UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

v.

CHRIMAR SYSTEMS INC.
D/B/A CMS TECHNOLOGIES,

Defendant.

Case No.

Honorable

Magistrate Judge

COMPLAINT AND JURY DEMAND

Plaintiff Cisco Systems, Inc. ("Cisco") hereby demands a jury trial and alleges as follows for its complaint against Defendant ChriMar Systems Inc. d/b/a CMS Technologies ("ChriMar"):

COMPLAINT

PARTIES

1. Cisco Systems, Inc. is a California corporation with its principal place of business on Tasman Drive in San Jose, California 95134.

2. On information and belief, 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

3. This action is predicated on the patent laws of the United States, Title 35 of the United States Code, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

4. An actual and justiciable controversy exists between ChriMar and Cisco as to the noninfringement, invalidity, and unenforceability of U.S. Patent Nos. 9,019,838 ("'838 Patent") and 9,049,019 ("'019 Patent") (attached as Exhibits A and B respectively). 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 Cisco. In connection with ChriMar's licensing campaign targeting PoE products, Cisco is currently involved in litigation against ChriMar with respect to U.S. Patent No. 7,457,250 ("'250 Patent").[1] This litigation involves PoE products implementing the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard. Cisco has also brought declaratory judgment actions against ChriMar with respect to

[1] *ChriMar Systems, Inc. v. Cisco Systems, Inc.*, No. 4:13-cv-1300-JSW (N.D. Cal.) ("the NDCA case").

related U.S. Patent No. 8,155,012 ("'012 Patent")[2] and U.S. Patent Nos. 8,902,760 ("'760 Patent") and 8,942,107 ("'107 Patent") in this Court.[3] The '838 Patent issued in April 2015. The '019 Patent issued in June 2015. Cisco maintains that the '250, '012, '760, '107, '838, and '019 Patents are invalid, unenforceable, and are not infringed by Cisco's PoE products capable of implementing the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard.[4]

5. 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 '838 Patent and '019 Patent, has a substantial relationship to Michigan. ChriMar has availed itself of the laws of this district in connection with its current portfolio

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[2] *Cisco Systems, Inc. v. ChriMar Systems, Inc.*, No. 2:14-cv-10290 (E.D. Mich.). That action is currently stayed pending resolution of the N.D. Cal. litigation.

[3] *Cisco Systems, Inc. v. ChriMar Systems, Inc.*, No. 2:15-cv-10817 (E.D. Mich.) That action is currently stayed pending resolution of the N.D. Cal. litigation.

[4] In the NDCA case, Cisco has counterclaimed for a declaratory judgment that the '250 Patent, parent to the '012, '760, '107, '838, and '019 Patents, is invalid, unenforceable, and not infringed by Cisco's PoE products, including products implementing the IEEE 802.3af and 802.3at amendments.

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

6. 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.

INTRODUCTION

7. During standardization of the "Power over Ethernet" technology by the Institute for Electrical and Electronics Engineers ("IEEE"), ChriMar deceptively and intentionally failed to disclose its belief that its then-pending and open patent application that led to both the '838 Patent and the '019 Patent covered certain functions being incorporated into the standards, and its licensing position about those patents or their applications. As alleged in further detail below, ChriMar participated in the standard-setting process of the IEEE and was fully aware of the rules and policies governing such participation, including with respect to the disclosure of intellectual property rights to the IEEE. In violation of those rules and policies, however, ChriMar selectively disclosed only one of its patents to the IEEE — a patent that was in a different patent family than the '838 and '019 Patents — while deceptively hiding its belief about the applicability of the pending

'838 and '019 Patent-related application to the standard from the IEEE and the participants in the standards-setting process.

8. ChriMar's plan at the time of this deception was to draft the claims 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. Cisco denies any infringement, but under ChriMar's apparent infringement theories and enforcement campaigns, ChriMar's deceptive conduct at the IEEE — not any intrinsic value of the technology claimed by the '838 Patent or '019 Patent — gave it monopoly power in the relevant technology markets alleged herein.

9. Due to ChriMar's intentional deception of the IEEE as part of its scheme, as further alleged herein, ChriMar has committed standards-related fraud, breached its contractual obligations to the IEEE, rendered the '838 and '019 Patents unenforceable due to its unclean hands, and violated Section 17200 of the California Business and Professions Code.

BACKGROUND

A. CHRIMAR'S PATENTS

10. ChriMar's patent portfolio includes the '838 Patent, the '019 patent, the '107 Patent, the '760 Patent, the '250 Patent, the '012 Patent, U.S. Patent No. 6,650,622 ("'622 Patent"), and U.S. Patent No. 5,406,260 ("'260 Patent").

11. The '838 Patent, entitled "Central Piece of Network Equipment," reports that it was filed on September 14, 2012, and issued on April 28, 2015. The '838 Patent reports that it is a continuation of Application No. 13/370,918, 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 '838 Patent are John F. Austermann, III and Marshall B. Cummings.

