aspects of the classification function that ChriMar contends are covered by its patents and reasonable substitutes for that technology comprise the “Classification Technology Market.” Together these markets are referred to herein as the “Power over Ethernet Technologies Markets.”

154. Before standardization, companies with alternative technologies to that which was standardized competed as viable, alternative substitute suppliers of technologies in these Power over Ethernet Technologies Markets. After standardization and lock-in, however, ChriMar, as the alleged holder of patents covering the technologies that perform the accused functions, holds monopoly power in each of the relevant Power over Ethernet Technologies Markets under its infringement assertions, as further alleged below. That is because, post-standardization and lock-in, formerly viable alternative technologies are no longer economically viable substitutes because of the lock-in effects discussed in paragraph 39 above.

155. Products compliant with the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard are deployed throughout the world and alternative technologies competing to be incorporated into these amendments were

offered by suppliers with operations all over the world, as alleged in paragraph 61. Accordingly, the geographic scope of each of the relevant Power over Ethernet Technologies Markets described above is worldwide.

156. ChriMar alleges that it owns the '760 and '107 Patents and, on information and belief, ChriMar believes that the '760 Patent and the '107 Patent are necessarily infringed by the practice of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard. ChriMar has accused entities selling IEEE 802.3af or IEEE 802.3at compliant products of infringing its allegedly "essential" patents. In particular, ChriMar has accused HP, which sells products supporting the IEEE 802.3af and IEEE 802.3at amendments in interstate commerce, of infringement.

157. Because ChriMar bases its allegations on compliance with the previously issued IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and ChriMar accuses the leading vendors of Power over Ethernet-enabled products of infringement, it is ChriMar's position that no meaningful level of Power over Ethernet-enabled products do not infringe its patents. Nor, because HP and other implementers of the IEEE 802.3af and IEEE 802.3at amendments are now locked-in to the standards, are there viable substitutes at present, as alleged above, *e.g.*, in paragraph 154. Given the number of alternative viable technologies available during the standards-setting process (*see* paragraph 61 above), and

consistent with the IEEE's policies (as described in paragraph 47 above), had the IEEE known about the '760 and '107 Patent-related applications and ChriMar's licensing positions regarding the same at the time of standardization, the IEEE would have incorporated one or more of the existing and known viable alternative technologies described in paragraph 61 into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard instead of the technologies that ChriMar contends are covered by its patents.

158. Accordingly, if ChriMar's patents, including the '760 and '107 Patents, in fact cover technologies that have been incorporated into the IEEE 802.3af and IEEE 802.3at amendments, ChriMar has monopoly power with respect to each of the Power over Ethernet Technologies Markets because ChriMar has the power to raise prices and to exclude competition with respect to each of the technologies allegedly covered by ChriMar's patents and incorporated into the amendments. Due to standardization and lock-in, there currently are no otherwise viable alternative technologies because: (1) once the IEEE selected the particular technologies allegedly covered by ChriMar's patents to be incorporated into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard and the standards were broadly adopted by HP and its Ethernet switching competitors, the other technologies capable of performing particular functions described in the standard specification were not included in the standard and were no longer

economically viable substitutes for the technologies included in the standards; (2) a device must conform to the requirements of the IEEE 802.3af and IEEE 802.3at amendments to be standards-compliant and assure interoperability with installed equipment of various manufacturers for commercial viability given the installed base of Power over Ethernet-enabled equipment; (3) once a company sufficiently implements the Power over Ethernet standards for its devices, the cost of developing a new specification and switching the design to a new specification is cost prohibitive; and (4) once the IEEE adopts a standard, it is costly and will take considerable time to develop a new standard to work around ChriMar's patents, particularly whereas here Power over Ethernet-enabled products have been brought to the market and widely adopted. In view of standardization and lock-in, product designers and manufacturers are unlikely to respond even to a significant increase in the cost of royalties — including unreasonably high royalties in excess of any intrinsic value of the patent — associated with the licensing demands of ChriMar to its purportedly essential patents by switching to alternative technologies or by switching to a different industry standard.

159. Barriers to entry into these markets are high because, among other reasons, the post-standardization lock-in effect alleged above has, together with standardization, led to a situation in which other technologies are no longer viable substitutes for the technologies the standard specifies to perform functions

included in the standard and accused by ChriMar of infringing its patents. Thus, ChriMar's excessive royalty demands cannot be countered by entry of another market participant into the Power over Ethernet Technologies Markets or alternative standards in order to drive down prices.

