

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CHRIMAR SYSTEMS, INC. d/b/a CMS )  
TECHNOLOGIES and CHRIMAR )  
HOLDING COMPANY, LLC, )  
 )  
Plaintiffs, )

v. )

CISCO SYSTEMS, INC.; CISCO )  
CONSUMER PRODUCTS LLC; CISCO- )  
LINKSYS LLC, HEWLETT-PACKARD )  
CO.; 3COM CORPORATION; AVAYA )  
INC. and EXTREME NETWORKS, INC., )  
 )  
Defendants. )

C.A. No. 11-1050 (GMS)

**DEMAND FOR JURY TRIAL**



REDACTED - PUBLIC VERSION

**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS  
OF DEFENDANT HEWLETT-PACKARD COMPANY**

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**ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS  
OF DEFENDANT HEWLETT-PACKARD COMPANY**

Defendant and Counterclaimant Hewlett-Packard Company (“Hewlett-Packard Co.”), hereby responds to the Complaint for Patent Infringement (“Complaint”) by Plaintiffs ChriMar Systems, Inc. d/b/a CMS Technologies and ChriMar Holding Company, LLC (collectively, “ChriMar”):

**RESPONSE TO ALLEGATIONS CONCERNING THE PARTIES**

1. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 1, and, accordingly, denies them.
2. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 2, and, accordingly, denies them.
3. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 3, and, accordingly, denies them.

4. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 4, and, accordingly, denies them.

5. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 5.

6. Hewlett-Packard Co. admits that Hewlett-Packard Co. is a corporation organized under the laws of Delaware with its principal place of business at 3000 Hanover Street, Palo Alto, California. Hewlett-Packard Co. further admits that Hewlett-Packard Co., sells, through authorized resellers, and contracts with certain companies who manufacture and/or assemble, certain products on behalf of Hewlett-Packard Co., including telephones, switches, wireless access points (“WAPs”), cameras, and routers, some of which are capable of supporting the Institute of Electrical and Electronics Engineers (“IEEE”) 802.3af Data Terminal Equipment (DTE) Power via Media Dependent Interface (MDI) and/or IEEE 802.3at Data Terminal Equipment (DTE) Power via Media Dependent Interface (MDI) Enhancements of the IEEE 802.3 standard.<sup>1</sup> Hewlett-Packard Co. denies any remaining allegations in Complaint ¶ 6.

7. Hewlett-Packard Co. denies that 3Com Corporation remains in existence as a separate legal entity or that 3Com Corporation is a wholly-owned subsidiary of Hewlett-Packard Co. On April 29, 2010, 3Com was folded into Hewlett-Packard Co. and ceased to exist as a legal entity. A certified copy of the Certificate of Merger of 3Com Corporation with and into Hewlett-Packard Co. is attached hereto as Exhibit A. The certificate of merger specifies that “the name of the surviving corporation is Hewlett-Packard Company, and the name of the corporation being

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<sup>1</sup> The reference in paragraph three of the Complaint to “Power over Ethernet” appears to refer to certain amendments to the 802.3 standard. Hewlett-Packard Co. notes that standards support does not mean that equipment implements every option of the standard or that there can be no variance in the design of equipment used for supporting the standard.

merged into this surviving corporation is 3Com Corporation.” Exh A. Under the applicable law a corporation which has ceased to exist as a result of a merger *lacks capacity to be sued*. Accordingly, 3Com lacks the capacity to respond to ChriMar’s complaint and Hewlett-Packard Co., 3Com’s successor-in-interest, alone answers the allegations regarding 3Com’s products. Hewlett-Packard Co. admits that the Complaint purports to use the term “HP” to collectively refer to defendants Hewlett-Packard Co. and 3Com Corporation. Hewlett-Packard Co. denies any remaining allegations in Complaint ¶ 7.

8. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 8.

9. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 9.

**RESPONSE TO ALLEGATIONS CONCERNING JURISDICTION AND VENUE**

10. Hewlett-Packard Co. admits that ChriMar’s Complaint purports to invoke the United States Patent Laws, and that this Court has subject matter jurisdiction over patent law claims generally. Hewlett-Packard Co. denies that it has committed any acts of patent infringement and denies that the patent asserted in ChriMar’s Complaint is valid or enforceable. Further, to the extent subject matter jurisdiction includes whether ChriMar has standing to assert infringement claims before this Court in this particular case against Hewlett-Packard Co. in light of ChriMar’s licensing obligations, Hewlett-Packard Co. denies the allegations with respect to subject matter jurisdiction. Hewlett-Packard Co. denies any remaining allegations in Complaint ¶ 10.

11. Hewlett-Packard Co. admits that this Court has personal jurisdiction over Hewlett-Packard Co. Hewlett-Packard Co. is without knowledge or information sufficient to form a belief about whether the Court has personal jurisdiction over the other named Defendants.

Hewlett-Packard Co. denies any patent infringement allegations in Complaint ¶ 11. Except as expressly admitted, and in light of the vague and ambiguous nature of ChriMar's allegations, Hewlett-Packard Co. denies any remaining allegations of Complaint ¶ 11.

12. Complaint ¶ 12 sets forth a legal conclusion to which no response is required and Hewlett-Packard Co. denies any allegations herein.

13. Hewlett-Packard Co. denies that joinder of all Defendants is proper under 35 U.S.C. § 299(a). Hewlett-Packard Co. admits that it has products that are certified as capable of supporting the IEEE 802.3af and/or 802.3at amendments to the IEEE 802.3 standard. Hewlett-Packard Co. further admits that one or more persons who were also employees of Hewlett-Packard Co. participated in IEEE standard setting activities. To the extent these allegations pertain to other named Defendants, Hewlett-Packard Co. is without knowledge or information sufficient to form a belief about those allegations and denies them. Further, Hewlett-Packard Co. denies any allegations of infringement of United States Patent No. 7,457,250 (the "'250 Patent"). In light of the vague and ambiguous nature of ChriMar's allegations, Hewlett-Packard Co. denies any remaining allegations of Complaint ¶ 13.

#### **RESPONSE TO ALLEGATIONS OF PATENT INFRINGEMENT**

14. Hewlett-Packard Co. incorporates by reference its responses above to the allegations of Paragraphs 1 through 13 of the Complaint as if set forth fully herein.

15. Hewlett-Packard Co. admits that the face of the '250 Patent indicates that it issued on November 25, 2008, is entitled "System for Communicating with Electronic Equipment," and lists John F. Austermann, III and Marshall B. Cummings as co-inventors. Hewlett-Packard Co. admits that the face of the '250 Patent reexamination certificate indicates that a reexamination certificate issued on March 1, 2011. Hewlett-Packard Co. admits that Exhibit A to the Complaint purports to be a copy of the '250 Patent. Hewlett-Packard Co. denies any remaining

allegations of Complaint ¶ 15 and specifically denies that the '250 Patent was duly and legally issued.

16. Denied as to Hewlett-Packard Co. Hewlett-Packard Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 16 as they relate to the other named Defendants and, accordingly, denies them.

17. Denied as to Hewlett-Packard Co. Hewlett-Packard Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 17 as they relate to the other named Defendants and, accordingly, denies them.

18. Denied as to Hewlett-Packard Co. Hewlett-Packard Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 18 as they relate to the other named Defendants and, accordingly, denies them.

19. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 19 and, accordingly, denies them.

20. Hewlett-Packard Co. lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Complaint ¶ 20 and, accordingly, denies them.

21. Denied.

22. Denied.

#### **RESPONSE TO REQUESTED RELIEF**

23. To the extent that any response to the Requested Relief in Complaint ¶¶ A through G is required, Hewlett-Packard Co. denies that ChriMar has any valid claim pursuant to 35 U.S.C. § 271 *et seq.* Hewlett-Packard Co. further denies that it has violated any of the Patent Laws with respect to the '250 Patent. Hewlett-Packard Co. further denies that ChriMar is entitled to any of the requested relief with respect to Hewlett-Packard Co. and requests that the Court deny the relief requested by ChriMar.

**GENERAL DENIAL**

Hewlett-Packard Co. further denies each allegation contained in ChriMar's Complaint that is not specifically admitted, denied, or otherwise responded to in this Answer to ChriMar's Complaint.

**AFFIRMATIVE DEFENSES**

Subject to its responses above, and upon information and belief, Hewlett-Packard Co. alleges and asserts the following defenses in response to the allegations of the Complaint, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to its responses above, Hewlett-Packard Co. specifically reserves all rights to allege additional affirmative defenses pursuant to any scheduling order or that become known through the course of discovery.

**FIRST AFFIRMATIVE DEFENSE - NON-INFRINGEMENT**

1. Hewlett-Packard Co. has not (i) directly infringed, either literally or under the doctrine of equivalents, (ii) contributed to infringement by others, either literally or under the doctrine of equivalents, and/or (iii) induced others to infringe, either literally or under the doctrine of equivalents, any valid or enforceable claim of the '250 Patent.

**SECOND AFFIRMATIVE DEFENSE - INVALIDITY**

2. The claims of the '250 Patent are each invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 101 et seq., including, but not limited to, sections §§ 101, 102, 103, 112, and/or 116, or judicially-created doctrines of invalidity, including but not limited to obviousness-type double patenting or the Rules and Regulations of the United States Patent and Trademark Office relating thereto.

3. By way of example only, and without limitation, and in consideration of ChriMar's improper application of the claims of the '250 Patent, the claims of the '250 Patent are invalid under 35 U.S.C. §§ 102 and/or 103 in view of at least the following prior art, either alone or in combination with one or more of the prior art references listed below:

- U.S. Pat. No. 3,983,338
- U.S. Pat. No. 4,173,714
- U.S. Pat. No. 4,413,250
- U.S. Pat. No. 5,523,747
- U.S. Pat. No. 5,568,525
- U.S. Pat. No. 5,675,813
- U.S. Pat. No. 5,991,885
- U.S. Pat. No. 6,272,219
- U.S. Pat. No.6,449,348
- WO 96/23377 A1, published August 1, 1996
- WO 97/09667 A1, published March 13, 1997
- Japanese Patent Application No. 02-087762, published March 28, 1990
- DAVID Systems documentation
- LattisNet System product and documentation
- IEEE 802.3i Ethernet standard

4. Depending on the scope of the asserted claims of the '250 Patent or contentions in connection therewith, the asserted claims may be invalid for failure to provide an adequate written description and/or enabling disclosure, or for failure to disclose the best mode pursuant to 35 U.S.C. § 112, subparagraph 1, or for indefiniteness under 35 U.S.C. § 112, subparagraph 2.

**THIRD AFFIRMATIVE DEFENSE - PROSECUTION HISTORY ESTOPPEL**

5. The claims in suit are limited by the text of the ‘250 Patent, the prosecution history, and/or the prior art such that ChriMar is estopped, or otherwise precluded, from asserting that any claim is infringed by Hewlett-Packard Co., literally or by equivalents.

**FOURTH AFFIRMATIVE DEFENSE - ESTOPPEL**

6. The ‘250 Patent is unenforceable due to estoppel, including without limitation the doctrine of equitable estoppel.

7. For example, ChriMar asserts in its Complaint that the ‘250 Patent is necessarily infringed by products that comply with the 802.3af and 802.3at amendments to the IEEE 802.3 standard. If the ‘250 Patent were necessarily infringed as alleged by ChriMar, then ChriMar was, according to its own allegations, under a duty to disclose to the IEEE the ‘250 Patent or its applications<sup>2</sup> and/or ChriMar’s position as to whether or not it would license the ‘250 Patent or its applications on reasonable and nondiscriminatory terms (“RAND terms”). From ChriMar’s assertions in the Complaint, ChriMar does not acknowledge any obligation to license the ‘250 patent on RAND terms and instead seeks a permanent injunction among other things. ChriMar, however, knowingly and intentionally did not disclose to the IEEE (a) the ‘250 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, or (c) ChriMar’s unwillingness to license the ‘250 Patent or its applications to an unrestricted number of applicants on RAND terms. ChriMar did so with the intention of precluding other existing viable alternatives that were equivalent, superior, or lower-

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<sup>2</sup> “The ‘250 Patent or its applications” as used throughout Hewlett-Packard Co.’s Affirmative Defenses and Hewlett-Packard Co.’s Counterclaims refers to United States Patent No. U.S. Patent No. 7,457,250 or any application to which it may purport to claim priority, including without limitation Application Nos. 10/668,708, 09/370,430, PCT/US99/07846, or Provisional Application No. 60/081,279.

costing from being implemented and with the expectation that were the standard to issue with technology that it considered covered by its patent rights, ChriMar would have an opportunity to become an indispensable licensor to anyone in the world seeking to produce a product compliant with the IEEE 802.3af and IEEE 802.3at amendments.