12. As alleged herein, the '838 Patent was not duly and legally issued.

13. On information and belief, ChriMar is the current assignee of the '838 Patent.

14. The '019 Patent, entitled "Network Equipment and Optional Tether," reports that it was filed on September 14, 2012 as Application No. 13/615,726, and

issued on June 2, 2015. The '019 Patent reports that it is a continuation of Application No. 13/370,918, 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 '019 Patent are John F. Austermann, III and Marshall B. Cummings.

15. As alleged herein, the '019 Patent was not duly and legally issued.

16. On information and belief, ChriMar is the current assignee of the '019 Patent.

17. 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.

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

19. 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, 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.

20. On information and belief, ChriMar is the current assignee of the '760 Patent.

21. 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.

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

23. 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 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 '250 Patent are John F. Austermann, III, and Marshall B. Cummings.

24. On information and belief, ChriMar is the current assignee of the '250 Patent.

25. The '838 and '019 Patents share nearly identical specifications with their family members, the '760, '107, '012, and '250 Patents.

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 targeting products with PoE functionality specified by certain standards promulgated by the IEEE and sellers of such products.

27. ChriMar's licensing and enforcement campaign began at least as early as 2001, when ChriMar sued Cisco in this District for allegedly infringing the '260 Patent, accusing, for example, Cisco's IP phones.[5] ChriMar thereafter claimed that the '260 Patent was "essential" to the IEEE PoE standards.[6] After the court in that action entered an order granting Cisco's motion for summary judgment that claim 1 of the '260 Patent was invalid, that litigation between Cisco and ChriMar was resolved by way of settlement, with Cisco taking a license to ChriMar's alleged technology. ChriMar also sued D-Link Systems ("D-Link"),[7] Foundry Networks ("Foundry"),[8] and PowerDsine, Ltd. ("PowerDsine")[9] 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 rulings favorable to them were issued, and

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

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

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

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

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

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, as alleged herein, ChriMar continued its licensing and enforcement campaign against sellers of products with PoE functionality, including Cisco and a number of other 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 Danpex Corp., Garrettcom, Inc., and Edgewater Networks in 2009.[10] Following conclusion of a reexamination proceeding involving the '250 Patent, ChriMar sued Cisco, and also Hewlett-Packard, Avaya, Inc., and Extreme Networks in district court,[11] and initiated a

[10] *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 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).

[11] *ChriMar Systems, Inc. v. Cisco Systems, Inc.*, No. 4:13-cv-1300-JSW (N.D. Cal.) ("the NDCA case").

Section 337 proceeding in the International Trade Commission.[12] In both its district court case and in the Section 337 proceeding it initiated, ChriMar alleged that Cisco and the other district court defendants were 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 PoE products. The complaints in these actions accuse specific models of IP phones and/or wireless access points, each of which includes PoE functionality.

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, 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.

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[12] *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).

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. ChriMar subsequently filed a separate suit against Alcatel-Lucent S.A., Alcatel-Lucent USA Inc., Alcatel-Lucent Holdings, Inc., and Alcatel-Lucent Enterprise USA Inc., in the Eastern District of Texas, Case No. 6:15-cv-163, on March 9, 2015, also alleging infringement of the '012 and '107 Patents, for among other things, making using, offering for sale, selling, and/or importing VOIP phones, wireless access points, and small cells, 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. ChriMar subsequently filed a separate suit against AMX, LLC in the Eastern District of Texas, Case No. 6:15-cv-164, on March 6, 2015, alleging infringement of the '012 and '107 Patents, for among other things, making, using, offering for sale, selling, and/or importing touch panels, wireless access points,

docking stations, wireless gateways, audio/video receivers, keypads, content sharing devices, entry communicators, control pads, communications gateways, multi-format transmitters/switches, encoder/decoders, phone controllers, and PoE extractors, 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. Most recently, ChriMar filed at least 44 additional lawsuits in the Eastern District of Texas: 6 suits on June 22, 2015;[13] 25 suits on July 1, 2015;[14]

[13] *ChriMar Systems, Inc. et al. v. Advanced Network Devices, Inc.*, No. 6-15-cv-0577 (E.D. Texas June 22, 2015) (asserting '012, '107, and '019 Patents); *ChriMar Systems, Inc. et al. v. Arrowspan, Inc.*, No. 6-15-cv-0579 (E.D. Texas June 22, 2015) (asserting '012, '107, and '019 Patents); *ChriMar Systems, Inc. et al. v. Biamp Systems Corp.*, No. 6-15-cv-0578 (E.D. Texas June 22, 2015)

(asserting '012, '107, and '019 Patents); *ChriMar Systems, Inc. et al. v. Hawk-I Security Inc.*, No. 6-15-cv-0580 (E.D. Texas June 22, 2015) (asserting '012, '107, and '019 Patents); *ChriMar Systems, Inc. et al. v. IPitomy Communications, LLC*, No. 6-15-cv-0582 (E.D. Texas June 22, 2015) (asserting '012, '107, and '019 Patents); *ChriMar Systems, Inc. et al. v. KeyScan, Inc.*, No. 6-15-cv-0583 (E.D. Texas June 22, 2015) (asserting '012, '107, and '019 Patents).