160. ChriMar acquired its monopoly power as a result of its misconduct in connection with the standards-setting process, including its failure to disclose the '760 and '107 Patent-related applications to the IEEE and its licensing position concerning those patents, as alleged above. Pursuant to IEEE standards and policies applicable to ChriMar, in light of ChriMar's attendance at IEEE meetings and ChriMar's deceptively withheld belief as to the applicability of the '760 and '107 Patent-related applications to the IEEE 802.3af and IEEE 802.3at amendments, ChriMar was under a duty to disclose to the IEEE (a) the '760 and '107 Patent-related applications, (b) ChriMar's belief of their applicability to the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '760 Patent, the '107 Patent, or their applications on RAND terms. ChriMar intentionally and deceptively failed to do so.

161. ChriMar's deceptive non-disclosure of the '760 and '107 Patent-related applications proximately and actually resulted in incorporation into the standard of technology over which ChriMar now claims patent rights. ChriMar has

therefore unlawfully excluded competing technologies from each of the relevant Power over Ethernet Technologies Markets, including those described in paragraph 61, and unlawfully acquired monopoly power in those markets.

162. The foregoing conduct by ChriMar has caused harm, and threatens to cause additional harm, to competition. These anticompetitive effects caused by ChriMar's anticompetitive and exclusionary conduct include each of the following:

163. By deliberately failing to disclose purportedly essential patent rights during the standards-setting process and its beliefs as to the applicability of those rights to the standards, ChriMar has improperly foreclosed competition in each of the relevant Power over Ethernet Technologies Markets, as alleged above. The result is increased prices for the licensing of technologies in the Power over Ethernet Technologies Markets. Consumers of these technologies have been harmed by ChriMar's conduct by being forced to pay (or face demands for, on threat of injunction and marketplace disparagement) higher prices for technologies as a result of ChriMar's illegal conduct. For example, after litigating against ChriMar in the ITC investigation, ChriMar's unlawful conduct and anticompetitive scheme forced previous defendants Avaya, Inc. and Extreme Networks, Inc. to pay higher prices for technology by taking a license to ChriMar's '250 Patent and '012 Patent. Furthermore, on information and belief, ChriMar's unlawful conduct and anticompetitive scheme has forced at least one supplier of Power over Ethernet-

enabled products out of the downstream product market due to ChriMar's threats of litigation, injunction, and increased royalties.

164. Additionally, ChriMar's conduct has and, unless enjoined, will continue to (1) substantially increase costs associated with the manufacture and sale of downstream Power over Ethernet-enabled devices that are compliant with the IEEE 802.3af and IEEE 802.3at amendments (for which the Power over Ethernet Technologies Markets are necessary inputs); (2) potentially exclude non-licensees from the manufacture and sales of such devices; and (3) chill innovation and quality competition for products that comply with the IEEE 802.3af and IEEE 802.3at amendments.

165. ChriMar's actions have reduced output, prevented competition on the merits for inclusion of technologies in the standard, raised prices of technology, wasted the time and money that HP and its Ethernet switching competitors spent standardizing the product and implementing the standard, and run counter to the policy of encouraging the setting of standards to promote competition. ChriMar's actions have subverted and disrupted the key purpose of standard setting. Under ChriMar's approach, only companies now licensed by ChriMar would be legally permitted to sell products or devices that are compliant with the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard. Any current ChriMar licensees cannot meet market demand, and could charge supracompetitive prices

for the products that are compliant with the IEEE 802.3af and IEEE 802.3at amendments that they would be able to manufacture and sell. Customers and consumers will be harmed, either by not getting products that are compliant with the IEEE 802.3af and IEEE 802.3at amendments or having to pay an exorbitant price for one. These actions would result in higher prices and cause further harm to competition.

166. Such anticompetitive effects and harm will continue unless and until the Court issues appropriate relief as requested below.

167. As is alleged with particularity above, ChriMar committed unlawful business acts by monopolizing the Power over Ethernet Technologies Markets.

168. Each of the unlawful business acts identified above have continuing anticompetitive effects in the State of California and throughout the United States.

