

**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. 2:17-cv-13770-AC-RSW

Honorable Avern Cohn

Magistrate Judge R. Steven
Whalen

FIRST AMENDED 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 and unenforceability of U.S. Patent Nos. 8,155,012 (“012 Patent”) (attached as Exhibit A), 8,942,107 (“107 Patent”) (attached as Exhibit B), 8,902,760 (“760 Patent”) (attached as Exhibit C), 9,049,019 (“019 Patent”) (attached as Exhibit D), 9,019,838 (“838 Patent”) (attached as Exhibit E), and 9,812,825 (“825 Patent”) (attached as Exhibit F). 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 has been involved in litigation against ChriMar with respect to U.S. Patent No. 7,457,250 (“250 Patent”)¹, and filed

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

declaratory judgment actions involving the '012², '107, '760 Patent³, '019, and '838 Patents⁴. The '250 Patent litigation involves PoE products implementing the IEEE 802.3af and 802.3at standards. Cisco also filed (and has since voluntarily dismissed in order to consolidate those allegations in the instant complaint and to drop Cisco's requests for declaratory judgment of invalidity so that Cisco is free to pursue, if warranted, *inter partes* review ("IPR") proceedings challenging the validity of the patents at issue in those cases (numerous claims of which have already been found to be invalid in other IPR proceedings)) declaratory judgment actions in this District concerning the '012, '107, '760, '019, and '838 Patents. Cisco maintains that the '012, '107, '760, '019, '838, and '825 Patents are unenforceable, and are not infringed by Cisco's PoE products implementing IEEE Standards 802.3af/at.

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,

² *Cisco Systems, Inc. et al v. ChriMar Systems, Inc. d/b/a CMS Technologies*, No. 2:14-cv-10290 (E.D. Mich.) (Cisco has voluntarily dismissed this action for the reasons described in paragraph 4 herein.)

³ *Cisco Systems, Inc. v. ChriMar Systems, Inc. d/b/a CMS Technologies*, No. 2:15-cv-10817 (E.D. Mich.) (Cisco has voluntarily dismissed this action for the reasons described in paragraph 4 herein.)

⁴ *Cisco Systems, Inc. v. ChriMar Systems, Inc. d/b/a CMS Technologies*, No. 2:15-cv-12565 (E.D. Mich.) (Cisco has voluntarily dismissed this action for the reasons described in paragraph 4 herein.)

Suite A-1 in Farmington Hills, Michigan. ChriMar has had substantial business contacts with Michigan including product sales to Michigan entities and ChriMar's campaign to enforce and license its patent portfolio, including the '012, '107, '760, '019, '838, and '825 Patents, has a substantial relationship to Michigan. ChriMar has availed itself of the laws of this District in connection with its current portfolio 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) including because ChriMar is incorporated in the state of Michigan, has a regular and established place of business in the state of Michigan, and has had substantial contacts with the state of Michigan. ChriMar Systems, Inc. (Identification Number 800003893) was incorporated in the state of Michigan on July 9, 1993 for a perpetual term under Section 284-1972 of the Business Corporation Act. Its 2017 Annual Report lists John Austermann at 36528 Grand River Ave, Ste. A1, Farmington Hills, MI 48335 as its registered agent. ChriMar's principal place of business is within the Eastern District of Michigan at 36528 Grand River Avenue, Suite A-1 in Farmington Hills, Michigan. ChriMar's website lists this same address as a location out of which ChriMar operates. In addition, in its Answer, ChriMar alleged that it "does not dispute venue in the Eastern District of Michigan" (Dkt. No. 9 at 6.)

BACKGROUND

A. CHRIMAR'S PATENTS

7. ChriMar's patent portfolio includes the '250, '012, '107, '760, '019, '838, and '825 Patents, U.S. Patent No. 6,650,622 (the "'622 Patent'"), U.S. Patent No. 5,406,260 (the "'260 Patent'"), and others. The phrase "the '622 Patent Family" as used throughout Cisco's Complaint refers to the '622, '250, '012, '107, '760, '019, '838, and '825 Patents and any application to which they may purport to claim priority, including without limitation Application No. PCT/US99/07846 and Provisional Application No. 60/081,279.

8. 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.

9. As alleged herein, the '012 Patent was not duly and legally issued.

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

11. 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.

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

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

14. 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.

15. As alleged herein, the '760 Patent was not duly and legally issued.

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

17. 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.

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

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

20. 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.

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

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

23. The '825 Patent, entitled "Ethernet Device," reports that it was filed on January 1, 2015 as Application No. 14/726,940, and issued on November 7, 2017. The '825 Patent reports that it is a continuation of Application No. 13/615,726, filed on September 14, 2012, now the '019 Patent, which is a continuation of Application No. 13/370,918, filed on February 10, 2012, now the '107 Patent, which is a continuation of Application No. 12/239,001, filed on September 26, 2008, now the '012 Patent, which is a continuation of Application No. 10/668,708, filed on

September 23, 2003, now the '250 Patent, which is a continuation of Application No. 09/370,430, filed on August 9, 1999, now the '622 Patent, which is a continuation-in-part of application No. PCT/US99/07846, filed on April 8, 1999. The inventors named on the '825 Patent are John F. Austermann, III and Marshall B. Cummings.