[14] *ChriMar Systems, Inc. et al. v. Accton Technology Corporation USA*, No. 6-15-cv-00616 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. ADTRAN, Inc.*, No. 6-15-cv-00618 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Advantech Corporation*, No. 6-15-cv-00619 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Alcatel Lucent*, No. 6-15-cv-00614 (E.D. Texas July 1, 2015) (asserting '760 and '838 Patents); *ChriMar Systems, Inc. et al. v. Allworx Corporation*, No. 6-15-cv-00620 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Alpha Networks, Inc.*, No. 6-15-cv-00621 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. AMX, LLC*, No. 6-15-cv-00615 (E.D. Texas July 1, 2015) (asserting '760 and '838 Patents); *ChriMar Systems, Inc. et al. v. ASUS Computer International*, No. 6-15-cv-00624 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. ASUSTek Computer International, Inc.*, No. 6-15-cv-00623 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Black Box Corporation*, No. 6-15-cv-00622 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Buffalo Americas, Inc.*, No. 6-15-cv-00625 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Costar Technologies, Inc.*, No. 6-15-cv-00626 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Dell Inc.*, No. 6-15-cv-00639 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Eagle Eye Networks, Inc.*, No. 6-15-cv-00627 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Edimax Computer Company*, No. 6-15-cv-00628 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. EnGenius Technologies, Inc.*, No. 6-15-cv-00640 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v.*

and 13 suits on July 2, 2015.[15] In each of these 44 lawsuits, ChriMar asserts infringement predicated on the accused products' compliance with the PoE

Juniper Networks, Inc., No. 6-15-cv-00630 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Korenix USA Corporation*, No. 6-15-cv-00631 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Leviton Manufacturing Co., Inc.*, No. 6-15-cv-00632 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Moxa Americas Inc.*, No. 6-15-cv-00633 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. NETGEAR, Inc.*, No. 6-15-cv-00634 (E.D. Texas July 1, 2015) (asserting 012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. NetMedia Inc.*, No. 6-15-cv-00635 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Phihong USA Corporation*, No. 6-15-cv-00636 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Rockwell Automation, Inc.*, No. 6-15-cv-00637 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Ruckus Wireless, Inc.*, No. 6-15-cv-00638 (E.D. Texas July 1, 2015) (asserting '012, '760, '107, and '838 Patents).

[15] *ChriMar Systems, Inc. et al. v. Allied Telesis, Inc.*, No. 6-15-cv-00652 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Belden Inc.*, No. 6-15-cv-00649 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Belkin International, Inc.*, No. 6-15-cv-00650 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. D-Link Systems, Inc.*, No. 6-15-cv-00653 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Fortinet, Inc.*, No. 6-15-cv-00651 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Huawei Technologies USA, Inc., Huawei Enterprise USA, Inc.*, No. 6-15-cv-00643 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. StarTech.com USA, LLP*, No. 6-15-cv-00645 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. TP-Link USA Corporation*, No. 6-15-cv-00641 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Transition Networks, Inc.*, No. 6-15-cv-00642 (E.D. Texas July 2, 2015) (asserting '012,

standards embodied in IEEE 802.3af and/or 802.3at. For example, in *ChriMar Systems, Inc. v. Accton Technology USA*, No. 6-15-cv-0616-JRG-JDL (E.D. Texas), ChriMar's infringement allegations read, in part, as follows: "Upon information and belief, Defendants make, use, offer to sell, sell, and/or import Power over Ethernet ("PoE") powered devices ("PDs") that comply with and/or are compatible with IEEE 802.3af and/or 802.3at." The additional 43 new cases filed in the Eastern District of Texas contain similar allegations.

36. ChriMar's website, www.cmspatents.com, further 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, '107, and '250 Patents, and targets "PoE equipment." ChriMar states on that website that it "is engaged in active licensing

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'760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. TRENDware International, Inc.*, No. 6-15-cv-00644 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. Tycon Systems Inc.*, No. 6-15-cv-00646 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. VP Networks, Inc. d/b/a ValuePoint Networks, Inc.*, No. 6-15-cv-00647 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents); *ChriMar Systems, Inc. et al. v. WatchGuard Technologies, Inc.*, No. 6-15-cv-00648 (E.D. Texas July 2, 2015) (asserting '012, '760, '107, and '838 Patents)

with vendors of ***PoE equipment***. Licenses for our ***patents*** are being offered to manufacturers and resellers of ***PoE equipment***."[16] As of July 17, 2015, this same page specifically identifies the '760 Patent, the '012 Patent, the '107 Patent, the '250 Patent, and the '622 Patent as U.S. Patents awarded to ChriMar. The '838 Patent, which issued approximately three months ago and the ’019 Patent, which issued approximately one and a half months ago, are 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 Cisco. Additionally, ChriMar lists Aastra USA, Inc. & Aastra Technologies Limited (now Mitel Networks Corporation), Avaya, Inc., Extreme Networks, Inc., Grandstream Networks, Inc., Microsemi Corporation, Samsung Electronics Co., Ltd., and Waters Network Systems, LLC as licensees to the '012 Patent, the '250 Patent, or patents pending, under the heading "***PoE Licensees and Products Include***:".[17] 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

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[16] *EthernetConnect Program*, http://www.cmspatents.com/index.html (emphases added).