169. As alleged above, ChriMar engaged in unfair business practices including by: (1) attending IEEE meetings regarding the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard while knowingly and intentionally not disclosing that it believed it had intellectual property rights that would be essential to the practice of such amendments and that it is unwilling to license on RAND terms; (2) ChriMar did not disclose its intellectual property rights and unwillingness to license on RAND terms, knowingly and in order to induce reliance on its representations as to its intellectual property rights; (3) ChriMar

knew or should have reasonably expected that its nondisclosures and misrepresentations would induce the IEEE to set the IEEE 802.3af and IEEE 802.3at amendments as it did; and (4) ChriMar did not disclose its intellectual property rights and unwillingness to license on RAND terms and made misrepresentations in order to exploit the key advantage of the standard while at the same time attempting to side-step its disclosure obligations.

170. In addition, ChriMar has falsely portrayed itself as a manufacturing entity in order to threaten HP with claims for injunctive relief to which ChriMar is not entitled. ChriMar previously told this Court that it had few sales as of 2000 and was out of the market of selling consumer devices years ago. *See, e.g., ChriMar Sys., Inc. v. Powerdsine Ltd.*, 2:01-cv-74081-AC (E.D. Mich.), Doc # 45 Plaintiff's Objections to Special Master (Sept. 6, 2007); *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

171. By deliberately failing to disclose purportedly essential patent rights and applications during the standards-setting process, ChriMar has improperly foreclosed competition in each of the relevant Power over Ethernet Technologies Markets. Before standardization, each functionality that is purportedly covered by ChriMar's patents and included in the standard competed with all available technical alternatives identified in paragraph 61 in one or more relevant markets. Participants in the development of the IEEE 802.3af and IEEE 802.3at

amendments could have chosen between them to select which of them to include in the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard. Following standardization, alternative technologies to perform functions necessary to practice the standard are no longer viable. *See* paragraphs 153-161 above. If ChriMar's anticompetitive scheme is successful, the result will be higher, supracompetitive royalty rates for licensing within those markets.

172. ChriMar's conduct has and, unless enjoined, will continue to substantially increase costs associated with the manufacture and sale of downstream Power over Ethernet-enabled devices that are compliant with the IEEE 802.3af and IEEE 802.3at amendments, potentially exclude non-licensees from the manufacture and sales of such devices, and chill innovation and quality competition for products that comply with the IEEE 802.3af and IEEE 802.3at amendments.

173. ChriMar's actions have and seek to continue to reduce output, prevent competition in the Power over Ethernet Technologies Markets, raise prices, waste the time and money spent standardizing the product, and run counter to the policy of encouraging the setting of standards to promote competition. ChriMar's actions subvert the key purpose of standard setting. Under ChriMar's approach, only companies now licensed by ChriMar would be legally permitted to sell products or devices that are compliant with the IEEE 802.3af and IEEE 802.3at amendments.

Any current ChriMar licensees cannot meet the market demand, and could charge supracompetitive prices for the products that are compliant with the IEEE 802.3af and IEEE 802.3at amendments that they would be able to manufacture and sell. Customers and consumers will be harmed, either by not getting products that are compliant with the IEEE 802.3af and IEEE 802.3at amendments or having to pay an exorbitant price for one. These actions would result in higher prices and less competition, and are therefore unfair business practices.

174. Each of the unfair business acts identified above is unfair when the effect of the act on HP is balanced against ChriMar's reasons, justifications, and motives for that act.

175. Each of the unfair business acts identified above has continuing anticompetitive effects in California and throughout the United States.

176. ChriMar committed fraudulent and deceptive business acts by engaging in the conduct as pleaded herein that deceived the IEEE, its participants and members of the public, including but not limited to, participating and advocating for technology to be incorporated into the IEEE 802.3af and IEEE 802.3at amendments while knowingly and intentionally not disclosing that it believed it had intellectual property rights that would be necessary to the practice of such amendments and that ChriMar was unwilling to provide RAND licenses to those alleged patent rights. ChriMar's failures to disclose and misrepresentations

were intended to induce reliance. ChriMar knew or should have reasonably expected that its nondisclosures and misrepresentations would induce the IEEE to set the IEEE 802.3af and IEEE 802.3at amendments as it did.