24. As alleged herein, '825 Patent was not duly and legally issued.

25. On information and belief, ChriMar is the current assignee of the '825 Patent.

26. 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.

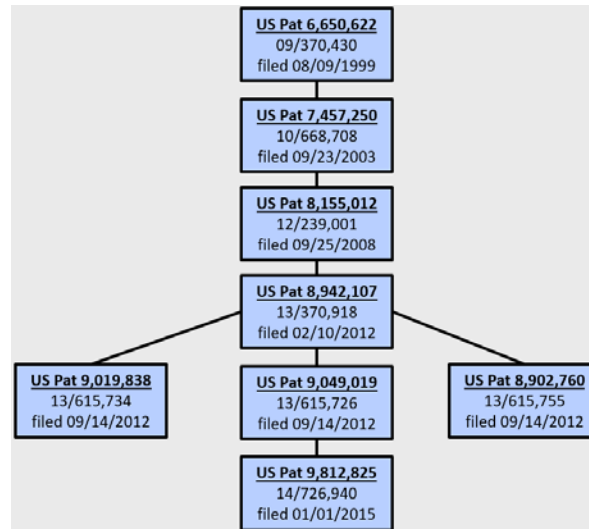
27. As alleged herein, the '250 Patent was not duly and legally issued.

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

29. The '012, '107, '760, '019, '838, and '825 Patents share nearly identical specifications with the '250 Patent to which each ultimately claims priority.

30. As alleged herein, on information and belief, Cisco believes that ChriMar asserts, and will assert, that the '012, '107, '760, '019, '838, and '825 Patents cover products with PoE functionality.

31. The below diagram summarizes ChriMar's '622 Family of Patents:



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

32. 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 Institute of Electrical and Electronics Engineers ("IEEE") and sellers of such products.

33. ChriMar's licensing and enforcement campaign began in 2001, when ChriMar sued Cisco in this district for allegedly infringing the '260 Patent in 2001,

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 favorable rulings were issued, and ultimately an additional claim of the '260 Patent (claim 17) was invalidated by the Court in the Foundry action, leading to dismissal of that action and summary affirmance by the Federal Circuit.

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).

34. 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 below, ChriMar continued its licensing and enforcement campaign against sellers of products with PoE functionality, including Cisco and a number of other California-based companies. ChriMar sued Waters Network Systems, LLC for allegedly infringing the '250 Patent in 2008, and went on to sue multiple additional sellers of products with PoE functionality (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 California-based Hewlett-Packard, Avaya, Inc., and Extreme Networks, both in the International Trade Commission,¹¹ and in district court,¹² for allegedly infringing

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 *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).

¹² *ChriMar Systems, Inc. v. Cisco Systems, Inc.*, No. 4:13-cv-1300-JSW (N.D. Cal.) (“the NDCA case”).

the '250 Patent by selling products with PoE functionality, including among other products, IP telephones, wireless access points, and wireless network cameras.

35. ChriMar has also expanded its licensing and enforcement campaign against products with PoE functionality to include the '012 Patent, which issued in 2012. ChriMar subsequently 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. On June 22, 2015, ChriMar filed six suits in the Eastern district of Texas, alleging infringement of the '012, '107, and '019 Patents¹³. ChriMar asserts

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)

infringement predicated on the accused products' compliance with the PoE standards embodied in IEEE 802.3af and/or 802.3at.

42. On July 1 2015, ChriMar expanded its litigation campaign in the Eastern District of Texas, initiating lawsuits against *thirty-nine* defendants, alleging infringement by PoE power sourcing equipment ("PSEs") and powered devices ("PDs") of the '012, '107, '760, '019, and '838 Patents: Alcatel-Lucent¹⁴, AMX, LLC¹⁵, Aacton Technology Corp., Edgecore USA, and SMC Networks¹⁶, Adtran & TRENDNet, Inc.¹⁷, Advantech Corporation¹⁸, Allworx Corp.¹⁹, Alpha Networks, Inc.²⁰, Black Box Corporation²¹, ASUSTek Computer International, Inc.²², ASUS

(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 6:15-cv-00614

¹⁵ 6:15-cv-00615

¹⁶ 6:15-cv-00616

¹⁷ 6:15-cv-00617

¹⁸ 6:15-cv-00618

¹⁹ 6:15-cv-00620

²⁰ 6:15-cv-00621

²¹ 6:15-cv-00622

²² 6:15-cv-00623

Computer International, Inc.²³, Buffalo Americas, Inc.²⁴, Costar Technologies, Inc.²⁵, Eagle Eye Networks, Inc.²⁶, Comtrend & Edimax²⁷, EnGenius Technologies, Inc.²⁸, Juniper Networks, Inc.²⁹, Korenix USA³⁰, Leviton Manufacturing Co., Inc.³¹, Moxa Americas Inc.³², Netgear, Inc.³³, NetMedia Inc.³⁴, Phihong USA Corporation³⁵, Rockwell Automation, Inc.³⁶, Ruckus Wireless³⁷, AeroHive Networks Incorporated & Dell Inc.³⁸, TP-Link USA Corporation³⁹, Transition