8. For example, and without limitation, ChriMar's 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 referenced in the Complaint, 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's 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 '250 Patent or its applications 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: (1) the '250 Patent or its applications and their belief as to applicability to the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and (2) ChriMar's unwillingness to license the '250 Patent or its applications to an unrestricted number of applicants on RAND terms. ChriMar failed to do so. Further, in a December 2001 assurance letter, ChriMar further failed to disclose that it is unwilling to grant RAND licenses to the '250 Patent despite representing that it would provide a license to its intellectual property to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions with respect to the IEEE 802.3af amendments to the IEEE 802.3 standard.

9. The IEEE and Hewlett-Packard Co. relied to their detriment upon ChriMar's failure to disclose to the IEEE; (a) the '250 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 '250 Patent or its applications on RAND terms. Based on such reliance, participants in the IEEE standards development process, including Hewlett-Packard Co.'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. The issued standards contain elements that ChriMar now alleges are covered by the '250 Patent, and that ChiMar is unwilling to extend licenses on RAND terms. If known, the participants in the IEEE standards development process, including Extreme's representatives, may have approved viable alternative technologies that were available during the standards-setting process.

10. Hewlett-Packard Co., other implementers of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, and members of the public that purchase products that implement those amendments, have been materially prejudiced by their reliance on ChriMar's failures to disclose in contravention of the IEEE's patent policy as set forth above. Hewlett-Packard Co. 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 certified as compliant with the IEEE 802.3 standard that ChriMar now alleges infringes the '250 patent.

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

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

13. As a result, ChriMar is estopped from bringing any infringement claims under the '250 Patent, and the '250 Patent is unenforceable against Hewlett-Packard Co.

14. In the event ChriMar is not estopped from enforcing the '250 Patent, in light of a December 2001 assurance letter supplied by ChriMar to the IEEE, ChriMar should be obligated to offer a license to Hewlett-Packard Co. on RAND terms under the '250 Patent.

15. In the alternative, ChriMar's failure to disclose the '250 Patent or its applications should be construed as an admission by ChriMar that the '250 Patent does not apply to implementations that practice the 802.3af and 802.3at amendments to the IEEE 802.3 standard, and ChriMar should be precluded from asserting the '250 Patent against such implementations.

**FIFTH AFFIRMATIVE DEFENSE - UNCLEAN HANDS**

16. ChriMar has unclean hands, rendering the '250 Patent unenforceable and barring ChriMar's claims.

17. For example, and without limitation, ChriMar asserts in its Complaint that the '250 Patent is necessarily infringed by products that comply with the 802.3af and 802.3at amendments to the IEEE 802.3 standard. If the '250 Patent were necessarily infringed as alleged by ChriMar, then ChriMar was under a duty to disclose the '250 Patent or its applications to the IEEE and/or to indicate ChriMar's position as to whether or not it would license the '250 Patent or its applications on reasonable and nondiscriminatory terms. ChriMar's failure to disclose to the IEEE: (a) the '250 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 '250 Patent or its applications on RAND terms constitutes conduct involving fraud, deceit, and unconscionability, which directly relates to the matter at issue.

18. ChriMar's above-referenced failures to disclose and misrepresentations have directly harmed vendors of Power over Ethernet-enabled products, including Hewlett-Packard Co., as well as the public because Hewlett-Packard Co. and others relied upon such non-disclosure and misrepresentations, as described above.

19. ChriMar's wrongful conduct that directly relates to the matter at issue affects the balance of equities between the litigants as well as the public's interest in having Power over Ethernet-enabled products, and equity dictates that ChriMar cannot enforce the '250 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

**SIXTH AFFIRMATIVE DEFENSE - WAIVER**

20. ChriMar's claims against Hewlett-Packard Co. are barred, in whole or in part, by the doctrine of waiver (including without limitation implied waiver).

21. By way of example, and without limitation, ChriMar intentionally failed to disclose to the IEEE: (a) the '250 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 '250 Patent or its applications on RAND terms, as discussed above in ¶¶ 7-9.

22. ChriMar intentionally relinquished its rights to enforce the '250 Patent, and/or its conduct was so inconsistent with an intent to enforce its rights as to induce a reasonable belief that such rights have been relinquished. ChriMar intentionally failed to disclose to the IEEE: (a) the '250 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 '250 Patent or its applications on RAND terms, with the expectation and anticipation that its

nondisclosure and misrepresentations would result in incorporation into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard of technology over which ChriMar now claims patent rights. ChriMar did so with the intention of precluding other existing viable alternatives that were equivalent, superior, or lower-costing from being implemented and with the expectation that were the standard to issue with technology that it considered covered by its patent rights, ChriMar would have an opportunity to become an indispensable licensor to anyone in the world seeking to produce a product compliant with the IEEE 802.3af and IEEE 802.3at amendments. The IEEE, as well as participants in the standards-setting process including Hewlett-Packard Co., relied upon ChriMar's above-referenced nondisclosures and misrepresentations leading to the issuance of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, as opposed to implementing alternatives available during the standards-setting process.

23. Vendors of Power over Ethernet-enabled products, including Hewlett-Packard Co. as well as the public, which has come to rely upon Power over Ethernet-enabled products, are materially prejudiced as a result of ChriMar's conduct discussed above. Hewlett-Packard Co. is now faced with ChriMar's Complaint seeking exclusionary relief (a form of relief to which ChriMar as a non-practicing entity is not entitled), damages, licensing fees at a rate unrelated to the purported value of the '250 Patent, and the uncertainty and cost of litigation.

24. As a result, ChriMar has waived any claims under the '250 Patent.

**SEVENTH AFFIRMATIVE DEFENSE – IMPLIED LICENSE**

25. Hewlett-Packard Co. has an implied license to the '250 Patent.

26. For example, and without limitation, if the claims are covered by the practice of the standard as alleged by ChriMar, Hewlett-Packard Co. has a license to the '250 Patent because of the covenants and representations ChriMar made during the IEEE 802.3 standards-setting

process. During that process, ChriMar made an irrevocable guarantee that it would “grant a license to an unrestricted number of applicants on a worldwide non-discriminatory basis and on reasonable terms and conditions to comply with the [Proposed] IEEE standard” with respect to any “granted patent(s) and for pending applications that it believes may be infringed by compliance with the Proposed IEEE Standard.” Letter from John Austermann, ChriMar Systems, Inc., to Secretary, IEEE-SA Standards Board Patent Committee (December 3, 2001), *available at* [http://standards.ieee.org/aboutisab/patcomlloa-802\\_3af-chrimar-03Dec2001.pdf](http://standards.ieee.org/aboutisab/patcomlloa-802_3af-chrimar-03Dec2001.pdf).

**EIGHTH AFFIRMATIVE DEFENSE - LACK OF SUBJECT MATTER JURISDICTION**

27. There is a lack of subject matter jurisdiction for ChriMar’s claims against Hewlett-Packard Co. in light of Hewlett-Packard Co.’s implied license to the ‘250 Patent.

**NINTH AFFIRMATIVE DEFENSE - PATENT MISUSE**

28. Hewlett-Packard Co. incorporates by reference paragraphs 6 through 26 as if fully set forth herein. Hewlett-Packard Co. also incorporates by reference the allegations in Hewlett-Packard Co.’s Counterclaims below as though fully set forth herein.

29. ChriMar’s claims against Hewlett-Packard Co. are barred, in whole or in part, by the doctrine of patent misuse.

30. For example, and without limitation, ChriMar intentionally failed to disclose to the IEEE: (a) the ‘250 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 ‘250 Patent or its applications on RAND terms despite representing that it would provide a license to its intellectual property to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions with respect to the IEEE 802.3af amendments to the IEEE 802.3 standard.

31. ChriMar knew its nondisclosures and misrepresentations would induce the IEEE to set the IEEE 802.3af and 802.3at amendments to the IEEE 802.3 standard in a way that ChriMar believes is covered by the '250 Patent, and that vendors of Power over Ethernet-enabled products, like Hewlett-Packard Co., would rely upon ChriMar's nondisclosures and misrepresentations as to its intellectual property rights, include its nondisclosures and misrepresentations in the IEEE standard setting process with respect to the '250 Patent or its applications and its unwillingness to license on RAND terms, and develop, manufacture and sell Power over Ethernet-enabled products that are compliant with the standard.

32. ChriMar participated in the IEEE standards-setting process, and is using its claims in this action, to broaden the scope of applicability of the '250 Patent through improper enforcement against all products that are compliant with the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard.

33. ChriMar's nondisclosures and misrepresentations before the IEEE has an anti competitive effect and is an abusive attempt to capture for ChriMar's gain an IEEE standard. This deceit also renders the patent-in-suit unenforceable.

34. ChriMar's attempted enforcement of the '250 Patent to attempt to collect damages and injunctive relief against Hewlett-Packard Co.'s standards-compliant products is a misuse of the '250 Patent.

**TENTH AFFIRMATIVE DEFENSE - LACHES**

35. ChriMar's infringement claim and right to relief is barred in whole or in part by the doctrine of laches.

**ELEVENTH AFFIRMATIVE DEFENSE - MARKING AND DAMAGES LIMITATIONS**

36. To the extent ChriMar or its licensees have failed to comply with the marking requirement of 35 U.S.C. § 287(a), ChriMar cannot recover any damages for Hewlett-Packard Co.'s alleged infringement prior to the date this suit was filed.

**TWELFTH AFFIRMATIVE DEFENSE - IMPROPER JOINDER**

37. ChriMar has improperly attempted to join Hewlett-Packard Co. with the other named Defendants in this action. *See* 35 U.S.C. § 299.

38. ChriMar does not allege, because it cannot, that its claims as to each Defendant arise “out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the *same accused product or process.*” *Id.* at § 299(a)(1) (emphasis added).

39. ChriMar's sole basis for seeking to join Hewlett-Packard Co. with the other named Defendants is through its allegations that Hewlett-Packard Co. and the other named Defendants have each infringed the '250 Patent. Such allegations are insufficient to satisfy the requirements for joinder all Defendants in one action. *Id.* at § 299(b).

40. ChriMar also does not assert that Hewlett-Packard Co. is jointly and severally liable with any other Defendant. *See id.* at § 299(a)(1).

**THIRTEENTH AFFIRMATIVE DEFENSE - NO ENTITLEMENT TO INJUNCTIVE RELIEF**

41. ChriMar is not entitled to injunctive relief. Among other things, ChriMar is and has long been a non-practicing entity, and it is not able to meet the standards for such relief as set forth in *eBay Inc. v. Merc Exchange, L.L.C.*, 547 U.S. 388 (2006).

### **HEWLETT-PACKARD CO.'S COUNTERCLAIMS**

Counterclaimant Hewlett-Packard Company (“Hewlett-Packard Co.”), on personal knowledge as to their own acts, and on information and belief as to all others based on their own and their attorneys’ investigation, alleges the following Counterclaims against ChriMar Systems, Inc. and ChriMar Holding Company, LLC (collectively, “ChriMar”):

#### **NATURE OF THE ACTION**

1. Hewlett-Packard Co. seeks a declaratory judgment of patent noninfringement, invalidity, and unenforceability of United States Patent No. 7,457,250 (the “250 Patent”) pursuant to Patent Laws of the United States, 35 U.S.C. § 100 *et seq.*, damages and an injunction for violations of the Sherman Act § 2, damages for breach of contract, and restitution and an injunction for violations of § 17200 *et seq.* of the California Business and Professions Code, and such other relief as the Court deems just and proper.

#### **PARTIES**

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

3. According to ChriMar’s Complaint, Counterclaim-defendant ChriMar Systems, Inc. d/b/a CMS Technologies is a Michigan corporation with its principal place of business at 36528 Grand River Avenue, Suite A-I in Farmington Hills, Michigan.

4. According to ChriMar’s Complaint, Counterclaim-defendant ChriMar Holding Company, LLC is a Texas limited liability company, having a principal place of business at 303 South Avenue in Marshall, Texas.

#### **JURISDICTION AND VENUE**

5. If subject matter jurisdiction is proper for ChriMar’s claims, this Court has jurisdiction over these Counterclaims pursuant to, and without limitation, 28 U.S.C. §§ 1331,

1337, 1338(a), 1367, 2201, and 2202, the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, Section 2 of the Sherman Act, 15 U.S.C. § 2 and Section 4 of the Clayton Act, 15 U.S.C. § 15.

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

7. ChriMar has subjected itself to personal jurisdiction by filing suit against Hewlett-Packard Co. in this judicial district.

8. If venue in the District of Delaware is proper for ChriMar's claims, then venue is proper in this judicial district at least under 28 U.S.C. §§ 1391.