[17] www.cmspatents.com/licensees.html.

terms under ***the Patent Licensing Program***, the EtherLock Reseller Program and/or the EtherLock OEM Program."[18] 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."[19] ChriMar's actions and statements all make clear that ChriMar is targeting products with PoE functionality for allegedly infringing ChriMar's patents, including the '838 and '019 Patents, as well as the '760, '107, '012 and '250 Patents.

C. STANDARDS IN GENERAL

37. 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. A standard is often published by a private Standards Setting Organization ("SSO"). Once a standard is established, competing manufacturers can offer their own products and services that are compliant with the standard.

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[18] *EthernetConnect Program*, http://www.cmspatents.com/index.html.

[19] www.cmstech.com/power.htm.

38. "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.

39. 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. Technical standards also reduce costs for both suppliers and purchasers at the manufacturing level, and the end-consumer level. *See, e.g.*, 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 can make products less costly for firms to

produce and more valuable to consumers. . . . Standards make networks, such as the Internet and wireless telecommunications, more valuable by allowing products to interoperate.").

40. While these benefits of technical standards are well recognized, it is also well understood that standard setting is subject to 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. However, if an issued standard requires the use of that patented technology and the standard has been sufficiently widely-adopted, other technological approaches generally are no longer available 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 who have designed, made, and sold standards-compliant products, such as Cisco, 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 are prohibitively expensive once a standard has been widely adopted, due to the need to redesign any product compliant with the original standard

allegedly covered by the patentee's patent rights. This results in "lock-in": companies have no choice but to manufacture and sell 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 standard-compliant product.

41. Owners of patents covering technologies adopted in a standard subject to "lock-in" can use "patent hold-up" to charge supracompetitive royalties that are higher than any intrinsic value associated with the patented technology. *See, e.g.*, *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 310 (3d Cir. 2007) ("In this unique position of bargaining power [where industry participants are 'locked-in' to the standard], the patent holder may be able to extract supracompetitive royalties from the industry participants."); 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 35-40 ("Thus, *ex post*, the owner of a patented technology necessary to implement the standard may have the power to extract higher royalties or other licensing terms that reflect the absence of competitive alternatives.").

42. To address these concerns and to avoid the anticompetitive effects associated with patent hold-up, SSOs adopt 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 SSO who hold purported Essential Patent Rights commit to licensing those rights on reasonable and non-discriminatory ("RAND") terms or at minimum indicate that they will not provide RAND licenses to any Essential Patent Rights.

43. The timely disclosure of any arguably Essential Patent Rights and whether the holder of those rights will license those rights on RAND terms by individuals participating in the SSO 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.

44. Any deceptive non-disclosure of arguably Essential Patent Rights, as engaged in by ChriMar here, undermines the safeguards that SSOs put in place to guard against abuse and to prevent patent hold-up. Through such conduct, the

intellectual property owner violates the industry practice and the very commitment that led to incorporation of that technology in the first place.

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

45. The IEEE Standards Association is an SSO 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.

46. 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.

47. 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 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. To remain "backwards compatible" with the previously ratified IEEE 802.3af amendment, the IEEE 802.3at amendment did not change many of the functions required by the 802.3af amendment, including functions that ChriMar alleges infringe the '012, '107, '760, and '250 Patents, and on information and belief, also alleges are covered by the '838 and '019 Patents. The general functionality of supplying data and power over Ethernet cables will be referred to herein as "Power over Ethernet."

48. 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 standard-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, and is discussed and/or reviewed during IEEE meetings. 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 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).

49. 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.

50. 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 cables 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.

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

51. 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 '838 Patent, the '019 Patent, or their applications,[20] (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 '838 Patent, the '019 Patent, or their applications on RAND terms, in order to intentionally and 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.

52. John Austermann, III, President and Chief Executive Officer of ChriMar and named inventor on the '838 Patent, the '019 Patent, and their applications, attended certain IEEE meetings regarding the setting of the IEEE

[20] The phrase "the '838 Patent, the '019 Patent, or their applications" as used throughout Cisco's Complaint refers to U.S. Patent No. 9,019,838, U.S. Patent No. 9,049,019, or any application to which either patent may purport to claim priority, including without limitation Application Nos. 13/615,734, 13/615,726, 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.

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 '838 Patent, the '019 Patent, or their applications to the IEEE and those members and participants in attendance during 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 '838 Patent, the '019 Patent, or their applications.