²³ 6:15-cv-00624

²⁴ 6:15-cv-00625

²⁵ 6:15-cv-00626

²⁶ 6:15-cv-00627

²⁷ 6:15-cv-00628

²⁸ 6:15-cv-00629 and 640

²⁹ 6:15-cv-00630

³⁰ 6:15-cv-00631

³¹ 6:15-cv-00632

³² 6:15-cv-00633

³³ 6:15-cv-00634

³⁴ 6:15-cv-00635

³⁵ 6:15-cv-00636

³⁶ 6:15-cv-00637

³⁷ 6:15-cv-00638

³⁸ 6:15-cv-00639, which resulted in a jury verdict of non-infringement for each of the '012, '760, '107, and '838 Patents

³⁹ 6:15-cv-00641

Networks⁴⁰, Huawei⁴¹, TRENDnet⁴², StarTech.com USA LLP⁴³, Tycon Systems, Inc.⁴⁴, VP Networks⁴⁵, WatchGuard Technologies, Inc.⁴⁶, Belden Inc., GarretCom, Inc., and Hirschmann Automation and Control, Inc.⁴⁷, Belkin International, Inc.⁴⁸, Fortinet, Inc.⁴⁹, Allied Telesis, Inc.⁵⁰, and D-Link Systems, Inc.⁵¹

43. Recently, ChriMar sued Panasonic on November 9, 2017 in the Eastern District of Texas⁵², alleging infringement of the '107, '760, '838, and '825 Patents. *See* Exhibit G. ChriMar's complaint states the "Patents-in-Suit generally cover plug and play automation and/or asset control capabilities employed by certain BaseT Ethernet equipment including PDs and PSEs that comply with or are compatible

⁴⁰ 6:15-cv-00642

⁴¹ 6:15-cv-00643

⁴² 6:15-cv-00644

⁴³ 6:15-cv-00645

⁴⁴ 6:15-cv-00646

⁴⁵ 6:15-cv-00647

⁴⁶ 6:15-cv-00648

⁴⁷ 6:15-cv-00649

⁴⁸ 6:15-cv-00650

⁴⁹ 6:15-cv-00651

⁵⁰ 6:15-cv-00652

⁵¹ 6:15-cv-00653

⁵² *Chrimar Systems, Inc. d/b/a CMS Technologies and ChriMar Holding Company, LLC, v. Panasonic Corporation and Panasonic Corporation of North America*, No. 6:17-cv-00637 (E.D. Tex.)

with certain portions of the IEEE Standards commonly referred to as PoE Standards (e.g., the IEEE 802.3af or IEEE 802.3at standards).” Exhibit G at 6.

44. ChriMar’s complaint specifically alleges that Panasonic infringes these patents because “Defendants make, use, offer to sell, sell, and/or import Power over Ethernet powered devices and/or power sourcing equipment”. With respect to the ’107 Patent, the complaint specifically accuses Panasonic of infringing at least “claim 103 across claims 5, 6, 16, 56, and 71, and claim 125 across claims 113 and 122” by “making using, offering for sale, selling, and/or importing the Accused PD Products in the United States.” Exhibit G at 10. With respect to the ’760 Patent, the complaint specifically accuses Panasonic of infringing at least “claims 166, 177, and claim 219 across claims 158, 179, and 182 by “making using, offering for sale, selling, and/or importing the Accused Products in the United States.” Exhibit G at 35. With respect to the ’838 Patent, the complaint specifically accuses Panasonic of infringing at least claims 6 and 76 by “making using, offering for sale, selling, and/or importing the Accused PSE Products in the United States.” Exhibit G at 35. With respect to the ’825 Patent, the complaint specifically accuses Panasonic of infringing at least claims 5, 13, 15, 16, and 17 by “making using, offering for sale, selling, and/or importing the Accused PSE Products in the United States”, and claims 40, 45, 49, 50, and 64 by “making, using, offering for sale, selling, and/or importing the Accused PD products in the United States.” Exhibit G at 19.

45. ChriMar's complaint specifically alleges that Panasonic infringes the '107 Patent by virtue of claiming compliance with the IEEE 802.3af Standard, stating "[f]or example, [a certain Accused Product] claims compliance with the IEEE 802.3af standard." See Exhibit G ¶¶ 36, 38, 39, 41.

46. ChriMar's complaint specifically alleges that Panasonic infringes the '760 Patent by virtue of claiming compliance with the IEEE 802.3af Standard, stating "[f]or example, [a certain Accused Product] claims compliance with the IEEE 802.3af standard." See Exhibit G ¶¶ 95, 97, 101, 105.

47. ChriMar's complaint specifically alleges that Panasonic infringes the '838 Patent by virtue of claiming compliance with the IEEE 802.3af Standard, stating "[f]or example, [a certain Accused Product] claims compliance with the IEEE 802.3af standard." See Exhibit G ¶¶ 119, 121.