## **BACKGROUND**

### **A. THE '250 PATENT**

9. The '250 Patent, entitled "System for Communicating with Electronic Equipment," reports that it was filed on September 23, 2003, issued on November 25, 2008 and then had a reexamination certificate issued on March 1, 2011. The '250 Patent reports that it is a continuation of Application No. 09/370,430, filed on August 9, 1999, now U.S. Patent No. 6,650,622, which is a continuation-in-part of Application No. PCT/US99/07846, filed on April 8, 1999. The inventors named on the '250 Patent are John F. Austermann, III, and Marshall B. Cummings. Chrimar purports to hold all title and interest in the '250 Patent. As alleged herein, Hewlett-Packard Co. denies that the '250 Patent was duly and legally issued.

### **B. STANDARDS IN GENERAL**

10. 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.

11. “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.

12. 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.

13. One goal of a typical standards-setting body is to create a standard that everyone in the industry can practice without the threat of patent infringement lawsuits that would prevent a company from practicing the standard. In furtherance of this goal, most standards-setting organizations have adopted intellectual property rights policies to address the problems that may arise from patent hold-up. A patent hold-up situation can occur where, after a standard is set and compliant products are being manufactured/sold, a patentee then claims rights to the technology covered by the standard. Typically, the royalty that a patentee may obtain from a patent license

for its technology is limited in part by the availability of alternative technical approaches to perform that function. If, however, an issued standard requires the use of that patented technology, other technological approaches are generally no longer available as substitutes and will no longer serve to limit the patentee's ability to demand royalties far in excess of what is warranted by the intrinsic value of the technology. This is compounded because companies that have designed, had made and sold standards-compliant products, such as Hewlett-Packard Co., invest significant resources in developing innovative, new products that also comply with the technical standard. Even if there were an alternative standard, the costs and disruption associated with switching is typically prohibitively expensive. Such high switching costs result in "lock-in" where companies become locked into manufacturing and selling products that are in compliance with the standard. Indeed, the public comes to rely upon standards-compliant equipment which can make it prohibitively difficult to subsequently switch to alternative, non-infringing substitutes once the standard has been issued. The high cost of switching applies to all elements of the standard regardless of how small the marginal contribution of the element would be (if not required by the standard) to the functionality of a standards-compliant product.

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

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

16. 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.

17. Failure to disclose Essential Patent Rights, as ChriMar has done here, also may lead to anti-competitive patent hold-up, where after the industry and the public have become locked into 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.

### **C. THE HISTORY OF THE IEEE'S POWER OVER ETHERNET STANDARDS**

18. 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.

19. 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.

20. 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.

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

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

22. 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.

23. 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.

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

24. ChriMar illegally exploited the IEEE standards-setting process with respect to the IEEE 802.3af and 802.3at amendments by deliberately failing to disclose to the IEEE: (a) the '250 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 '250 Patent or its 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 to the IEEE 802.3 standard based upon technology that is purportedly covered by ChriMar's intellectual property.

25. John Austermann, III, President and Chief Executive Officer of ChriMar and named inventor on the '250 Patent and its applications, 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 802.3aftask force meeting in La Jolla, California, as well as the January 26-27, 2005 PoE-Plus Study Group. Mr. Austermann failed to disclose the '250 Patent or its applications 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 '250 Patent or its applications.

26. 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/patcomlloa-802\\_3af-chrimar-03 Dec2001.pdf](http://standards.ieee.org/about/sasb/patcomlloa-802_3af-chrimar-03 Dec2001.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 ‘250 Patent in its December 3, 2011 letter.

27. ChriMar failed to disclose to the IEEE the ‘250 Patent or its applications. ChriMar failed to disclose that the ‘250 Patent or its application covered any proposals for the IEEE 802.3af standard. ChriMar failed to disclose to the IEEE that the ‘250 Patent or its applications covered any proposals for the IEEE 802.3at standard. ChriMar failed to disclose to the IEEE its unwillingness to license the ‘250 patent on RAND terms.

28. 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 ‘250 Patent or its applications 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 ‘250 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 ‘250 Patent or its applications on RAND terms. ChriMar failed to do so.

29. 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 ‘250 Patent or its 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.

30. ChriMar's failure to disclose the '250 Patent 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.

31. 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 into 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 that if the standard were 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.

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

33. 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 of 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.

34. Various companies were attempting to have their technologies, which were viable alternatives to that which ChriMar now claims is covered by the '250 Patent, 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).

35. 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 '250 Patent or its applications 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 '250 Patent on RAND terms; (c) decided to 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 '250 Patent. *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.”).

**COUNT I**  
**(Declaratory Judgment Action for a Declaration**  
**of Noninfringement and Invalidity of U.S. Patent No. 7,457,250)**

36. Hewlett-Packard Co. incorporates herein by reference the allegations in paragraph 3 from Hewlett-Packard Co.’s affirmative defenses and paragraphs 1 through 35 from Hewlett-Packard Co.’s Counterclaims, above as though fully set forth herein.

37. ChriMar has accused Hewlett-Packard Co. of infringing the ‘250 Patent by using, having made, offering for sale, selling, importing, exporting, supplying and/or distributing products that are compliant with the IEEE 802.3af and/or 802.3at amendments, referred to herein as Power over Ethernet-enabled products.

38. As a result of the acts described in the foregoing paragraphs, there exists an actual and justiciable controversy between Hewlett-Packard Co. and ChriMar regarding the alleged infringement and validity of the ‘250 Patent.

39. Hewlett-Packard Co. has not infringed and does not infringe (directly, indirectly, or in any other manner) any valid, enforceable claim of the ‘250 Patent, either literally or under the doctrine of equivalents.

40. The claims of the ‘250 Patent are each invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 101 *et seq.*, including, but not limited to, sections 101, 102, 103, 112, and/or 116, or judicially-created doctrines of invalidity, including but not limited to obviousness-type double patenting or the Rules and Regulations of the United States Patent and Trademark Office relating thereto.

41. By way of example only, and without limitation, and in consideration of ChriMar’s improper application of the claims of the ‘250 Patent, the claims of the ‘250 Patent

are invalid under 35 U.S.C. §§ 102 and/or 103 in view of at least the following prior art, either alone or in combination with one or more of the prior art references listed below:

- U.S. Pat. No. 3,983,338
- U.S. Pat. No. 4,173,714
- U.S. Pat. No. 4,413,250
- U.S. Pat. No. 5,523,747
- U.S. Pat. No. 5,568,525
- U.S. Pat. No. 5,675,813
- U.S. Pat. No. 5,991,885
- U.S. Pat. No. 6,272,219
- U.S. Pat. No.6,449,348
- WO 96/23377 A1, published August 1, 1996
- WO 97/09667 A1, published March 13, 1997
- Japanese Patent Application No. 02-087762, published March 28, 1990
- DAVID Systems documentation
- LattisNet System product and documentation
- IEEE 802.3i Ethernet standard

42. Depending on the scope of the asserted claims of the '250 Patent or contentions in connection therewith, the asserted claims may be invalid for failure to provide an adequate written description and/or enabling disclosure, or for failure to disclose the best mode pursuant to 35 U.S.C. § 112, subparagraph 1, or for indefiniteness under 35 U.S.C. § 112, subparagraph 2.

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

**COUNT II**

**(Declaratory Judgment Action for a Declaration  
of Patent Unenforceability Due To Unclean Hands)**

44. Hewlett-Packard Co. incorporates herein by reference the allegations in paragraphs 6 through 19 from Hewlett-Packard Co.'s affirmative defenses and paragraphs 1 through 43 from Hewlett-Packard Co.'s Counterclaims above as though fully set forth herein.

45. ChriMar's has unclean hands, rendering the '250 Patent unenforceable and barring ChriMar's claims.

46. Despite having a duty to disclose to the IEEE: (a) the '250 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 '250 Patent or its applications on RAND terms connection with the 802.3af and 802.3at amendments, ChriMar knowingly and intentionally did not do so.

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

48. ChriMar now seeks damages and injunctive relief against Hewlett-Packard Co. ChriMar's wrongful conduct affects the balance of equities between the litigants and equity dictates that ChriMar cannot enforce the '250 Patent in light of its intentional wrongful and deceptive conduct during the standards-setting process.

49. ChriMar thus committed conduct involving fraud, deceit, unconscionability, and bad faith, in connection with the '250 Patent, which directly relates to the matter at issue, rendering the '250 Patent unenforceable. A judicial declaration of unenforceability is necessary and appropriate in order to resolve this controversy.

**COUNT III**  
**(Breach of Contract)**

50. Hewlett-Packard Co. incorporates herein by reference the allegations in paragraphs 1 through 49 of Hewlett-Packard Co.'s Counterclaims above as though fully set forth herein.

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

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

53. In light of the above-referenced failures to disclose to the IEEE as well as ChriMar's assertions in the Complaint, ChriMar has breached its contractual obligations, memorialized in the IEEE's patent policy to which Hewlett-Packard Co. is both a party and an intended beneficiary.

54. Hewlett-Packard Co. has been, and will continue to be, damaged by ChriMar's breach of contract. Hewlett-Packard Co. has invested considerable sums in bringing Power over

Ethernet-enabled products to market, which is now in jeopardy in light of ChriMar's infringement allegations due to Hewlett-Packard Co.'s reliance upon the standards and assurance process and ChriMar's failures to disclose to the IEEE as alleged above.

**COUNT IV**  
**(Monopolization of the Power over Ethernet Technology Market**  
**in Violation of Section 2 of the Sherman Act)**

55. Hewlett-Packard Co. incorporates herein by reference the allegations in paragraphs 1 through 54 above as though fully set forth herein.

56. ChriMar actually, potentially, and/or purportedly competes in the United States and worldwide markets for developing and licensing technology essential to implement the IEEE 802.3af and 802.3at amendments to the IEEE 802.3 standard and for technology essential to perform certain functions, allegedly covered by the '250 Patent, necessary to implement the IEEE 802.3 standard (hereinafter "Power over Ethernet Technology Market").

57. The United States and worldwide markets for the development and licensing of Power over Ethernet Technology consists of technology and functions allegedly covered by the '250 Patent and excludes several otherwise viable alternatives because: (1) once the IEEE selected a particular technology to be incorporated into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, other technologies capable of performing particular functions described in the specification were not included in the standard; (2) a device must conform to the requirements of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard to be standards-compliant and to 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 implements the Power over Ethernet standard for its devices, the cost of developing a new specification and switching the design to a new specification is likely 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 the '250 Patent, particularly where Power over Ethernet-enabled products have been already brought to the market. Product designers and manufacturers are unlikely to respond even to a significant increase in the cost of royalties - including unreasonable royalties - associated with the license of patents essential to implement the Power over Ethernet specification by switching to a different industry standard.

58. In this action, ChriMar is seeking a permanent injunction against damages from Hewlett-Packard Co. and other vendors of Power over Ethernet-enabled products based on monopoly power it improperly acquired over the Power over Ethernet Technology Market if its patent claims cover implementations that practice the IEEE 802.3 standard as alleged by ChriMar.

59. ChriMar alleges that it owns the '250 Patent and claims that the '250 Patent is 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 this allegedly "essential" patent. In particular, ChriMar has accused Hewlett-Packard Co., which sells IEEE 802.3af or IEEE 802.3at compliant products in interstate commerce, of infringement.

60. Because ChriMar bases its allegations on compliance with the previously issued the 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 there is no meaningful level of Power over Ethernet-enabled products that do not infringe the '250 Patent. Nor, because of "lock in" to the standard, are there viable technology substitutes at present. Accordingly, if the '250 Patent claims covered products that

comply with the IEEE standard as claimed by ChriMar, ChriMar has monopoly power over the Power over Ethernet Technology Market.

61. ChriMar's conduct has and will continue to directly and substantially affect and restrain interstate commerce in the United States as Hewlett-Packard Co. sells networking products that implement the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard in interstate commerce.

62. ChriMar's anticompetitive conduct has caused and will directly and proximately cause antitrust injury to Hewlett-Packard Co. within the Power over Ethernet Technology Market including but not limited to causing substantial injury to competition, consumers and competitors (including Hewlett-Packard Co.) in the Power over Ethernet Technology Market.

63. Hewlett-Packard Co.'s damages and injuries flow directly from ChriMar's wrongful, exclusionary acts that make ChriMar's conduct unlawful.

64. Hewlett-Packard Co.'s antitrust injuries are the direct result of ChriMar's anticompetitive conduct, alleged herein, which occurred within the United States. The harm and losses to Hewlett-Packard Co. from ChriMar's illegal conduct are ongoing and cumulative. Because ChriMar's actions may substantially and adversely injure Hewlett-Packard Co.'s goodwill with their customers and in the Power over Ethernet Technology Market generally, monetary compensation alone is not sufficient, leaving Hewlett-Packard Co. without a sufficient remedy at law.