53. 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 '838 Patent, the '019 Patent, or their applications because it was in a different patent family than the '838 Patent, the '019 Patent, or their applications. ChriMar continued to hide the '838 Patent, the '019 Patent, or their applications from the IEEE and intentionally did not identify the '838 Patent, the '019 Patent, or their applications in its December 3, 2001 letter.

54. ChriMar deceptively concealed from and failed to disclose to the IEEE the '838 Patent, the '019 Patent, or their applications. ChriMar deceptively concealed from and failed to disclose to the IEEE that the '838 Patent, the '019 Patent, or their applications covered any proposals for the IEEE 802.3af amendment. ChriMar deceptively concealed from and failed to disclose to the IEEE that the '838 Patent, the '019 Patent, or their 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 '838 Patent, the '019 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 '838 Patent, the '019 Patent, or their applications to the IEEE 802.3af and 802.3at amendments, ChriMar was under a duty to disclose to the IEEE (a) the

'838 Patent, the '019 Patent, or their 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 '838 Patent, the '019 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 '838 Patent, the '019 Patent, or their 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 '838 Patent, the '019 Patent, or their 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 '838 Patent, the '019 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 '838 Patent, the '019 Patent, or their 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 the '838 Patent and/or the '019 Patent 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.

F. CHRIMAR'S ITC AND DISTRICT COURT LITIGATIONS

64. As part of its anticompetitive scheme, ChriMar filed complaints for patent infringement of the '250 Patent against Cisco and others in United States District Court and the United States International Trade Commission ("the ITC"). On October 31, 2011, ChriMar filed a complaint for infringement of the '250 Patent in Delaware. The case was eventually transferred to the Northern District of California. Also, on November 16, 2011, ChriMar filed a verified First Amended Complaint with the ITC urging the commencement of an investigation under Section 337 of the Tariff Act of 1930 as amended, 19 U.S.C. § 1337. At the ITC, ChriMar sought the remedy of barring from importation at least a significant volume of Cisco's Power over Ethernet-enabled products, based on allegations that these products infringed the claims of the '250 Patent. The investigation at the ITC

was entitled *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 WLANs, and Cameras,* Inv. No. 337-TA-817 ("the ITC investigation").

65. In the ITC investigation, ChriMar named as Respondents Cisco, Hewlett-Packard Co., 3Com Corporation, Avaya Inc., and Extreme Networks, Inc. Collectively, these entities comprise the substantial majority of companies offering products that comply with the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard.

66. In both the NDCA case and in the ITC investigation, ChriMar asserted infringement of the '250 Patent by Respondents based on the importation of products by the Respondents that ChriMar alleged practice the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard.

67. In its Complaint in the ITC investigation, ChriMar alleged that it had a domestic industry or is in the process of starting one, a requirement for bringing an ITC investigation. Following discovery in the ITC investigation, the Respondents filed a summary determination motion seeking to end the investigation due to ChriMar's failure to satisfy the domestic industry requirement. Subsequently (less than a month later, and less than two months before the start of the scheduled ITC hearing), ChriMar withdrew its Complaint, and the ITC

investigation was terminated, causing Cisco and other Respondents to incur significant expense without any resolution of ChriMar's infringement allegations, due to ChriMar's enforcement actions in furtherance of its anticompetitive scheme. Since that time, Cisco and other defendants have incurred significant litigation expense defending against ChriMar's anticompetitive scheme.

68. ChriMar has continued its anticompetitive scheme by enforcing its '012, '760, '107, '838, and '019 Patents against multiple defendants, as described above in paragraphs 29-35.

G. AN ACTUAL AND JUSTICIABLE CONTROVERSY EXISTS

69. ChriMar's conduct demonstrates that it will seek to prevent Cisco 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 '838 and '019 Patents. For example, ChriMar's actions and course of conduct against Cisco thus far with respect to the '260, '250, '012, '760, and '107 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.

70. 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, Cisco fully expects to be confronted with similar allegations from ChriMar on the newly issued '838 and '019 Patents against Cisco's PoE products.

71. ChriMar's allegations of infringement of the '250 Patent against Cisco in the NDCA case 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, '012 Patent, '760 Patent, and '107 Patent are in the same patent family as the '838 and '019 Patents, and ChriMar alleges that the '838 Patent, the '019 Patent, the '107 Patent, the '760 Patent, the '012 Patent, and the '250 Patent are directed to the same technology. Cisco expects to be confronted with similar allegations from ChriMar as to the '838 and '019 Patents against its products as it has been with respect to the '250, '012, '760, and '107 Patents.

72. A declaration concerning the invalidity, noninfringement, and unenforceability of the claims of the '838 Patent and the '019 Patent is necessary in light of the present controversy between the parties.

FIRST COUNT

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 9,019,838)

73. Plaintiff incorporates by reference the allegations in paragraphs 1 through 72, inclusive.

74. There exists an actual and justiciable controversy regarding the noninfringement of the '838 Patent by Cisco.

75. Cisco has not infringed and does not infringe any valid and enforceable claim of the '838 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations with regard to the '838 Patent.

76. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '838 Patent.

SECOND COUNT

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 9,049,019)

77. Plaintiff incorporates by reference the allegations in paragraphs 1 through 76, inclusive.

78. There exists an actual and justiciable controversy regarding the noninfringement of the '019 Patent by Cisco.

79. Cisco has not infringed and does not infringe any valid and enforceable claim of the '019 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations with regard to the '019 Patent.

80. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '019 Patent.

THIRD COUNT

(Declaratory Judgment of Invalidity of U.S. Patent No. 9,019,838)

81. Plaintiff incorporates by reference the allegations in paragraphs 1 through 80, inclusive.

82. There exists an actual and justiciable controversy regarding the invalidity of the '838 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations regarding the '838 Patent.

83. The claims of the '838 Patent are invalid because of a failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 et seq., including §§ 101, 102, 103, and 112.

84. By way of example only, and without limitation, and in consideration of ChriMar's improper application of the claims of the '838 Patent, the claims of the '838 Patent are invalid under 35 U.S.C. §§ 102 and/or 103 in view of at least the following exemplary prior art, either alone or in combination with one or more of the exemplary 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

85. Depending on the scope of the asserted claims of the '838 Patent or contentions in connection therewith, the asserted claims may also 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.

86. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '838 Patent.

FOURTH COUNT

(Declaratory Judgment of Invalidity of U.S. Patent No. 9,049,019)

87. Plaintiff incorporates by reference the allegations in paragraphs 1 through 86, inclusive.

88. There exists an actual and justiciable controversy regarding the invalidity of the '019 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations regarding the '019 Patent.

89. The claims of the '019 Patent are invalid because of a failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 et seq., including §§ 101, 102, 103, and 112.

90. By way of example only, and without limitation, and in consideration of ChriMar's improper application of the claims of the '019 Patent, the claims of

the '019 Patent are invalid under 35 U.S.C. §§ 102 and/or 103 in view of at least the following exemplary prior art, either alone or in combination with one or more of the exemplary 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

91. Depending on the scope of the asserted claims of the '019 Patent or contentions in connection therewith, the asserted claims may also 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.

92. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '019 Patent.

FIFTH COUNT

(Declaratory Judgment of Unenforceability of U.S. Patent No. 9,019,838)

93. Plaintiff incorporates by reference the allegations in paragraphs 1 through 92, inclusive.

94. ChriMar's hands are unclean, rendering the '838 Patent unenforceable and barring ChriMar from enforcing the '838 Patent against Cisco.

95. Despite having a duty to disclose to the IEEE (a) the '838 Patent or its applications,[21] (b) ChriMar's belief of their applicability to the IEEE 802.3af or IEEE 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '838 Patent or its applications on RAND terms in connection with the IEEE 802.3af and IEEE 802.3at amendments, ChriMar knowingly and intentionally did not do so.

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

97. ChriMar now actively seeks licenses, damages and injunctive relief against manufacturers and re-sellers of products that implement 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 '838 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

98. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the '838 Patent, which directly

[21] The phrase "the '838 Patent or its applications" as used throughout Cisco's Complaint refers to U.S. Patent No. 9,019,838 or any application to which it may purport to claim priority, including without limitation Application Nos. 13/615,734, 13/370,918, 12/239,001, 10/668,708, 09/370,430, PCT/US99/07846, or Provisional Application No. 60/081,279.

relates to the matter at issue, rendering the '838 Patent unenforceable. A judicial declaration of unenforceability is necessary and appropriate in order to resolve this controversy.

SIXTH COUNT

(Declaratory Judgment of Unenforceability of U.S. Patent No. 9,049,019)

99. Plaintiff incorporates by reference the allegations in paragraphs 1 through 98, inclusive.

100. ChriMar's hands are unclean, rendering the '019 Patent unenforceable and barring ChriMar from enforcing the '019 Patent against Cisco.

101. Despite having a duty to disclose to the IEEE (a) the '019 Patent or its applications,[22] (b) ChriMar's belief of their applicability to the IEEE 802.3af or IEEE 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '019 Patent or its applications on RAND terms in connection with the IEEE 802.3af and IEEE 802.3at amendments, ChriMar knowingly and intentionally did not do so.

[22] The phrase "the '019 Patent or its applications" as used throughout Cisco's Complaint refers to U.S. Patent No. 9,049,019 or any application to which it may purport to claim priority, including without limitation Application Nos. 13/615,726, 13/370,918, 12/239,001, 10/668,708, 09/370,430, PCT/US99/07846, or Provisional Application No. 60/081,279.

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

103. ChriMar now actively seeks licenses, damages and injunctive relief against manufacturers and re-sellers of products that implement 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 '019 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

104. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the '019 Patent, which directly relates to the matter at issue, rendering the '019 Patent unenforceable. A judicial declaration of unenforceability is necessary and appropriate in order to resolve this controversy.