48. ChriMar's complaint specifically alleges that Panasonic infringes the '825 Patent by virtue of claiming compliance with the IEEE 802.3af/at Standards, stating "because each of the Accused PD Products comply with the PoE Standards" (Exhibit G ¶ 60), and "because each Accused PD Product is 802.3af/at compliant or compatible" (Exhibit G ¶ 65). See also Exhibit G, ¶¶ 55 ("Additionally, each Accused PD product *implements Section 33.3.5.1 of the 802.3af standard*"); 56 ("*Each Accused PD Product complies or is compatible with the portions of the IEEE 802.3af standard* that prescribe the presentation of valid detection signatures

by drawing different magnitudes of DC current flow in response to at least one electrical connection”); 60 (“***Because each Accused PD product claims IEEE 802.3af/at compliance or compatibility***, each has at least one path coupled across the contacts of the Ethernet connector...”); 63 (“***excerpts of the PoE standards demonstrate that a compliant product, such as the Accused PD Products***, will draw different magnitudes of DC current flow in response to at least one electrical connection applied to a contact, ***as required to comply with the detection and classification protocols***”); 70 (“each Accused PSE Product searches the Ethernet data link for PDs ***as required by 802.3af***”); 75 (“***An IEEE 802.3af compliant Accused PSE Product must also include a DC supply*** in order to perform detection, classification, and control of the provision of operational power to a PD”); 78 (“The Accused PSE Products detect different magnitudes of DC current flow in response to at least one electrical connection applied to contacts of an Ethernet connector, ***as required to comply with the detection and classification protocols***”).

49. ChriMar has also recently sued Watchnet, Inc.⁵³ (alleging infringement of the ’012, ’107, and ’825 Patents by PoE-compliant devices), Johnson Controls, Inc.⁵⁴ (alleging infringement of the ’760, ’107, ’838, and ’825 Patents by PoE-

⁵³ Chrimar Systems, Inc. d/b/a CMS Technologies et al v. Watchnet Inc., TXED-6:17-cv-00657

⁵⁴ Chrimar Systems, Inc. d/b/a CMS Technologies et al v. Johnson Controls, Inc., TXED-6:17-cv-00654

compliant devices), and Avigilon Corp⁵⁵ (alleging infringement of the '760, '107, '838, and '825 Patents by PoE-compliant devices).

50. ChriMar's website, www.cmspatents.com, confirms that ChriMar's licensing and enforcement campaign targets products with PoE functionality for allegedly infringing ChriMar's patents. ChriMar's website includes a number of public statements concerning ChriMar's licensing of its patents. Specifically, ChriMar publicly states on that website that its licensing campaign targets "PoE equipment." ChriMar states on that website that it "is engaged in active licensing with vendors of *PoE equipment*. Licenses for our *patents* are being offered to manufacturers and resellers of *PoE equipment*."⁵⁶ This same page specifically identifies the parent patents of the '825 Patent, the '012 Patent, the '250 Patent, and the '622 Patent, as U.S. Patents awarded to ChriMar. Additionally, ChriMar lists Avaya, Inc. as a licensee to the '012 Patent and '250 Patent under the heading "*PoE Licensees and Products Include*:"⁵⁷ As alleged above, Avaya was previously a named party to '250 Patent litigation, when that action was pending in Delaware prior to transfer, but was dismissed after Avaya entered into a licensing agreement with ChriMar, which ChriMar publicly states includes a license to the '012 Patent.

⁵⁵ Chrimar Systems, Inc. et al v. Avigilon Corporation et al, *TXED-6:17-cv-00682*

⁵⁶ *Patent Licensing Program*, <http://www.cmspatents.com> (emphasis added).

⁵⁷ www.cmspatents.com/licensees.html.

Further, ChriMar's website describes ChriMar's "EthernetConnect Program," which ChriMar states "allows for certain vendors of *PoE products* to receive special terms under *the Patent Licensing Program*, the EtherLock Reseller Program and/or the EtherLock OEM Program."⁵⁸ 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."⁵⁹ ChriMar's actions and statements all make clear that ChriMar is targeting products with PoE functionality for allegedly infringing ChriMar's patents, including the '012, '107, '760, '019, '838, and '825 Patents.

C. STANDARDS IN GENERAL

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

⁵⁸ *EthernetConnect Program*, <http://www.cmspatents.com/>

⁵⁹ www.cmstech.com/power.htm.

52. “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.

53. 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.

54. One goal of a typical standards setting body is to create a standard that everyone in the industry can practice without the threat of patent infringement lawsuits that would prevent a company from practicing the standard. In furtherance of this goal, most standard setting organizations have adopted intellectual property

rights policies to address the problems that may arise from patent hold-up. A patent hold-up situation can occur where, after a standard is set and compliant products are being manufactured/sold, a patentee then claims rights to the technology covered by the standard. Typically, the royalty that a patentee may obtain from a patent license for its technology is limited in part by the availability of alternative technical approaches to perform that function. However, if an issued standard requires the use of that patented technology, other technological approaches are generally 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, had 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 is typically prohibitively expensive. Such high switching costs result in "lock-in" where companies become locked into manufacturing and selling products that are in compliance with the standard. Indeed, the public comes to rely upon standards-compliant equipment which can make it prohibitively difficult to subsequently switch to alternative, non-infringing substitutes once the standard has been issued. The high cost of switching applies to all elements of the standard

regardless of how small the marginal contribution of the element would be (if not required by the standard) to the functionality of a standard compliant product.