65. Hewlett-Packard Co. has suffered irreparable injury by reason of ChriMar's anticompetitive conduct and will continue to suffer injury unless and until the Court enjoins such conduct.

**COUNT V**

**(Attempted Monopolization of the Power over Ethernet Technology Market  
in Violation of Section 2 of the Sherman Act)**

66. Hewlett-Packard Co. incorporates herein by reference the allegations in paragraphs 1 through 65 above as though fully set forth herein.

67. ChriMar actually, potentially, and/or purportedly competes in the United States and worldwide markets for developing and licensing technology essential to implement the IEEE 802.3af and 802.3at amendments to the IEEE 802.3 standard and for technology essential to perform certain functions, allegedly covered by the '250 Patent, necessary to implement the IEEE 802.3 standard (hereinafter "Power over Ethernet Technology Market").

68. The United States and worldwide markets for the development and licensing of Power over Ethernet Technology consists of technology and functions allegedly covered by the '250 Patent and excludes several otherwise viable alternatives because: (1) once the IEEE selected a particular technology to be incorporated into the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard, other technologies capable of performing particular functions described in the specification were not included in the standard; (2) a device must conform to the requirements of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard to be standards-compliant and to 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 implements the Power over Ethernet standard for its devices, the cost of developing a new specification and switching the design to a new specification is likely 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 the '250 Patent, particularly where Power over Ethernet-enabled products have been already brought to the market. Product designers and manufacturers are unlikely to respond even to a significant

increase in the cost of royalties - including unreasonable royalties - associated with the license of patents essential to implement the Power over Ethernet specification by switching to a different industry standard.

69. On November 16, 2011, ChriMar filed a verified First Amended Complaint with the United States International Trade Commission (“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 the overwhelming majority of products comprising the Power over Ethernet Technology Market, 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”).

70. In the ITC investigation, ChriMar named as Respondents HP, Cisco Systems, Inc., 3Com Corporation,<sup>3</sup> Avaya Inc. and Extreme Networks, Inc. Collectively, these entities comprise the substantial majority of products commercially offered in the Power over Ethernet Technology Market.

71. In its Complaint in the ITC investigation, ChriMar asserted infringement of the ‘250 patent by Respondents based on the importation of products by the Respondents that allegedly practice the Power over Ethernet Standards IEEE 802.3af and 802.3at. As to HP, ChriMar alleged that “...the accused HP products include capabilities as set forth in those PoE

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<sup>3</sup> ChriMar acknowledged that 3Com merged with HP before the filing date of the ITC investigation and stipulated to terminate 3Com from the ITC investigation.

Standards and operate in the manner covered by the asserted claims of the ‘250 patent.” Exhibit B, ChriMar First Amended ITC Complaint (“ITC Complaint”) at ¶ 71.

72. In the ITC investigation, ChriMar alleged that it owns the ‘250 Patent and claims that the ‘250 Patent is necessarily infringed by the practice of the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard. ChriMar accused entities selling IEEE 802.3af or IEEE 802.3at compliant products of infringing this allegedly “essential” patent. In particular, ChriMar has accused Hewlett-Packard Co., which sells IEEE 802.3af or IEEE 802.3at compliant products in interstate commerce, of infringement.

73. Because ChriMar bases its allegations on compliance with the previously issued the 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 there is no meaningful level of Power over Ethernet-enabled products that do not infringe the ‘250 Patent. Nor, because of “lock in” to the standard, are there viable technology substitutes at present. Accordingly, if the ‘250 Patent claims covered products that comply with the IEEE standard as claimed by ChriMar, ChriMar has monopoly power over the Power over Ethernet Technology Market.

74. Further, ChriMar’s ITC investigation was a baseless action because ChriMar did not meet the standing requirements of an ITC complainant. At the ITC, it is a statutorily mandated prerequisite of filing that the party requesting the investigation have a substantial domestic industry. This domestic industry requirement is set forth in 19 U.S.C. § 1337(a), which states:

(2) Subparagraphs (B), (C), (D), and (E) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

75. In its Complaint in the ITC investigation, ChriMar alleged that it had a domestic industry or is in the processing of starting one, stating it (a) “made a significant investment in plant and equipment;” (b) “a significant employment of labor or capital;” and (c) “total sales of its products that practice at least one claim of the ‘250 patent are substantial” related to its Etherlock products.<sup>4</sup> Exhibit B, ITC Complaint at ¶¶ 114-127.

76. ChriMar further stated in its ITC Complaint that its licensee to the ‘250 patent, Hubbell, Inc. “engaged in manufacturing, sales, advertising, customer support, and engineering and research and development activities” that were substantial and supported its domestic industry claims. *Id.* at ¶ 130. ChriMar alleged that its “license with Hubbell is a production-driven license, which encourages adoption and use of the patented technology to create new products and/or industries, by which ChriMar and Hubbell technically collaborated to develop and establish products, including Hubbell’s line of PowerTrac products, that practice at least one claim of the ‘250 patent.” *Id.* at ¶ 131.

77. ChriMar further stated it “made a substantial investment in the exploitation of the ‘250 patent through its licensing activities in the United States.” *Id.* at ¶ 141. ChriMar alleged that it “made and continues to make a substantial investment in licensing the Asserted Patent.

---

<sup>4</sup> ChriMar’s Etherlock products are not PoE products and do not compete with Defendants products.

ChriMar's United States employees have negotiated royalty bearing license agreements to the '250 patent, each of which have generated significant royalties . . . ." *Id.* at ¶ 143.

78. Discovery in the ITC investigation established that ChriMar's allegations for domestic industry were baseless. As a result, the Respondents filed a summary determination motion seeking to end the investigation. 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.

79. The act by ChriMar of initiating the baseless ITC investigation was predatory and anticompetitive conduct. ChriMar filed its Complaint in the ITC investigation with a specific intent to monopolize the Power over Ethernet Technology Market because it accuses the leading vendors of Power over Ethernet-enabled products of infringement and alleges that there is no meaningful level of Power over Ethernet-enabled products that do not infringe the '250 Patent.

80. ChriMar's baseless claims against HP and other competitors in the Power over Ethernet Technology Market constitute a knowing and willful attempt to interfere directly with the business relationship of HP and its other competitors through the improper use of the court system as an anticompetitive tool, by precluding, delaying, and/or multiplying the costs of entry into the relevant market for HP and the other competitors in the Power over Ethernet Technology Market.

81. ChriMar's baseless claims in the ITC investigation with its intent to monopolize the Power over Ethernet Technology Market in the United States constitute a dangerous probability of ChriMar succeeding in its attempt to monopolize the market.

82. ChriMar's conduct has affected and restrained interstate commerce in the United States as Hewlett-Packard Co. sells networking products that implement the IEEE 802.3af and IEEE 802.3at amendments to the IEEE 802.3 standard in interstate commerce.

83. ChriMar's anti competitive conduct has caused antitrust injury to Hewlett-Packard Co. within the Power over Ethernet Technology Market including but not limited to causing substantial injury to competition, consumers and competitors (including Hewlett-Packard Co.) in the Power over Ethernet Technology Market.

84. As a result of the ITC investigation, HP was required to incur significant expenses to defend against the action. These litigation fees and expenses were a direct result of ChriMar's baseless allegations.

85. Hewlett-Packard Co.'s damages and injuries flow directly from ChriMar's wrongful, exclusionary acts that make ChriMar's conduct unlawful.

86. Hewlett-Packard Co.'s antitrust injuries are the direct result of ChriMar's anticompetitive conduct, alleged herein, which occurred within the United States. Because ChriMar's actions may substantially and adversely injure Hewlett-Packard Co.'s goodwill with their customers and in the Power over Ethernet Technology Market generally, monetary compensation alone is not sufficient, leaving Hewlett-Packard Co. without a sufficient remedy at law.

87. Hewlett-Packard Co. has suffered irreparable injury by reason of ChriMar's anticompetitive conduct.

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

88. Hewlett-Packard Co. incorporates herein by reference the allegations in paragraphs 1 through 87 above as though fully set forth herein.

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

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

91. Hewlett-Packard Co.'s principal place of business 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 '250 Patent or its applications, (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 '250 Patent or its 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 to disrupt California consumers ability to obtain Power over Ethernet-enabled products.

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

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

94. As alleged above, ChriMar engaged in unfair business practices by including: (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.

95. In addition, ChriMar has falsely portrayed itself as a manufacturing entity in order to threaten Hewlett-Packard Co. with claims for injunctive relief to which ChriMar is not entitled. ChriMar previously told U.S. district courts that it had few sales as of 2000 and was out of the market years ago before the '250 Patent had issued. *See, e.g., ChriMar Sys., Inc. v. Powerdsine Ltd.*, 2:01-cv-74081-AC (E.D.Mich.), Doc # 45 Plaintiffs Objections to Special Master (Sept. 6, 2007).

96. 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 super-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 by having to pay an exorbitant price for one. These actions would result in higher prices and less competition, and are therefore unfair business practices.

97. Each of the unfair business acts identified above is unfair when the effect of the act on Hewlett-Packard Co. is balanced against ChriMar's reasons, justifications, and motives for that act.

98. Each of the unfair business acts identified above violates the policy or spirit of the antitrust laws because it harms Hewlett-Packard Co., competition, and consumers.

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

100. ChriMar committed fraudulent business acts by engaging 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 it 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.

101. 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, Hewlett-Packard Co. 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, Hewlett-Packard Co.'s injuries in fact are irreparable, and Hewlett-Packard Co. will continue to suffer injury-in-fact.

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

**PRAYER FOR RELIEF**

WHEREFORE, Hewlett-Packard Co. requests that the Court enter a judgment in Hewlett-Packard Co.'s favor and grant the following relief:

- a) A judgment dismissing ChriMar's Complaint against Hewlett-Packard Co. with prejudice;
- b) A declaration that Hewlett-Packard Co. has not infringed any of the claims of the '250 Patent;
- c) A declaration that the '250 Patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. §§ 101, 102, 103, 112 and/or 116;
- d) A declaration that the '250 Patent is unenforceable and/or that ChriMar's unclean hands preclude its enforcement of that patent in this suit;
- e) An injunction against ChriMar and its affiliates, subsidiaries, assigns, employees, agents or anyone acting in privity or concert with ChriMar from charging infringement or instituting or

continuing any legal action for infringement of the '250 Patent against Hewlett-Packard Co., its customers, or anyone acting in privity with Hewlett-Packard Co.;

f) An order declaring that Hewlett-Packard Co. is the prevailing party and that this is an exceptional case, awarding Hewlett-Packard Co. its costs, expenses, disbursements and reasonable attorney fees under 35 U.S.C. § 285 and all other applicable statutes, rules and common law;

g) An order adjudging and declaring that ChriMar has violated Section 2 of the Sherman Act, 15 U.S.C. § 2; and that ChriMar has violated Section 17200, et seq., of the California Business and Professions Code;

h) Judgment against ChriMar for treble the amount of Hewlett-Packard Co.'s damages as proven at trial in accordance with Section 4 of the Clayton Act, 15 U.S.C. § 15;

i) Enjoining, pursuant to applicable federal and state laws, including Section 17200, et seq., of the California Business and Professions Code, ChriMar's continuing violations of law by: (1) barring ChriMar from asserting the '250 Patent and other intellectual property rights it has claimed are essential to practice the IEEE 802.3af or IEEE 802.3at Power over Ethernet standards against parties manufacturing, selling, purchasing or using products practicing those standards; or (2) in the alternative, requiring ChriMar to grant IEEE members, including Hewlett-Packard Co. a royalty-free license to the '250 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;

j) Granting further equitable relief as necessary or appropriate, including full restitution to Hewlett-Packard Co. and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by ChriMar from Hewlett-Packard Co., its actual



# **EXHIBIT A**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 06:28 PM 04/28/2010  
FILED 06:28 PM 04/28/2010  
SRV 100438084 - 2858384 FILE

CERTIFICATE OF MERGER  
OF  
3COM CORPORATION,  
a Delaware corporation  
WITH AND INTO  
HEWLETT-PACKARD COMPANY  
a Delaware corporation

Pursuant to Title 8, Section 251(c) of the General  
Corporation Law of the State of Delaware

Hewlett-Packard Company, a Delaware corporation ("HP"), hereby certifies as follows:

**FIRST:** The name of the surviving corporation is Hewlett-Packard Company, and the name of the corporation being merged into this surviving corporation is 3Com Corporation.

**SECOND:** The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

**THIRD:** The name of the surviving corporation is Hewlett-Packard Company, a Delaware corporation.

**FOURTH:** The Certificate of Incorporation of the surviving corporation shall be its Certificate of Incorporation.

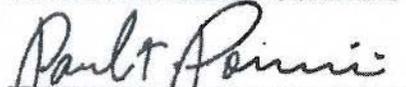
**FIFTH:** The merger is to become effective on April 29<sup>th</sup> at 11:59 p.m. EST.