SEVENTH COUNT

(Breach of Contract)

105. Plaintiff incorporates by reference the allegations in paragraphs 1 through 104, inclusive.

106. As a participant in the IEEE standards-setting process, the IEEE patent policy and bylaws required ChriMar, which entered into an express and/or

implied contract with the IEEE's members, or alternatively, with the IEEE to which IEEE members and others are third-party beneficiaries, to disclose through a Letter of Assurance patents or patent applications that it 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."

107. The IEEE rules and policies (including without limitation the IEEE's patent policy), both formal and informal, including all stipulations, amendments, modifications, requirements and representations in any form, constitute a contract between ChriMar and the IEEE's members, or alternatively between ChriMar and the IEEE, to which IEEE members and others, including but not limited to Cisco, are third-party beneficiaries including because industry participants who manufacture or sell Power over Ethernet-enabled products such as Cisco are the intended beneficiaries of the IEEE patent policy, which includes being informed as to whether owners of essential intellectual property rights will license such rights on RAND terms.

108. In light of the above-referenced failures to disclose to the IEEE, ChriMar has breached its contractual obligations, memorialized in the IEEE patent policy to which Cisco is both a party and an intended beneficiary.

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

EIGHTH COUNT

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

110. Plaintiff incorporates by reference the allegations in paragraphs 1 through 109, inclusive.

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

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

113. Cisco 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 '838 Patent, the '019 Patent, or their applications, (b) ChriMar's belief of their applicability to the IEEE 802.3af amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '838 Patent, the '019 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.

114. 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 Cisco 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 '838 Patent, the '019 Patent, and other patents, including the alternative technologies identified in paragraph 61. Each function allegedly covered by ChriMar's '838 Patent, the '019 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."

115. 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 paragraphs 40, 41, and 44 above.

116. 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.

117. ChriMar alleges that it owns the '838 and '019 Patents and, on information and belief, ChriMar believes that the '838 Patent and the '019 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 Cisco, which sells products supporting the IEEE 802.3af and IEEE 802.3at amendments in interstate commerce, of infringement.

118. 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 Cisco 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 115. 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 48 above), had the IEEE known about the '838 Patent, the '019 Patent, or their 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.

119. Accordingly, if ChriMar's patents, including the '838 and '019 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 Cisco 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.

120. 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.

121. ChriMar acquired its monopoly power as a result of its misconduct in connection with the standards-setting process, including its failure to disclose the '838 Patent, the '019 Patent, or their 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 '838 Patent, the '019 Patent, or their applications to the IEEE 802.3af and IEEE 802.3at amendments, ChriMar was under a duty to disclose to the IEEE (a) the '838 Patent, the '019 Patent, or their 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 '838 Patent, the '019 Patent, or their applications on RAND terms. ChriMar intentionally and deceptively failed to do so.

122. ChriMar's deceptive non-disclosure of the '838 Patent, the '019 Patent, or their 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.

123. 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:

124. 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. ChriMar's 44 recently-filed lawsuits in the Eastern District of Texas threaten to force additional suppliers of Power over Ethernet-enabled products out of the market, many of which are small enterprises.

125. 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.

126. 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 Cisco 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.

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

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

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

130. 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.

131. In addition, ChriMar has falsely portrayed itself as a manufacturing entity in order to threaten Cisco 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).

132. 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 114-122 above. If ChriMar's anticompetitive scheme is successful, the result will be higher, supracompetitive royalty rates for licensing within those markets.

133. 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.

134. 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.

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

136. Each of the unfair business acts identified above violates and threatens to violate the federal antitrust laws, and violates and threatens to violate the policy or spirit of the antitrust laws because it harms Cisco, competition, and consumers.

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

138. 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.

139. Each of the fraudulent and 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, Cisco has suffered injury-in-fact and has been deprived of money or property in which Cisco has a vested interest. Unless and until the Court enjoins such conduct, Cisco's injuries in fact are irreparable, and Cisco will continue to suffer injury-in-fact.

140. As a direct, proximate, and foreseeable result of ChriMar's wrongful conduct, as alleged above, Cisco 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.

141. 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.

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

NINTH COUNT

(Fraud)

143. Plaintiff incorporates by reference the allegations in paragraphs 1 through 142, inclusive.

144. ChriMar's enforcement efforts suggest ChriMar's belief that the '838 and '019 Patents are necessarily infringed by products that comply with the IEEE

802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard. If the '838 and '019 Patents were necessarily infringed, then ChriMar was under a duty to disclose to the IEEE the '838 Patent, the '019 Patent, or their applications to the IEEE and/or ChriMar's position as to whether or not it would license the '838 Patent, the '019 Patent, or their applications on RAND terms. ChriMar had a duty to disclose to the IEEE the '838 Patent, the '019 Patent, or their applications and/or whether it would be willing to license the '838 Patent, the '019 Patent, or their applications to an unrestricted number of applicants on RAND terms or that it is unwilling to grant licenses on RAND terms. ChriMar, however, knowingly and intentionally hid and did not disclose to the IEEE (a) the '838 Patent, the '019 Patent, or their applications, (b) ChriMar's belief of their applicability to the IEEE 802.3af or IEEE 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '838 Patent, the '019 Patent, or their applications to an unrestricted number of applicants on RAND terms.