55. To address these concerns, standard setting organizations typically have policies that set forth requirements concerning, among other things: (a) the timely and prompt disclosure of intellectual property such as patents or patent applications that may claim any portion of the specifications of the standard in development (i.e., are believed to be infringed by implementing the standard (also sometimes referred to as “Essential Patent Rights”)); and (b) a process of assurance by which members or participants in the standard setting organization who hold purported Essential Patent Rights commit to licensing those rights on RAND (Reasonable and Non-Discriminatory Licensing) terms or at minimum indicate that they will not provide such licenses to any Essential Patent Rights.

56. 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 standard setting organization is critical so that those participating in the development of the standard may evaluate any and all technical proposals with knowledge of the potential licensing costs that might be incurred by anyone developing standards-compliant products.

57. Any non-disclosure of arguably Essential Patent Rights and/or breach of RAND commitments, as ChriMar has done here, undermine the safeguards that

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

58. Failure to disclose Essential Patent Rights, as ChriMar has done here, also may lead to anti-competitive patent hold-up, where after the industry and the public have become locked-in to the standard, the patentee seeks to extract exorbitant, unreasonable or otherwise improper royalties through its improperly obtained power over the market for the technology for the standards-compliant equipment.

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

59. The IEEE is a standards setting organization for a broad range of disciplines, including electric power and energy, telecommunications, and consumer electronics. In or about March 1999, there was a call for interest in the IEEE 802.3 working group — which sets standards for physical layer and data link layer's media access control (MAC) of wired Ethernet — to begin developing what would become the IEEE 802.3af Data Terminal Equipment (DTE) Power via Media Dependent

Interface (MDI) Enhancement to the IEEE 802.3 standard (“the IEEE 802.3af amendment”). A task force was formed to field technical proposals from the industry and to create a draft standard to present to the IEEE 802.3 working group. As part of this process, the task force held a number of meetings and received input from multiple industry participants.

60. 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.

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

standard meant to enhance the capabilities provided by the IEEE 802.3af amendment by allowing a PSE to provide power in excess of 30 watts to a PD.

62. The success of the IEEE's standards-setting process depends on the disclosure by participants as to whether they possess any patents or applications which they believe may be infringed by any proposed standard and whether the participant is willing or unwilling to grant licenses on RAND terms. As such, the IEEE has a "patent disclosure policy" that requires participants in the standards setting process to disclose patents or patent applications they believe to be infringed by the practice of the proposed standard. This policy is set forth in the IEEE-SA Standards Board Bylaws and the IEEE-SA Standards Board Operations Manual. Further, the IEEE's patent disclosure policy requires members and participants to disclose intellectual property rights through a "Letter of Assurance." *See, e.g., IEEE, IEEE-SA Standards Board Operations Manual 22 (1998)* ("Patent holders shall submit letters of assurance to the IEEE Standards Department (to the attention of the Staff Administrator, Intellectual Property Rights) before the time of IEEE-SA Standards Board review for approval."); *see also IEEE, IEEE-SA Standards Board Bylaws 12 (1998)*. The IEEE 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).

63. 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.

64. Power over Ethernet devices that are compliant with the IEEE 802.3af and/or IEEE 802.3at amendments to the IEEE 802.3 standard include network switches that supply data and Power over Ethernet to devices such as VoIP phones, switches, WAPs, routers, and security cameras (previously referred to as “Power over Ethernet-enabled products.”). This allows buildings and other physical infrastructure to be designed so that electrical plugs do not need to be located near where network devices are used. Moreover, because Power over Ethernet-enabled switches that distribute power using Power over Ethernet are often supported by uninterruptible power supplies or other redundant power sources, the use of Power over Ethernet permits devices like VoIP phones to continue to receive power from a Power over Ethernet switch in the event of power outages. The availability of this method of delivering power has driven government and private enterprise to design not only their networks, but also their physical infrastructure around Power over Ethernet-enabled products.

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

65. ChriMar illegally exploited the IEEE standard setting process with respect to the IEEE 802.3af and 802.3at amendments by deliberately failing to disclose to the IEEE (a) the '622 Patent Family, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard and/or (c) ChriMar's unwillingness to license the '622 Patent Family 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 to the IEEE 802.3 standard based upon technology that is purportedly covered by ChriMar's intellectual property.

66. John Austermann, III, President and Chief Executive Officer of ChriMar and named inventor on the '622 Patent Family, attended certain IEEE meetings regarding the setting of the IEEE 802.3af and IEEE 802.3at amendments. The IEEE conducted a "call for patents" at each meeting attended by Mr. Austermann. 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 '622 Patent Family to the IEEE. Mr. Austermann

also failed to disclose to the IEEE any belief that any proposals for the IEEE 802.3 standard would be covered by the '622 Patent Family.

67. Further, ChriMar submitted a Letter of Assurance to the IEEE on or about December 3, 2001, which disclosed only U.S. Patent No. 5,406,260. *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. ChriMar, however, did not identify the '622 Patent Family in its December 3, 2001 letter.