**SIXTH:** The Agreement of Merger is on file at 3000 Hanover Street, Palo Alto, California 94304, the place of business of the surviving corporation.

**SEVENTH:** A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this Certificate of Merger to be executed in its corporate name this 28th day of April, 2010.

HEWLETT-PACKARD COMPANY



Paul T. Porrini  
Vice President, Deputy General Counsel  
and Assistant Secretary

# **EXHIBIT B**

# McKool Smith

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November 16, 2011

## VIA HAND DELIVERY

The Honorable James R. Holbein  
Secretary, U.S. International Trade Commission  
500 E Street, S.W., Room 112  
Washington, DC 20436

**RE:** *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, DN 2853*

Dear Secretary Holbein:

Pursuant to 19 C.F.R. § 210.14(a), Complainant ChriMar Systems, Inc. d/b/a CMS Technologies files the attached First Amended Complaint, which amends the original complaint filed on November 1, 2011, as supplemented on November 10, 2011.

Please note that the changes made to the original complaint are as follows:

In the Caption: "WLANs" was changed to "LANs";

In Paragraph 1: "wireless local area networks ('WLANs')" was changed to "local area networks ('LANs')";

In Paragraphs 107, 147, and 150: "wireless local area networks" was changed to "local area networks"; and

In Paragraphs 5, 20, 22, 24, 26, 34, 36, 41, 47, 50, and 72: "WLANs" was changed to "LANs".

Respectfully submitted,



Benjamin Levi

Enclosure

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

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

Investigation No. 337-TA-\_\_\_\_\_

(DN 2853)

FIRST AMENDED COMPLAINT OF CHRIMAR SYSTEMS, INC. d/b/a CMS  
TECHNOLOGIES UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED

COMPLAINANT

ChriMar Systems, Inc.  
d/b/a CMS Technologies  
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PROPOSED RESPONDENTS

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Tel: (408) 526-4000

Cisco Consumer Products LLC  
120 Theory Drive  
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Tel: (949) 823-3000

Cisco Systems International B.V.  
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**PROPOSED RESPONDENTS (Cont.)**

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Avaya Inc.  
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Tel: (866) 462-8292

Extreme Networks, Inc.  
3585 Monroe Street  
Santa Clara, CA 95051  
Tel: (408) 579-2800

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. THE PARTIES.....2

    A. Complainant.....2

    B. Proposed Respondents .....3

        1. Cisco Systems, Inc., Cisco Consumer Products LLC, Cisco Systems International B.V., and Cisco-Linksys LLC .....3

        2. Hewlett-Packard Co. and 3Com Corporation .....6

        3. Avaya Inc. ....8

        4. Extreme Networks, Inc. ....9

        5. The Avaya and Extreme Networks “Global Strategic Alliance” .....10

III. THE TECHNOLOGY AND PRODUCTS AT ISSUE .....10

IV. THE ASSERTED PATENT -- U.S. Patent No. 7,457,250 (and 7,457,250 C1).....11

    A. Identification of the Patent and Ownership by ChriMar.....11

    B. Nontechnical Description of the '250 Patent .....12

    C. Foreign Counterparts to the '250 Patent .....12

    D. Licensees.....12

V. UNLAWFUL AND UNFAIR ACTS OF RESPONDENTS .....12

    A. Cisco .....12

    B. HP .....15

    C. Avaya .....17

    D. Extreme .....19

E.	Joint Infringement by Avaya and Extreme .....	21
VI.	SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE.....	21
A.	Cisco .....	21
B.	HP .....	22
C.	Avaya .....	22
D.	Extreme.....	23
VII.	TARIFF CLASSIFICATION UNDER THE HARMONIZED TARIFF SCHEDULE.....	23
VIII.	RELATED LITIGATION .....	23
IX.	DOMESTIC INDUSTRY .....	25
A.	ChriMar’s Activities and Investments in Plant and Equipment, or Employment of Labor or Capital .....	25
B.	ChriMar’s Engineering and Research and Development.....	27
C.	The Activities and Investments of ChriMar’s Licensee, Hubbell, Inc.....	28
D.	ChriMar’s Licensing of the ‘250 Patent.....	30
X.	RELIEF REQUESTED.....	31

**TABLES OF SUPPORTING MATERIALS****INDEX OF EXHIBITS**

Exhibit No.	Description
1	Certified Copy of U.S. Patent No. 7,457,250
2	Certified Copy of the Recorded Assignment for U.S. Patent Nos. 7,457,250
3	Certified Copy of the Recorded Assignment for U.S. Patent No. 7,457,250
4	CMS Asset Control Products - Etherlock Systems (www.cmstech.com/products/products.html)
5	CMS Security Products - Etherlock Security Systems
6	CMS North American Product Pricing
7	Cisco Systems, Inc. 2010 10-K Report
8	Cisco Systems, Inc. 2010 Annual Report
9	HP 2010 Annual Report
10	Avaya, Inc. 2010 10-K Report
11	Extreme Networks, Inc. 2010 10-K Report
12C	<b>CONFIDENTIAL</b> List of Licensees
13	Cisco Systems White Paper titled "Power over Ethernet: Cisco Inline Power and IEEE 802.3af"
14	Exemplary Infringement Chart for Claims 1 and 53 of U.S. Patent 7,457,250 for Cisco Accused Products
15	Datasheet - Cisco Catalyst 3750-X and 3560-X Series Switches
16	Datasheet - Cisco Unified IP Phone 7941G-GE
17	IEEE Standard 802.3af-2003
18	IEEE Standard 802.3at-2009
19C	<b>CONFIDENTIAL</b> Declaration of John F. Austermann, III
20	Document titled IEEE 802.3af DTE Power via MDI Task Force, July 2000 Plenary Week Meeting
21	HP White Paper titled "ProCurve Switch 5400 and 3500 Power Over Ethernet"
22	Exemplary Infringement Chart for Claims 1 and 53 of U.S. Patent 7,457,250 for HP Accused Devices
23	HP 2910 al Switch Series QuickSpecs
24	Datasheet - HP 310x IP Phone Series
25	HP ProCurve Switch Quick Setup Guide
26	Avaya - A practical Guide to Power over Ethernet
27	Exemplary Infringement Chart for Claims 1 and 53 of U.S. Patent 7,457,250 for Avaya Accused Devices
28	Datasheet - Avaya Ethernet Routing Switch 4500 Series
29	Avaya 2007 IP Deskphone Fact Sheet
30	Avaya 2007 IP Deskphone Getting Started

Exhibit No.	Description
31	Document titled "RE: detecting PD disconnection Event"
32	"Extreme Products at a Glance"
33	Exemplary Infringement Chart for Claims 1 and 53 of U.S. Patent 7,457,250 for Extreme Accused Devices
34	Extreme Networks Data Sheet: Summit X460 Series
35	Extreme Networks Data Sheet: Altitude 4600 Series Access Points
36	Extreme Networks, Inc.'s Products - Standards Bodies
37	Application Notes for the Extreme Networks Summit 300-24 Summit 400-24P and Summit 400-24T Power over Ethernet with Avaya IP Telephones
38	Avaya Extreme Networks Alliance Fact Sheet
39	Receipt Evidencing Purchase of Cisco Products
40	Photo of Cisco IP Phone 7900 Series and Contents Packaged in Box (1 of 2)
41	Photo Indicating Cisco Product is Marked as: "Made in Malaysia" (Cisco IP Phone 7900 Series)
42	Photo of Cisco IP Phone 7900 Series and Contents Packaged in Box (2 of 2)
43	Photo Indicating Cisco Product is Marked as: "Made in China" (Cisco IP Phone 7900 Series)
44	Photo of Cisco Switch Product (Catalyst 3560 X-Series)
45	Photo Indicating Cisco Switch Product (Catalyst 3560 X-Series) is Marked as: "Made in China"
46	Receipt Evidencing Purchase of HP Products
47	Photo Indicating HP Product is Marked as: "Product of Singapore" (HP ProCurve Switch)
48	Photo of HP ProCurve Switch Packaged in Box
49	Photo Indicating HP Product is Marked as: "Assembled in China" (HP 3101SP IP Phone)
50	Photo of HP 3101SP IP Phone and Contents Packaged in Box (1 of 2)
51	Photo of HP 3101SP IP Phone and Contents Packaged in Box (2 of 2)
52	Receipt Evidencing Purchase of Avaya Products
53	Receipt Evidencing Purchase of Avaya Products
54	Photo Indicating Avaya Product is Marked as: "Made in China" (Avaya 2007 IP Deskphone)
55	Photo Indicating Avaya Product is Marked as: "Made in China" (Avaya 2007 IP Deskphone)
56	Photo of Avaya 2007 IP Deskphone and Contents Packaged in Box (1 of 2)
57	Photo of Avaya 2007 IP Deskphone and Contents Packaged in Box (2 of 2)
58	Photo Indicating Avaya Product is Marked as: "Made in China" (Avaya Switch)
59	Receipt Evidencing Purchase of Extreme Products
60	Photo Indicating Extreme Product is Marked as "Made in China" (Extreme Summit X460 Switch)
61	Photo Indicating Extreme Product is Marked as: "Product of China" (Extreme Altitude 4610 Wireless Access Point)

Exhibit No.	Description
62	<b>EXHIBIT NOT USED</b>
63	<b>EXHIBIT NOT USED</b>
64	Exemplary Claim Chart for at least one Claim of U.S. Patent 7,457,250 for Etherlock II and Etherlock ID
65	CMS Etherlock II Overview - ( <a href="http://www.cmstech.com/products/etherlock/etherlock.html">www.cmstech.com/products/etherlock/etherlock.html</a> )
66	CMS Etherlock II Specifications <a href="http://www.cmstech.com/products/etherlock/ether_specifics.html">www.cmstech.com/products/etherlock/ether_specifics.html</a> )
67	EtherLock II Quick Reference
68C	<b>CONFIDENTIAL</b> Copy of License Agreement between ChriMar and Hubbell, Inc.
69	Exemplary Claim Chart for at least one Claim of U.S. Patent 7,457,250 for Hubbell, Inc. Accused Devices
70	Hubbell DTXD POWERTRAC Electronic Asset Tag Coupler Datasheet ( <a href="http://www.hubbellcatalog.com/hubbellpremise/datasheet.asp?PN=DTXD&amp;FAM=PowerTrac">www.hubbellcatalog.com/hubbellpremise/datasheet.asp?PN=DTXD&amp;FAM=PowerTrac</a> .)
71	Hubbell PowerTrac Datasheet
72	Hubbell, Inc. 2005 Annual Report
73	Hubbell, Inc. 2010 Annual Report

**TABLE OF APPENDICES**

<b>Description</b>	
<b>A</b>	<b>Certified Copy of Prosecution History of U.S. Patent No. 7,457,250</b>
<b>B</b>	<b>Copies of Technical References from Prosecution History for U.S. Patent No. 7,457,250</b>
<b>C</b>	<b>Certified Copy of Reexamination Prosecution History of U.S. Patent No. 7,457,250</b>
<b>D</b>	<b>Copies of Technical References from Reexamination Prosecution History for U.S. Patent No. 7,457,250</b>

## **I. INTRODUCTION**

1. ChriMar Systems, Inc. d/b/a CMS Technologies (“ChriMar” or “Complainant”) files this First Amended Complaint under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on the unlawful importation into the United States, the sale for importation, and the sale within the United States after importation by owners, importers, or consignees of certain communication equipment, components thereof, and products containing the same, including Power over Ethernet telephones, switches, wireless access points (“WAPs”), routers and other devices used in local area networks (“LANs”), and cameras (collectively “Accused Products”) that are compliant with the IEEE 802.3af and/or IEEE 802.3at amendments to the IEEE 802.3 standard and that infringe at least claims 1, 2, 12, 13, 15, 19, 20, 22-26, 29, 30, 31, 32, 38, 45, 46, 48, 50 (as dependent on the foregoing applicable asserted claims), 52, 53, 55, 56, 58, 59, 60-62, 65-68, 74, 81, 82, 84, 86 (as dependent on the foregoing applicable asserted claims), and 88 of U.S. Patent No. 7,457,250, including the reexamination certificate thereof, U.S. Patent No. 7,457,250 C1 (collectively “the ‘250 patent” or the “Asserted Patent”).

2. The proposed respondents are Cisco Systems, Inc., Cisco Consumer Products LLC, Cisco Systems International B.V., Cisco-Linksys LLC, Hewlett-Packard Co., 3Com Corporation, Avaya Inc., and Extreme Networks, Inc. (collectively “proposed respondents” or “respondents”).