177. Each of the fraudulent deceptive business acts identified above has continuing anticompetitive effects in California and throughout the United States. By reason of ChriMar's unlawful, unfair, and fraudulent business conduct, HP has suffered injury-in-fact and has been deprived of money or property in which it has a vested interest. Unless and until the Court enjoins such conduct, HP's injuries in fact are irreparable, and HP will continue to suffer injury-in-fact.

178. As a direct, proximate, and foreseeable result of ChriMar's wrongful conduct, as alleged above, HP has suffered harm in California and elsewhere, including being forced to expend resources to defend against ChriMar's claims of infringement, and is threatened, in particular, by loss of profits, loss of customers and potential customers, loss of goodwill and product image, uncertainty in business planning, and uncertainty among customers and potential customers.

179. As a direct, proximate, and foreseeable result of ChriMar's wrongful conduct, as alleged above, competition has been injured in the Power over Ethernet Technologies Markets by excluding rivals, and there is a significant threat of injury in downstream markets for Power over Ethernet-enabled devices and complementary innovation markets, thereby causing injury to consumers in

California and elsewhere, including the inevitable passing on to consumers of improper and supracompetitive royalties demanded by ChriMar and decreases in innovation and quality competition for end products that comply with the IEEE 802.3af and IEEE 802.3at amendments.

180. The allegations set forth herein are based upon HP's current belief and the information presently available to HP, and are subject to change as additional evidence is obtained through discovery.

PRAYER FOR RELIEF

WHEREFORE, HP requests that the Court enter a judgment in HP's favor and grant the following relief:

- a) A declaration that HP does not infringe in any manner any of the claims of the '760 Patent;
- b) A declaration that HP does not infringe in any manner any of the claims of the '107 Patent;
- c) A declaration that the '760 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 101, 102, 103, 112 and/or 116;
- d) A declaration that the '107 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 101, 102, 103, 112 and/or 116;

- e) A declaration that the '760 Patent is unenforceable against HP due to estoppel, waiver, implied license and/or unclean hands;
- f) A declaration that the '107 Patent is unenforceable against HP due to estoppel, waiver, implied license and/or unclean hands;
- g) An order that ChriMar breached its obligations to the IEEE, for which HP is a third party beneficiary;
- h) Awarding HP any and all damages as a result of ChriMar's breach of its obligation to the IEEE;
- i) An injunction against ChriMar and its affiliates, subsidiaries, assigns, employees, agents or anyone acting in privity or concert with ChriMar from charging infringement or instituting or continuing any legal action for infringement of the '760 Patent against HP, its customers, or anyone acting in privity with HP;
- j) An injunction against ChriMar and its affiliates, subsidiaries, assigns, employees, agents or anyone acting in privity or concert with ChriMar from charging infringement or instituting or continuing any legal action for infringement of the '107 Patent against HP, its customers, or anyone acting in privity with HP;
- k) An order declaring that HP is the prevailing party and that this is an exceptional case, awarding HP its costs, expenses, disbursements and

reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law;

- l) Adjudge and decree that ChriMar has violated Section 17200, et seq., of the California Business and Professions Code;
- m) Enjoin, pursuant to applicable federal and state laws, including Section 17200, et seq., of the California Business & Professions Code, ChriMar's continuing violations of law by: (1) barring ChriMar from asserting the '760 Patent and other intellectual property rights it has claimed cover the IEEE 802.3af or IEEE 802.3at Power over Ethernet standards against parties manufacturing, selling, purchasing or using products practicing those standards; or in the alternative (2) requiring ChriMar to grant IEEE members, including HP a royalty-free license to the '760 Patent and any other intellectual property rights that ChriMar failed to disclose to the IEEE;
- n) Enjoin, pursuant to applicable federal and state laws, including Section 17200, et seq., of the California Business & Professions Code, ChriMar's continuing violations of law by: (1) barring ChriMar from asserting the '107 Patent and other intellectual property rights it has claimed cover the IEEE 802.3af or IEEE 802.3at Power over Ethernet standards against parties manufacturing, selling, purchasing or using products practicing those standards; or in the alternative (2) requiring ChriMar to grant IEEE

members, including HP a royalty-free license to the '107 Patent and any other intellectual property rights that ChriMar failed to disclose to the IEEE;

- o) Awarding HP its costs and expenses of litigation, including attorneys' fees and expert witness fees; and
- p) Granting such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure, HP respectfully demands a jury of all issues triable to a jury in this action.

Dated: March 5, 2015

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