68. ChriMar failed to disclose to the IEEE the '622 Patent Family. ChriMar failed to disclose that the '622 Patent Family covered any proposals for the IEEE 802.3af standard. ChriMar failed to disclose to the IEEE that the '622 Patent Family covered any proposals for the IEEE 802.3at standard. ChriMar failed to disclose to the IEEE its unwillingness to license the '622 Patent Family on RAND terms.

69. Pursuant to IEEE standards policies applicable to ChriMar, in light of ChriMar's attendance at that IEEE meeting and ChriMar's belief as to the applicability of the '622 Patent Family to the IEEE 802.3af and 802.3at amendments to the 802.3 standard, ChriMar was under a duty to disclose to the IEEE (a) the '622

Patent Family, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard and/or (c) ChriMar's unwillingness to license the '622 Patent Family on RAND terms. ChriMar failed to do so.

70. 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 '622 Patent Family 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.

71. ChriMar's failure to disclose the '622 Patent Family 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.

72. Due in part to ChriMar's knowing and intentional deception, the industry adopted the present form of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and 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 Technology Market as defined below. ChriMar expected 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.

73. ChriMar's unlawful conduct has had, and will continue to have, a substantial anticompetitive effect on the Power over Ethernet Technology Market.

74. In developing the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, IEEE participants sought to select the most appropriate technology to provide each individual function within the standard. IEEE participants evaluated whether to incorporate particular proposed technology and whether to include viable alternative competing technologies into the standard. They made these decisions based on technical and commercial merit and intellectual property considerations, including 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.

75. Various companies were attempting to have their technologies, which were viable alternatives to that which ChriMar now claims is covered by the '622 Patent Family, considered for incorporation into the IEEE 802.3af and IEEE 802.3at amendments. For example, with respect to the IEEE 802.3af amendment, the IEEE considered technologies, that appear to be alternative technologies, which 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).

76. ChriMar's nondisclosures and misrepresentations resulted in incorporation into the standard of technology over which ChriMar now alleges to have patent rights. Had ChriMar disclosed to the IEEE the '622 Patent Family and the fact that ChriMar believed they would be infringed by practicing the 802.3af and 802.3at amendments to the 802.3 standard, and that ChriMar was unwilling to license the patent on RAND terms, the IEEE would have (a) incorporated one or more viable alternative technologies into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard; (b) required ChriMar to provide a letter of assurance that it would license the '622 Patent Family on RAND terms; (c) decided to either not adopt any amendment to the IEEE 802.3; and/or (d) adopted an amendment that did not incorporate technology that ChriMar claims is covered by the '622 Patent Family. *See, e.g., IEEE, IEEE-SA Standards Board Bylaws 12 (1998)* ("IEEE standards may include the known use of patent(s), including patent applications, if there is technical justification in the opinion of the standards-developing committee and provided the IEEE receives assurance from the patent

holder that it will license applicants under reasonable terms and conditions for the purpose of implementing the standard.”).

F. AN ACTUAL AND JUSTICIABLE CONTROVERSY EXISTS

77. 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 ’012, ’107, ’760, ’019, ’838, and ’825 Patents. For example, ChriMar’s actions and course of conduct against other manufacturers of products with PoE functionality, including IP telephones, wireless access points, and wireless network cameras, including in the Eastern District of Texas, and ChriMar’s actions and course of conduct against Cisco are sufficient affirmative acts to create an actual and justiciable controversy.

78. Further, in light of ChriMar’s enforcement conduct including its website and patent infringement suits against other manufacturers of products with PoE functionality, including IP telephones, wireless access points, and wireless network cameras in the Eastern District of Texas, Cisco expects to be confronted with similar allegations from ChriMar on the ’012, ’107, ’760, ’019, ’838, and ’825 Patents.

79. ChriMar’s allegations of infringement of the ’250 Patent against Cisco in the Northern District of California case and the ITC investigation for similar

products as are accused in the Eastern District of Texas cases further create an actual and justiciable controversy. The '250 Patent is the parent patent to each of the '012, '107, '760, '019, '838, and '825 Patents, and on information and belief, Cisco believes that ChriMar alleges that each of the '012, '107, '760, '019, '838, and '825 Patents and the '250 Patent are directed to the same technology. Cisco expects to be confronted with similar allegations from ChriMar as to the '012, '107, '760, '019, '838, and '825 Patents against its products as it has been with respect to the '250 Patent.

80. A declaration concerning the noninfringement and unenforceability of the claims of the '012, '107, '760, '019, '838, and '825 Patents is necessary in light of the present controversy between the parties.

FIRST COUNT

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,155,012)

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

82. There exists an actual and justiciable controversy regarding the noninfringement of the '012 Patent by Cisco.

83. Cisco has not infringed and does not infringe any valid and enforceable claim of the '012 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations with regard to non-infringement of the '012 Patent.

84. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding non-infringement of the '012 Patent.

SECOND COUNT

(Declaratory Judgment of Unenforceability of U.S. Patent No. 8,155,012)

85. Cisco incorporates by reference the allegations in paragraphs 1 through 84, inclusive.

86. ChriMar's hands are unclean, rendering the '012 Patent unenforceable and barring any infringement claim by ChriMar.

87. Despite having a duty to disclose to the IEEE (a) the '012 Patent or its applications, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard and/or (c) ChriMar's unwillingness to license the '012 Patent or its applications on RAND terms in connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so.