3. A certified copy of the ‘250 patent is attached as Exhibit 1. A certified copy of the recorded assignments for the ‘250 patent is attached as Exhibits 2 and 3. ChriMar owns by assignment all right, title, and interest in and to the ‘250 patent.

4. An industry as required by 19 U.S.C. §§ 1337 (a)(2) and (a)(3)(A), (B), and/or (C) exists and/or is in the process of being established.

5. ChriMar seeks as relief an exclusion order barring from entry into the United States infringing communication equipment, components thereof, and products containing the same, including Power over Ethernet telephones, switches, WAPs, routers and other devices used in LANs, and cameras manufactured or imported by or on behalf of respondents. ChriMar also seeks orders directing each respondent and its related entities to cease and desist the importation into the United States, the sale for importation, and the sale after importation of infringing communication equipment, components thereof, and products containing the same, including Power over Ethernet telephones, switches, WAPs, routers and other devices used in LANs, and cameras, and to cease and desist all commercial activity relating to those infringing goods.

## **II. THE PARTIES**

### **A. Complainant**

6. ChriMar Systems, Inc. was incorporated on July 9, 1993, under the laws of Michigan and has had its principal place of business at 36528 Grand River Avenue, Suite A-1, in Farmington Hills, Michigan for almost ten years.

7. ChriMar Systems, Inc. does business as CMS Technologies, which also has its principal place of business at 36528 Grand River Avenue, Suite A-1, in Farmington Hills, Michigan.

8. Since 1993, ChriMar has been an innovator in methods and systems that utilize Ethernet networks, including Power over Ethernet ("PoE"), technology. ChriMar is a small business that markets, has sold, and continues to offer for sale its products, including the EtherLock II and related products, such as, for example, the EtherLock ID, PC Key, and Watcher. Exhibits 4-6. Currently, orders for ChriMar's products are fulfilled in Michigan by ChriMar and products are assembled in Michigan by ChriMar on a made-to-order basis. ChriMar markets, has sold, and continues to offer for sale its products directly through, for

example, its web site (www.cmstech.com) and by telephone, and indirectly through Partners Program.

9. ChriMar's products, including its EtherLock II and related products, such as, for example, the EtherLock ID, PC Key, and Watcher, practice at least one claim of the '250 patent.

10. ChriMar has licensed its patents, including the '250 patent, to many companies, including Hubbell, Inc. ChriMar's license with Hubbell is a production-driven license, by which ChriMar and Hubbell collaborated technically to establish Hubbell's line of PowerTrac products that practice at least one claim of the '250 patent. ChriMar's technical collaboration with its licensee Hubbell included hardware and software design, development, and technical support.

**B. Proposed Respondents**

**1. Cisco Systems, Inc., Cisco Consumer Products LLC, Cisco Systems International B.V., and Cisco-Linksys LLC**

11. Cisco Systems, Inc. is a corporation organized under the laws of California with its principal place of business at 170 West Tasman Drive in San Jose, California.

12. Cisco Consumer Products LLC, a limited liability corporation organized under the laws of California with its principal place of business at 120 Theory Drive in Irvine, California, is a wholly-owned subsidiary of Cisco Systems, Inc.

13. Cisco Systems International B.V., a limited liability company organized under the laws of the Netherlands with its principal place of business at Haarlerbergweg 13-19, 1101 CH, Amsterdam, is a wholly-owned subsidiary of Cisco Systems, Inc.

14. Cisco-Linksys LLC, a limited liability corporation organized under the laws of California, with its principal place of business at 121 Theory Drive in Irvine, California, is a wholly-owned subsidiary of Cisco Systems, Inc.

15. Proposed respondents Cisco Systems, Inc., Cisco Consumer Products LLC, Cisco Systems International B.V., and Cisco-Linksys LLC are collectively referred to herein as “Cisco.”

16. Cisco designs, manufactures, and sells, among other things, internet protocol-based networking and other products related to the communications and information technology industry and provides services associated with these products and their use. Exhibit 7 at 3. According to Cisco, their products fall into three categories: “core technologies,” which includes switches; “advanced technologies,” which includes networking, security, communications video systems and wireless technology; and “other products,” which includes video surveillance products. *Id.* at 3, 5-7.

17. According to Cisco, “many key aspects of networking technology are governed by industry[-]wide standards.” Exhibit 7 at 28.

18. According to Cisco’s 2010 Annual Report, Cisco’s communications products, including their enterprise telephony products, are used by “more that 85% of Fortune 500 companies.” Exhibit 8 at 2. Cisco also stated that in “fiscal 2010, Cisco reported record net sales of over \$40 billion, an increase of 11% compared to a year ago.” *Id.* at 3. Also during fiscal year 2010, “switching revenue was up approximately 12% from a year ago” and was “due primarily to higher sales of [Cisco’s] modular and LAN fixed-configuration switches of approximately \$830 million and \$630 million, respectively.” *Id.* at 3 and 20. Cisco’s fiscal year 2010 sales of over \$1.45 billion of modular and LAN fixed-configuration switches was due in part to sales of Cisco’s Catalyst Series Switches. *Id.* at 20.

19. According to Cisco, they “depend on non-U.S. operations of [their] contract manufacturers, component suppliers and distribution partners.” Exhibit 7 at 26.

20. Upon information and belief, Cisco Systems, Inc., among other things, designs, manufactures or has manufactured, and sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs, cameras and other products that are compliant with the IEEE 802.3af and/or IEEE 802.3at amendments to the IEEE 802.3 standard (collectively or individually, "the PoE Standards").

21. Upon information and belief, Cisco Systems, Inc. is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

22. Upon information and belief, Cisco Consumer Products LLC, among other things, designs, manufactures or has manufactured, and sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs, cameras and other products that are compliant with the PoE Standards.

23. Upon information and belief, Cisco Consumer Products LLC is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

24. Upon information and belief, Cisco Systems International B.V., among other things, designs, manufactures or has manufactured, and sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs, cameras and other products that are compliant with the PoE Standards.

25. Upon information and belief, Cisco Systems International B.V. is involved in at least the manufacture, importation into the United States, sale for importation, and/or the distribution in or into the United States of Accused Products.

26. Upon information and belief, Cisco-Linksys LLC, among other things, manufactures or has manufactured, designs, develops, and/or sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs, cameras and other products that are compliant with the PoE Standards.

27. Upon information and belief, Cisco-Linksys LLC is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

## **2. Hewlett-Packard Co. and 3Com Corporation**

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

29. 3Com Corporation, a corporation organized under the laws of Delaware with its principal place of business at 350 Campus Drive in Marlborough, Massachusetts, is a wholly-owned subsidiary of Hewlett-Packard Co.

30. Proposed respondents Hewlett-Packard Co. and 3Com Corporation are collectively referred to herein as "HP."

31. HP states that they are a "leading global provider of products, technologies, software, solutions and services to individual consumers, small- and medium-sized businesses . . . and large enterprises." Exhibit 9 at 3. HP's operations are organized into seven business segments, one of which is called "Corporate Investments." *Id.* at 4. Revenue from HP's "Corporate Investments" segment is "attributable to the sale of certain network infrastructure products, including Ethernet switch products . . . under the ProCurve [and] 3Com . . . brands." *Id.* at 7.

32. According to HP, "[n]et revenue in Corporate Investments relates primarily to network infrastructure products sold under the 'ProCurve Networking,' [and] '3Com' . . . brands.

In fiscal 2010, revenue from ProCurve Networking increased 33.9%,” driven by improved market demand. Exhibit 9 at 60.

33. HP “utilize[s] a significant number of outsourced manufacturers . . . around the world to manufacture HP-designed products.” Exhibit 9 at 8. According to HP, “[t]he manufacture of product components, the final assembly of our products and other critical operations are concentrated in certain geographic locations, including Shanghai, Singapore and India. We also rely on major logistics hubs primarily in Asia to manufacture and distribute our products and in the southwestern United States to import products into the Americas region.” *Id.* at 20.

34. Upon information and belief, Hewlett-Packard Co., among other things, manufactures or has manufactured, designs, develops, and/or sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs and other products that are compliant with the PoE Standards.

35. Upon information and belief, Hewlett-Packard Co. is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

36. Upon information and belief, 3Com Corporation, among other things, manufactures or has manufactured, designs, develops, and/or sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs and other products that are compliant with the PoE Standards.

37. Upon information and belief, 3Com Corporation is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

**3. Avaya Inc.**

38. Avaya Inc. ("Avaya") is a corporation organized under the laws of Delaware with its principal place of business at 211 Mt. Airy Road in Basking Ridge, New Jersey.

39. According to Avaya, it is a "global leader in business communications systems." Exhibit 10 at 1. "Avaya conducts its business in three segments," two of which "make up Avaya's product portfolio." *Id.* Avaya identified those two business segments as its "Global Communications Solutions" and its "Data Networking" segments. *Id.* The Global Communications Solutions segment includes Avaya's advanced IP (internet protocol) telephony products and the Data Networking segment includes Avaya's Ethernet switching and wireless networking products. *Id.* at 2-3.

40. Avaya stated that it has "outsourced substantially all of our manufacturing operations to several electronic manufacturing services, or EMS providers." Exhibit 10 at 6. Avaya's "EMS providers produce the vast majority of our products in facilities located in China." *Id.* Other Avaya products are produced in "Poland, Israel, Mexico, Malaysia, Taiwan, Ireland, Germany, Indonesia, [and] the United Kingdom." *Id.*

41. Upon information and belief, Avaya, among other things, manufactures or has manufactured, designs, develops, and/or sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs and other products that are compliant with the PoE Standards.

42. Upon information and belief, Avaya is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

**4. Extreme Networks, Inc.**

43. Extreme Networks, Inc. (“Extreme”) is a corporation organized under the laws of Delaware with its principal place of business at 3585 Monroe Street in Santa Clara, California.

44. According to Extreme, it “is a leading provider of network infrastructure equipment and services for enterprises, data centers, and metropolitan telecommunications service providers.” Exhibit 11 at 3. Since the time it was established in 1996 through to the present day, Extreme has had “a single technology vision of ‘Ethernet Everywhere’ – a unifying network strategy that uses Ethernet technology to simplify each element and component of the network.” *Id.*

45. According to Extreme, internet protocol enabled devices “as diverse as servers, printers, laptops, desk phones, televisions, residential networks, cell phones and various wireless devices are now connected to both ‘hard-wired’ and wireless Ethernet networks over which IP [internet protocol] information flows.” Exhibit 11 at 4.

46. Extreme maintains “a relationship with Flextronics International Ltd. for the manufacture of some of [its] products in Guadalajara, Mexico.” Exhibit 11 at 9. Extreme also maintains a relationship with Alpha Networks, Inc., headquartered in Hsinchu, Taiwan, to design and manufacture at least some of Extreme’s Ethernet, LAN, Wireless, and VoIP products. *Id.* at 10.

47. Upon information and belief, Extreme, among other things, manufactures or has manufactured, designs, develops, and/or sells directly and/or through authorized agents and distributors PoE telephones, switches, WAPs, routers and other devices used in LANs and other products that are compliant with the PoE Standards.

48. Upon information and belief, Extreme is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

**5. The Avaya and Extreme Networks “Global Strategic Alliance”**

49. Avaya and Extreme have entered into a “Global Strategic Alliance” through which, they state, that they have “worked together to develop the Engaged Network as an integral part of the intelligent communications experience . . . through close integration of Extreme Networks convergence infrastructure and Avaya’s intelligent communications portfolio.” Exhibit 38. Avaya and Extreme Networks also state that they are “closely aligned” and they “carefully test products for interoperability and are committed to giving customers a single point of accountability.” *Id.*

**III. THE TECHNOLOGY AND PRODUCTS AT ISSUE**

50. The technology and products at issue generally concern the detection scheme used by PoE equipment, including, without limitation, telephones, switches, WAPs, routers and other devices used in LANs, and cameras that are compliant with the PoE Standards.

51. IEEE 802.3af and 802.3at are amendments to the IEEE 802.3 standard that include specifications for providing the safe delivery of operational power to an end device over twisted pair cabling. These specifications include the definition of a detection protocol to distinguish between different end devices; those that can receive their operational power over the twisted pair cable (a Powered Device or PD) and those legacy devices that cannot receive operational power over the twisted pair cable. Given the large number of legacy devices that are connected via the twisted pair cable and the possible consequences of applying operational power to such legacy devices, a detection protocol is employed to distinguish between a legacy device and a powered device (PD) in order to prevent damage to a legacy device. The IEEE

802.3at amendment, among other things, augments the Power over Ethernet capability introduced in the IEEE 802.3af amendment with higher power levels and improved power management information.