145. For example, and without limitation, ChriMar representatives including the named inventor, John Austermann, III, attended a number of IEEE meetings with respect to the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, including at least a January 2000 meeting in La Jolla, California, and a January 2005 meeting in Vancouver, British Columbia. Pursuant to IEEE standards policies applicable to ChriMar representatives including the

named inventor, John Austermann, III, in light of attendance at these IEEE meetings and ChriMar's representatives' belief as to the applicability of the '838 Patent, the '019 Patent, or their applications to the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, ChriMar's representatives including John Austermann, III were under a duty to disclose to the IEEE the '838 Patent, the '019 Patent, or their applications and their belief as to applicability to the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, or ChriMar's unwillingness to license the '838 Patent, the '019 Patent, or their applications to an unrestricted number of applicants on RAND terms, which ChriMar failed to do. Further, in a December 2001 assurance letter, ChriMar further failed to disclose that it is unwilling to grant an unrestricted number of licenses to its intellectual property that it believes may be infringed by compliance with the proposed standard on RAND terms. Instead, ChriMar represented that it would provide RAND licenses with respect to the IEEE 802.3af amendments to the IEEE 802.3 standard.

146. Cisco, other members of the IEEE, other implementers of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and members of the public who purchase products that implement those amendments relied to their detriment upon ChriMar's failure to disclose to the IEEE (a) the '838 Patent, the '019 Patent, or their applications, (b) ChriMar's belief of their applicability to

the IEEE 802.3af or IEEE 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '838 Patent, the '019 Patent, or their applications on RAND terms. Based on such reliance, participants in the IEEE standards development process, including Cisco'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, containing elements that ChriMar appears to allege are covered by the '838 and '019 Patents while simultaneously expressing an unwillingness to extend licenses on RAND terms, as opposed to implementing viable alternative technologies that were available during the standard-setting process.

147. Cisco, other implementers of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and members of the public who purchase products that implement those amendments, have been materially prejudiced and damaged by their reliance on ChriMar's failures to disclose in contravention of the IEEE's patent policy as set forth above. Cisco 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, having manufactured and selling products designed based on the IEEE 802.3 standard.

148. ChriMar knew its above-referenced nondisclosures and/or misrepresentations would induce the IEEE to adopt the IEEE 802.3af and IEEE

802.3at amendments in their present form and that vendors of products designed based upon the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, like Cisco, would rely upon its misrepresentations including nondisclosures as to its intellectual property rights, and develop, have made and sell such products.

149. Cisco and others developed, made and marketed their products and services in reliance on ChriMar's nondisclosures and/or misrepresentations, as described above, including investing substantial sums developing, making and marketing products designed based upon the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard and have suffered damages based upon ChriMar's fraudulent actions, including the nondisclosures and/or misrepresentations identified above and additional nondisclosures and/or misrepresentations.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants as follows:

A. A declaration that Plaintiff has not infringed and does not infringe in any manner any of the claims of the '838 Patent;

B. A declaration that Plaintiff has not infringed and does not infringe in any manner any of the claims of the '019 Patent;

C. A declaration that each claim of the '838 Patent is invalid;

D. A declaration that each claim of the '019 Patent is invalid;

E. A declaration that the '838 Patent is unenforceable and therefore without any force or effect against Plaintiff, its officers, agents, employees and customers;

F. A declaration that the '019 Patent is unenforceable and therefore without any force or effect against Plaintiff, its officers, agents, employees and customers;

G. A declaration that ChriMar's ability to enforce the '838 Patent is limited or barred in equity;

H. A declaration that ChriMar's ability to enforce the '019 Patent is limited or barred in equity;

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 any legal action for infringement of the '838 Patent against Cisco or anyone acting in privity with Cisco;

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 any legal action for infringement of the '019 Patent against Cisco or anyone acting in privity with Cisco;

K. An order declaring that Cisco is the prevailing party and that this is an exceptional case, awarding Cisco 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 '838 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 Cisco a royalty-free license to the '838 Patent and any other intellectual property rights that ChriMar has claimed are essential to practice the IEEE 802.3af or IEEE 802.3at Power over Ethernet standards;

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 '019 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 Cisco a royalty-free license to the '019 Patent and any other intellectual property rights that ChriMar has claimed are essential to practice the IEEE 802.3af or IEEE 802.3at Power over Ethernet standards;

O. Enter judgment that ChriMar committed fraud and provide Cisco damages for the fraud, as well as declare the '838 Patent and the '019 Patent unenforceable based upon ChriMar's fraudulent conduct; and

P. For such other and further relief, in law or in equity, as this Court deems just.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all issues and causes of action so triable herein, pursuant to Federal Rule of Civil Procedure 38.

Dated: July 20, 2015

KERR, RUSSELL AND WEBER, PLC

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