88. 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.

89. 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 '012 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

90. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the '012 Patent, which directly relates to the matter at issue, rendering the '012 Patent unenforceable. A judicial declaration of unenforceability is necessary and appropriate in order to resolve this controversy.

THIRD COUNT

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,942,107)

91. Cisco incorporates by reference the allegations in paragraphs 1 through 90, inclusive.

92. There exists an actual and justiciable controversy regarding the noninfringement of the '107 Patent by Cisco.

93. Cisco has not infringed and does not infringe any valid and enforceable claim of the '107 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations with regard to non-infringement of the '107 Patent.

94. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding non-infringement of the '107 Patent.

FOURTH COUNT

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

95. Cisco incorporates by reference the allegations in paragraphs 1 through 94, inclusive.

96. ChriMar's hands are unclean, rendering the '107 Patent unenforceable and barring any infringement claim by ChriMar.

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

98. 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.

99. 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 '107 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

100. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the '107 Patent, which directly relates to the matter at issue, rendering the '107 Patent unenforceable. A judicial declaration of unenforceability is necessary and appropriate in order to resolve this controversy.

FIFTH COUNT

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,902,760)

101. Cisco incorporates by reference the allegations in paragraphs 1 through 100, inclusive.

102. There exists an actual and justiciable controversy regarding the noninfringement of the '760 Patent by Cisco.

103. Cisco has not infringed and does not infringe any valid and enforceable claim of the '760 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations with regard to non-infringement of the '760 Patent.

104. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding non-infringement of the '760 Patent.

SIXTH COUNT

(Declaratory Judgment of Unenforceability of U.S. Patent No. 8,902,760)

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

106. ChriMar's hands are unclean, rendering the '760 Patent unenforceable and barring any infringement claim by ChriMar.

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

108. 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.

109. 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 '760 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

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

declaration of unenforceability is necessary and appropriate in order to resolve this controversy.

SEVENTH COUNT

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

111. Cisco incorporates by reference the allegations in paragraphs 1 through 110, inclusive.

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

113. 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 non-infringement of the '019 Patent.

114. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding non-infringement of the '019 Patent.

EIGHTH COUNT

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

115. Cisco incorporates by reference the allegations in paragraphs 1 through 114, inclusive.

116. ChriMar's hands are unclean, rendering the '019 Patent unenforceable and barring any infringement claim by ChriMar.

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

118. 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.

119. 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.

120. 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.

NINTH COUNT

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

121. Cisco incorporates by reference the allegations in paragraphs 1 through 120, inclusive.

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

123. 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 non-infringement of the '838 Patent.

124. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding non-infringement of the '838 Patent.

TENTH COUNT

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

125. Cisco incorporates by reference the allegations in paragraphs 1 through 124, inclusive.

126. ChriMar's hands are unclean, rendering the '838 Patent unenforceable and barring any infringement claim by ChriMar.

127. Despite having a duty to disclose to the IEEE (a) the '838 Patent or its applications, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard and/or (c) ChriMar's unwillingness to

license the '838 Patent or its applications on RAND terms in connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so.

128. 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.

129. 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.

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

ELEVENTH COUNT

(Declaratory Judgment of Non-Infringement of U.S. Patent No. 9,812,825)

131. Cisco incorporates by reference the allegations in paragraphs 1 through 130, inclusive.

132. There exists an actual and justiciable controversy regarding the noninfringement of the '825 Patent by Cisco.

133. Cisco has not infringed and does not infringe any valid and enforceable claim of the '825 Patent. Accordingly, Cisco requests a judicial determination of its rights, duties, and obligations with regard to non-infringement of the '825 Patent.

134. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding non-infringement of the '825 Patent.

TWELFTH COUNT

(Declaratory Judgment of Unenforceability of U.S. Patent No. 9,812,825)

135. Cisco incorporates by reference the allegations in paragraphs 1 through 134, inclusive.

136. ChriMar's hands are unclean, rendering the '825 Patent unenforceable and barring any infringement claim by ChriMar.

137. Despite having a duty to disclose to the IEEE (a) the '825 Patent or its applications, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard and/or (c) ChriMar's unwillingness to license the '825 Patent or its applications on RAND terms in connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so.

138. 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.

139. 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 '825 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

140. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the '825 Patent, which directly relates to the matter at issue, rendering the '825 Patent unenforceable. A judicial declaration of unenforceability is necessary and appropriate in order to resolve this controversy.

THIRTEENTH COUNT

(Breach of Contract)

141. Cisco incorporates by reference the allegations in paragraphs 1 through 140, inclusive.

142. 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.”

143. 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.

144. 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.

145. 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.

FOURTEENTH COUNT

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

146. Cisco incorporates by reference the allegations in paragraphs 1 through 145, inclusive.

147. ChriMar has engaged in unfair competition within the meaning of Section 17200 of the California Business and Professions Code.

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

149. Cisco Systems, Inc. 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 '622 Patent Family, (b) ChriMar's belief of their applicability to the 802.3af amendments to the IEEE 802.3 standard and/or (c) ChriMar's unwillingness to license the '622 Patent Family 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 PoE-enabled products.