52. The detection protocol defined within IEEE 802.3af and 802.3at calls for distinguishing between different end devices by altering a DC signal to convey information about an end device to the hubs, switches, and routers, etc.; these hubs, switches, and routers, etc. are referred to as Power Sourcing Equipment (PSE).

**IV. THE ASSERTED PATENT – U.S. Patent No. 7,457,250 (and 7,457,250 C1)**

**A. Identification of the Patent and Ownership by ChriMar**

53. The '250 patent, entitled "System for Communicating with Electronic Equipment," lists John F. Austermann, III, and Marshall B. Cummings as co-inventors. The '250 patent originally issued on November 25, 2008, and the reexamination certificate issued on March 1, 2011. Exhibit 1.

54. The '250 patent issued from application number 10/668,708, filed on September 23, 2003, and is a continuation of application number 09/370,430, filed on August 9, 1999, now U.S. Patent No. 6,650,622, which in turn is a continuation-in-part of PCT/US99/07846 filed on April 8, 1999, and is based on provisional application No. 60/081,279 filed on April 10, 1998.

55. ChriMar owns by assignment all right, title, and interest in and to the '250 patent.

56. The '250 patent is valid, enforceable, and in full force and effect.

57. This Complaint is accompanied by a certified copy and three copies of both the original and reexamination prosecution histories of the '250 patent and by four copies of most of the cited references.<sup>1</sup> Appendices A-D.

**B. Nontechnical Description of the '250 Patent**

58. The '250 patent describes a system for detecting, at a central module, a remote piece of Ethernet equipment that connects to an Ethernet network. This information is conveyed over the same Ethernet cable used to carry the normal network information.<sup>2</sup>

**C. Foreign Counterparts to the '250 Patent**

59. No foreign patents or patent applications corresponding to the '250 patent have been filed, abandoned, withdrawn, or rejected.

**D. Licensees**

60. Attached as Confidential Exhibit 12C is a list of licensees of the '250 patent.

**V. UNLAWFUL AND UNFAIR ACTS OF RESPONDENTS**

**A. Cisco**

61. On information and belief, Cisco and its Accused Products directly and indirectly infringe one or more of the asserted claims of the '250 patent. Discovery may reveal that Cisco and its Accused Products infringe additional claims of the '250 patent.

62. On information and belief, Cisco, among other things, manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation devices that are compliant with the PoE Standards. *See, e.g.,* Exhibit 13. On

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<sup>1</sup> Complainant has diligently sought to obtain each and every one of the 874 total references cited in both the original and reexamination prosecution histories, and has succeeded in obtaining all but 19 of those references. Copies of all of the references that Complainant has been able to obtain are included in Appendices B and D.

<sup>2</sup> No part of this Complaint, including any section herein or Exhibit hereto, construes, or is intended to construe, the specification, file history, or claims of the '250 patent.

information and belief, the accused Cisco products include capabilities as set forth in those PoE Standards and operate in a manner covered by the asserted claims of the '250 patent.

63. On information and belief, exemplary PoE Standards-compliant products that infringe one or more claims of the Asserted Patent include, but are not limited to, Cisco's WAPs, including its 2000 Series, 4400 Series, and 200E Series; Cisco's Small Business and Unified IP telephones, including its 500 Series, 3900 Series, 6900 Series, and 7900 Series; Cisco's Unified IP Conference Stations; Cisco's Internet Cameras; Cisco's PoE Network Cameras; Cisco's Ethernet cables including CAB-ETH-SRJ45; Cisco's ESW 500 Series Switches; Cisco's Catalyst Series Switches; Cisco's Small Business Managed Switches; Cisco's 300 Series Switches; Cisco's 10/100 Ethernet Switches; Linksys' 8-Port Managed Switches; and Cisco's 8-Port 10/100 Switches. Discovery may reveal additional products that infringe. This identification of specific products or types of products is intended only to be exemplary and is not intended to limit the scope of the investigation or remedy, which should extend to all infringing goods.

64. Attached as Exhibit 14 is a chart that applies independent claims 1 and 53 of the '250 patent to representative accused Cisco devices. *See also* Exhibits 15-18.

65. On information and belief, Cisco manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation all elements of the systems as set forth in the asserted claims, thereby directly infringing those claims.

66. For example, upon information and belief, Cisco and/or its authorized representatives advertises, markets, offers for sale, and sells complete systems containing all the elements of the systems as set forth in the asserted claims.

67. Upon information and belief, Cisco contributes to the direct infringement of the asserted claims of the '250 patent by others, including users of the claimed systems, by providing

communication equipment, components thereof and products containing the same that are elements of ChriMar's patented systems and/or by providing communication equipment, components thereof and products containing the same that are materials or apparatuses for use in practicing ChriMar's patented systems and constitute a material part of the invention. Cisco knew or was willfully blind that the same was especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

68. Upon information and belief, Cisco further actively induces others, including users of the accused communication equipment, components thereof and products containing the same to directly infringe the asserted claims of the '250 patent by providing directions, demonstrations, guides, and/or manuals that encourage and facilitate others to perform actions known and intended by Cisco to be acts of infringement. Upon information and belief, Cisco knew or was willfully blind that its actions would cause infringement of the '250 patent and did so with intent to encourage infringement.

69. Cisco knew of or was willfully blind to the existence of the '250 patent for the reasons set forth in paragraph 23 of the Confidential Declaration attached hereto as Exhibit 19C. In addition, ChriMar made presentations to multiple sessions of the IEEE 802.3af/at committees. Confidential Exhibit 19C, ¶¶ 8-11. Upon information and belief, Cisco knew of or was willfully blind to the existence of the '250 patent at least through its participation in the relevant IEEE 802.3af and/or IEEE 802.3at committees. *See, e.g.*, Exhibit 20. In addition, on October 31, 2011, a lawsuit was commenced in U.S. District Court against, among others, Cisco Systems, Inc., Cisco Consumer Products LLC, and Cisco-Linksys LLC, alleging that they infringed the '250 patent.

**B. HP**

70. On information and belief, HP and its Accused Products directly and indirectly infringe one or more of the asserted claims of the '250 patent. Discovery may reveal that HP and its Accused Products infringe additional claims of the '250 patent.

71. On information and belief, HP, among other things, manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation devices that are compliant with the PoE Standards. *See, e.g.*, Exhibit 21. On information and belief, the accused HP products include capabilities as set forth in those PoE Standards and operate in a manner covered by the asserted claims of the '250 patent.

72. On information and belief, exemplary PoE Standards-compliant products that infringe one or more claims of the Asserted Patent include, but are not limited to, HP's IP telephones; HP's ProCurve MultiService Access Point Series; HP's ProCurve MultiService Mobility Outdoor A.P. Series; HP's ProCurve Radio Ports; HP's ProCurve WAPs; HP's ProCurve Access Point 530; HP's ProCurve M110 Access Points; HP's ProCurve Mobility Integ. Serv. Access Point Series; HP's ProCurve M111 Client Bridge; 3Com's AP3750 Managed Access Points; 3Com's Wireless LAN Access Points; 3Com's Wireless LAN Mgd. Access Points; 3Com's OfficeConnect Wireless 108Mbps PoE Access Points; 3Com's 11g 54Mbps Wireless LAN Outdoor Bridges; 3Com's 11 Mbps Wireless LAN Outdoor Bridge Solution; 3Com's 3100 Series telephones; 3Com's 3100 Series Consoles; 3Com's NBX Series telephones; HP's Ethernet cables including HP Monster HPM 700 NET5-7 and 3Com 216-0003-01R, HP's ProCurve Switches; HP's ProCurve 2520 Series; HP's Procurve Modules; 3Com's SuperStack Switches; 3Com's Baseline Switches; and 3Com's LAN Switches. Discovery may reveal additional products that infringe. This identification of specific products or types of products is

intended only to be exemplary and is not intended to limit the scope of the investigation or remedy, which should extend to all infringing goods.

73. Attached as Exhibit 22 is a chart that applies independent claims 1 and 53 of the '250 patent to representative accused HP devices. *See also* Exhibits 17, 18, 23-25.

74. On information and belief, HP manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation all elements of the systems as set forth in the asserted claims, thereby directly infringing those claims.

75. For example, upon information and belief, HP and/or its authorized representatives advertises, markets, offers for sale, and sells complete systems containing all the elements of the systems as set forth in the asserted claims.

76. Upon information and belief, HP contributes to the direct infringement of the asserted claims of the '250 patent by others, including users of the claimed systems, by providing communication equipment, components thereof and products containing the same that are elements of ChriMar's patented systems and/or by providing communication equipment, components thereof and products containing the same that are materials or apparatuses for use in practicing ChriMar's patented systems and constitute a material part of the invention. HP knew or was willfully blind that the same was especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

77. Upon information and belief, HP further actively induces others, including users of the accused communication equipment, components thereof and products containing the same to directly infringe the asserted claims of the '250 patent by providing directions, demonstrations, guides, and/or manuals that encourage and facilitate others to perform actions

known and intended by HP to be acts of infringement. Upon information and belief, HP knew or was willfully blind that its actions would cause infringement of the '250 patent and did so with intent to encourage infringement.

78. ChriMar made presentations to multiple sessions of the IEEE 802.3af/at committees. Confidential Exhibit 19C, ¶¶ 8-11. Upon information and belief, HP knew of or was willfully blind to the existence of the '250 patent at least through its participation in the relevant IEEE 802.3af and/or IEEE 802.3at committees. *See, e.g.*, Exhibit 20. In addition, on October 31, 2011, a lawsuit was commenced in U.S. District Court against, among others, HP, alleging that HP infringed the '250 patent.

**C. Avaya**

79. On information and belief, Avaya and its Accused Products directly and indirectly infringe one or more of the asserted claims of the '250 patent. Discovery may reveal that Avaya and its Accused Products infringe additional claims of the '250 patent.

80. On information and belief, Avaya, among other things, manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation devices that are compliant with the PoE Standards. *See, e.g.*, Exhibit 26. On information and belief, the accused Avaya products include capabilities as set forth in those PoE Standards and operate in a manner covered by the asserted claims of the '250 patent.

81. On information and belief, exemplary PoE Standards-compliant products that infringe one or more claims of the Asserted Patent include, but are not limited to, Avaya's 2300 Series WLANs; Avaya's 8100 Series WLANs; Avaya's 1100 Series IP telephones; Avaya's 1200 Series IP telephones; Avaya's 2000 Series IP telephones; Avaya's Ethernet cables including 5065F05001111500049TEOA, Avaya's 2500 Series Ethernet Routing Switches; Avaya's 4500 Series Ethernet Routing Switches; Avaya's 5000 Series Ethernet Routing

Switches; and Avaya's 8300 Series Ethernet Routing Switches. Discovery may reveal additional products that infringe. This identification of specific products or types of products is intended only to be exemplary and is not intended to limit the scope of the investigation or remedy, which should extend to all infringing goods.

82. Attached as Exhibit 27 is a chart that applies independent claims 1 and 53 of the '250 patent to representative accused Avaya devices. *See also* Exhibits 17, 18, 28-30.

83. On information and belief, Avaya manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation all elements of the systems as set forth in the asserted claims, thereby directly infringing those claims.

84. For example, upon information and belief, Avaya and/or its authorized representatives advertises, markets, offers for sale, and sells complete systems containing all the elements of the systems as set forth in the asserted claims.

85. Upon information and belief, Avaya contributes to the direct infringement of the asserted claims of the '250 patent by others, including users of the claimed systems, by providing communication equipment, components thereof and products containing the same that are elements of ChriMar's patented systems and/or by providing communication equipment, components thereof and products containing the same that are materials or apparatuses for use in practicing ChriMar's patented systems and constitute a material part of the invention. Avaya knew or was willfully blind that the same was especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

86. Upon information and belief, Avaya further actively induces others, including users of the accused communication equipment, components thereof and products containing the

same to directly infringe the asserted claims of the '250 patent by providing directions, demonstrations, guides, and/or manuals that encourage and facilitate others to perform actions known and intended by Avaya to be acts of infringement. Upon information and belief, Avaya knew or was willfully blind that its actions would cause infringement of the '250 patent and did so with intent to encourage infringement.

87. ChriMar made presentations to multiple sessions of the IEEE 802.3af/at committees. Confidential Exhibit 19C, ¶¶ 8-11. Upon information and belief, Avaya knew of or was willfully blind to the existence of the '250 patent at least through its participation in the relevant IEEE 802.3af and/or IEEE 802.3at committees. *See, e.g.*, Exhibit 31. In addition, on October 31, 2011, a lawsuit was commenced in U.S. District Court against, among others, Avaya, alleging that it infringed the '250 patent.

**D. Extreme**

88. On information and belief, Extreme and its Accused Products directly and/or indirectly infringe one or more of the asserted claims of the '250 patent. Discovery may reveal that Extreme and its Accused Products infringe additional claims of the '250 patent.