150. As is alleged with particularity above, ChriMar committed unlawful business acts by monopolizing the Power over Ethernet Technology Market.

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

152. As alleged above, ChriMar engaged in unfair business practices including by: (1) attending IEEE meetings regarding the 802.3af and 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 802.3at amendments to the IEEE 802.3 standard 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.

153. ChriMar's actions seek to reduce output, prevent competition on the standardized product, 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 to the IEEE 802.3 standard. Any current ChriMar licensees cannot meet the market demand, and could charge supra-competitive prices for the products that are compliant with the IEEE 802.3 standard 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 to the IEEE 802.3 standard 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.

154. 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.

155. Each of the unfair business acts identified above violates the policy or spirit of the antitrust laws because it harms Cisco, competition, and consumers.

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

157. ChriMar committed fraudulent 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 802.3af and 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 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 802.3at amendments to the IEEE 802.3 standard.

158. Each of the fraudulent 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 it 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.

159. 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.

FIFTEENTH COUNT

(Fraud)

160. Cisco incorporates by reference the allegations in paragraphs 1 through 159, inclusive.

161. ChriMar's enforcement efforts suggest ChriMar's belief that the '012, '107, '760, '019, '838, and '825 Patents are necessarily infringed by products that comply with the 802.3af and 802.3at amendments to the IEEE 802.3 standard. If the '012, '107, '760, '019, '838, and '825 Patents were necessarily infringed as alleged by ChriMar, then ChriMar was under a duty to disclose to the IEEE the '622 Patent

Family to the IEEE and/or ChriMar's position as to whether or not it would license the '622 Patent Family on RAND terms. ChriMar had a duty to disclose to the IEEE the '622 Patent Family and/or whether it would be willing to license the '622 Patent Family 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 '622 Patent Family, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard, and (c) ChriMar's unwillingness to license the '622 Patent Family to an unrestricted number of applicants on RAND terms.

162. 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 '622 Patent Family to the IEEE 802.3af and IEEE 802.3at amendments to the 802.3 standard, ChriMar's representatives including John Austermann, III were under a duty to disclose to the IEEE the '622 Patent Family 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 '622 Patent Family 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.

163. 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 '622 Patent Family, (b) ChriMar's belief of their applicability to the 802.3af or 802.3at amendments to the IEEE 802.3 standard, and/or (c) ChriMar's unwillingness to license the '622 Patent Family 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 '012, '107, '760, '019, '838, and '825 Patents while simultaneously expressing an unwillingness to extend licenses on RAND terms, as opposed to

implementing viable alternative technologies that were available during the standards-setting process.

164. 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.

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

166. Cisco and others developed, had made and marketed their products and services in reliance on ChriMar's nondisclosures and/or misrepresentations, as described above, including investing substantial sums developing, having made 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

Cisco prays for judgment against ChriMar as follows:

A. A declaration that Cisco has not infringed and does not infringe in any manner any of the claims of the '012, '107, '760, '019, '838 and '825 Patents;

B. A declaration that each of the '012, '107, '760, '019, '838, and '825 Patents are unenforceable and therefore without any force or effect against Cisco, its respective officers, agents, employees and customers;

C. A declaration that ChriMar's ability to enforce the '012, '107, '760, '019, '838, and '825 Patents is limited or barred in equity;

D. 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 any of the '012, '107, '760, '019, '838, and '825 Patents against Cisco or anyone acting in privity with Cisco;

E. 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;

F. Adjudge and decree that ChriMar has violated Section 17200, et seq., of the California Business and Professions Code;

G. 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 any of the '012, '107, '760, '019, '838, and '825 Patents 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 each of the '012, '107, '760, '019, '838, and '825 Patents 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;

H. Enter judgment that ChriMar committed fraud and provide Cisco damages for the fraud, as well as declare each of the '012, '107, '760, '019, '838, and '825 Patents unenforceable based upon ChriMar's fraudulent conduct; and

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

JURY TRIAL DEMAND

Cisco 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: February 17, 2018

KERR, RUSSELL AND WEBER, PLC

By: /s/ Fred K. Herrmann

Fred K. Herrmann (P49519)

500 Woodward Avenue

Suite 2500

Detroit, MI 48226

Telephone: (313) 961-0200

Facsimile: (313) 961-0388

fherrmann@kerr-russell.com

Michael W. De Vries

J. Patrick Park

KIRKLAND & ELLIS LLP

333 South Hope Street

Los Angeles, California 90071

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

michael.devries@kirkland.com

patrick.park@kirkland.com

James E. Marina

KIRKLAND & ELLIS LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

james.marina@kirkland.com

Adam R. Alper
Robert N. Kang
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500
adam.alper@kirkland.com
robert.kang@kirkland.com

Attorneys for Cisco Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2018, I caused the foregoing First Amended Complaint and Jury Demand to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: /s/ Fred K. Herrmann
Fred K. Herrmann (P49519)
500 Woodward Avenue
Suite 2500
Detroit, MI 48226
Telephone: (313) 961-0200
Facsimile: (313) 961-0388
fherrmann@kerr-russell.com