89. On information and belief, Extreme, among other things, manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation devices that are compliant with the PoE Standards. *See, e.g.*, Exhibit 32. On information and belief, the accused Extreme products include capabilities as set forth in those PoE Standards and operate in a manner covered by the asserted claims of the '250 patent.

90. On information and belief, exemplary PoE Standards-compliant products that infringe one or more claims of the Asserted Patent include, but are not limited to, Extreme's Altitude 4600 Series Access Points; Extreme's Altitude 4700 Series Access Points; Extreme's Black Diamond 8500 Series Switches; Extreme's Black Diamond 8800 Series Switches;

Extreme's Black Diamond 8900 Series Switches; Extreme's Summit Series Switches; and Extreme's EAS Series Switches. Discovery may reveal additional products that infringe. This identification of specific products or types of products is intended only to be exemplary and is not intended to limit the scope of the investigation or remedy, which should extend to all infringing goods.

91. Attached as Exhibit 33 is a chart that applies independent claims 1 and 53 of the '250 patent to representative accused Extreme devices. *See also* Exhibits 17, 18, 34, and 35.

92. On information and belief, Extreme or its authorized representatives manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation all elements of the systems as set forth in the asserted claims, thereby directly infringing those claims.

93. For example, upon information and belief, Extreme or its authorized representatives advertises, markets, offers for sale, and sells complete systems containing all the elements of the systems as set forth in the asserted claims.

94. Upon information and belief, Extreme contributes to the direct infringement of the asserted claims of the '250 patent by others, including users of the claimed systems, by providing communication equipment, components thereof and products containing the same that are elements of ChriMar's patented systems and/or by providing communication equipment, components thereof and products containing the same that are materials or apparatuses for use in practicing ChriMar's patented systems and constitute a material part of the invention. Extreme knew or was willfully blind that the same was especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

95. Upon information and belief, Extreme further actively induces others, including users of the accused communication equipment, components thereof and products containing the same to directly infringe the asserted claims of the '250 patent by providing directions, demonstrations, guides, and/or manuals that encourage and facilitate others to perform actions known and intended by Extreme to be acts of infringement. Upon information and belief, Extreme knew or was willfully blind that its actions would cause infringement of the '250 patent and did so with intent to encourage infringement.

96. ChriMar made presentations to multiple sessions of the IEEE 802.3af/at committees. Confidential Exhibit 19C, ¶¶ 8-11. Upon information and belief, Extreme knew of or was willfully blind to the existence of the '250 patent at least through its participation in the relevant IEEE 802.3af and/or IEEE 802.3at committees. *See, e.g.*, Exhibit 36. In addition, on October 31, 2011, a lawsuit was commenced in U.S. District Court against, among others, Extreme, alleging that it infringed the '250 patent.

**E. Joint Infringement by Avaya and Extreme**

97. Upon information and belief, Avaya and Extreme, and their Accused Products jointly infringe one or more of the asserted claims of the '250 patent.

98. Upon information and belief, there is an agency and/or contractual relationship between Avaya and Extreme, and/or there is otherwise a relationship between Avaya and Extreme such that the acts of one may be attributed to the other in terms of the practice of one or more of the asserted claims of the '250 patent. Exhibits 37 and 38.

**VI. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE**

**A. Cisco**

99. Upon information and belief, Cisco imports into the United States, sells for importation, and/or sells within the United States after importation products and/or systems

containing all the elements of the systems as set forth in the asserted claims. Exhibits 40, 42, and 45. Upon information and belief, Cisco's accused products are manufactured abroad, sold for importation, and sold in the United States after importation by Cisco or its authorized agents.

100. Prior to the filing of this Complaint, exemplary accused Cisco products were purchased in the United States. Exhibit 39. Exhibits 40-45 show that those items were manufactured abroad.

**B. HP**

101. Upon information and belief, HP imports into the United States, sells for importation, and/or sells within the United States after importation products and/or systems containing all the elements of the systems as set forth in the asserted claims. Exhibits 48, 50, and 51. Upon information and belief, HP's accused products are manufactured abroad, sold for importation, and sold in the United States after importation by HP or its authorized agents.

102. Prior to the filing of this Complaint, exemplary accused HP products were purchased in the United States. Exhibit 46. Exhibits 47-51 show that those items were manufactured abroad.

**C. Avaya**

103. Upon information and belief, Avaya imports into the United States, sells for importation, and/or sells within the United States after importation products and/or systems containing all the elements of the systems as set forth in the asserted claims. Exhibits 56-58. Upon information and belief, Avaya's accused products are manufactured abroad, sold for importation, and sold in the United States after importation by Avaya or its authorized agents.

104. Prior to the filing of this Complaint, exemplary accused Avaya products were purchased in the United States. Exhibits 52 and 53. Exhibits 54-58 show that those items were manufactured abroad.

**D. Extreme**

105. Upon information and belief, Extreme imports into the United States, sells for importation, and/or sells within the United States after importation products and/or systems containing some or all the elements of the systems as set forth in the asserted claims. Upon information and belief, Extreme's accused products are manufactured abroad, sold for importation, and sold in the United States after importation by Extreme or its authorized agents.

106. Prior to the filing of this Complaint, exemplary accused Extreme products were purchased in the United States. Exhibit 59. Exhibits 60-61 show that those items were manufactured abroad.

**VII. TARIFF CLASSIFICATION UNDER THE HARMONIZED TARIFF SCHEDULE**

107. The products as to which ChriMar seeks exclusion include, without limitation, PoE telephones classified under subheading 8517.18.00, HTSUS, PoE switches classified under subheading 8517.62.00, HTSUS, PoE wireless access points classified under subheading 8517.62.00, HTSUS, PoE routers and other devices used in local area networks classified under subheading 8517.62.00, HTSUS, and PoE cameras classified under subheading 8517.69.00, HTSUS.

**VIII. RELATED LITIGATION**

108. On November 25, 2008, ChriMar filed a complaint in the U.S. District Court for the Eastern District of Texas alleging that Waters Network Systems LLC, infringed the '250 patent. That action, *ChriMar Systems, Inc. v. Waters Network Systems, LLC*, No. 2:08-cv-00453, was dismissed after Waters Network Systems, LLC consented to the entry of judgment against it and took a license to the '250 patent.

109. On February 6, 2009, ChriMar filed a complaint in the U.S. District Court for the Eastern District of Texas alleging that Danpex Corporation infringed the '250 patent. That action, *ChriMar Systems, Inc. v. Danpex Corporation*, No. 2:09-cv-00044, was dismissed after Danpex consented to the entry of a judgment against it.

110. On March 23, 2009, ChriMar filed a complaint in the U.S. District Court for the Eastern District of Texas alleging that Garrettcom, Inc., Edgewater Networks, Inc., and Neteon Technologies, Inc. infringed the '250 patent. *ChriMar Systems, Inc. v. Garrettcom, Inc. et al.*, No. 2:09-cv-00085. Neteon Technologies, Inc. consented to the entry of judgment against it and took a license to the '250 patent. Thereafter, the remainder of the case was transferred to the U.S. District Court for the Northern District of California and was subsequently voluntarily dismissed.

111. On July 30, 2009, ChriMar filed a complaint in the U.S. District Court for the Eastern District of Texas alleging that KTI Network, Inc. and Cyberpath Inc. infringed the '250 patent. That action, *ChriMar Systems, Inc. v. KTI Network, Inc. et al.*, No. 2:09-cv-00230, was voluntarily dismissed.

112. On July 2, 2009, a request for an *ex parte* reexamination of the '250 patent was filed with the United States Patent & Trademark Office ("PTO") by Mr. Edward Langer of Raanana, Israel, followed on September 24, 2009, by a corrected request for an *ex parte* reexamination of the '250 patent by the same Mr. Langer. On December 2, 2009, the PTO granted-in-part the requested *ex parte* reexamination. During the reexamination, over 650 references were made of record. On March 1, 2011, reexamination certificate U.S. 7,457,250 C1 issued, which confirmed the patentability of the reexamined claims without amendment.

113. On October 31, 2011, a complaint was filed in the U.S. District Court for the District of Delaware alleging that Cisco Systems, Inc., Cisco Consumer Products LLC, Cisco-Linksys LLC, Hewlett-Packard Co., 3Com Corporation, Avaya Inc. and Extreme Networks, Inc. infringe the '250 patent.

**IX. DOMESTIC INDUSTRY**

**A. ChriMar's Activities and Investments in Plant and Equipment, or Employment of Labor or Capital**

114. Pursuant to Section 337 (a)(2) and (a)(3)(A), a domestic industry exists or is in the process of being established by virtue of ChriMar's significant investments in plant and equipment made with respect to articles protected by the '250 patent.

115. ChriMar has made a significant investment in plant and equipment in the United States, including at its facilities in Farmington Hills, Michigan, with respect to ChriMar's products protected by the Asserted Patent, including the EtherLock II and related products, such as, for example, the EtherLock ID, PC Key, and Watcher. Further details of ChriMar's significant investments in plant and equipment are provided in Confidential Exhibit 19C, ¶ 2.

116. Alternatively, and in addition, pursuant to Section 337 (a)(2) and (a)(3)(B), a domestic industry exists or is in the process of being established by virtue of ChriMar's significant employment of labor or capital with respect to articles protected by the '250 patent.

117. ChriMar has made a significant employment of labor or capital in the United States, including at its facilities in Farmington Hills, Michigan, with respect to ChriMar's products protected by the Asserted Patent, including the EtherLock II and related products, such as, for example, the EtherLock ID, PC Key, and Watcher. In addition, ChriMar provides customer service and support from its facilities in Farmington Hills, Michigan, for all its products, including its EtherLock II and related products, such as, for example, the EtherLock

ID, PC Key, and Watcher. ChriMar's customer service and support activities are provided by ChriMar's employees via telephone, e-mail, and facsimile. *See* [www.cmstech.com/support/support.html](http://www.cmstech.com/support/support.html) and Confidential Exhibit 19C, ¶¶ 3, 4, and 16. Further details of ChriMar's significant employment of labor or capital are provided in Confidential Exhibit 19C, ¶¶ 3, 4, and 16.

118. Currently, orders for ChriMar's products are fulfilled in Michigan by ChriMar and products are assembled in Michigan by ChriMar on a made-to-order basis.

119. ChriMar's total sales of its products that practice at least one claim of the '250 patent are substantial. Confidential Exhibit 19C, ¶ 5.

120. There is a nexus between ChriMar's significant investments in plant and equipment and its significant employment of labor or capital and the articles that practice the Asserted Patent.

121. As shown in the chart attached as Exhibit 64, ChriMar's EtherLock II™ and EtherLock ID™ products practice at least one claim of the '250 patent. *See also* Exhibits 6, 65-67. ChriMar may also rely on other ChriMar products, such as, for example, the PC Key and Watcher, to demonstrate that ChriMar's products practice at least one claim of the '250 patent. ChriMar may also demonstrate at the evidentiary hearing that other claims of the '250 patent are practiced by ChriMar's products.

122. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(A) and/or (B), a domestic industry exists and/or is in the process of being established by virtue of ChriMar's significant investment in its plant and equipment and/or its significant employment of labor or capital with respect to articles protected by the Asserted Patent.

**B. ChriMar's Engineering and Research and Development**

123. Pursuant to Section 337 (a)(2) and (a)(3)(C), a domestic industry exists or is in the process of being established by virtue of ChriMar's substantial investments in the exploitation of the '250 patent through engineering and research and development.

124. ChriMar has made a substantial investment in the exploitation of the '250 patent through its engineering and research and development activities in the United States, including at its facilities in Farmington Hills, Michigan. These substantial investments include engineering and research and development activities designed to exploit the '250 patent, including attendance at trade shows, production of prototypes, technical collaboration with manufacturers, including its licensee Hubbell, Inc., and other efforts to engage potential investors, manufacturers, or licensees, and ChriMar's efforts to foster propagation or use of the '250 patent as well as efforts to facilitate or hasten the practical application of that invention by bringing it to market. Further details of ChriMar's substantial investment in the exploitation of the '250 patent through its engineering and research and development activities are provided in Confidential Exhibit 19C, ¶¶ 6-16.

125. There is a nexus between ChriMar's substantial investment in the exploitation of the '250 patent through its engineering and research and development and the Asserted Patent.

126. ChriMar has expended substantial and significant resources towards the engineering and research and development of technology based upon its '250 patent. However, respondents have increasingly saturated the market with infringing products, and respondents' infringement has dampened and will continue to dampen the sales of ChriMar's and its licensees' products that are protected by or licensed under the '250 patent.

127. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(C), a domestic industry exists or is in the process of being established by virtue of ChriMar's

substantial investments in the exploitation of the '250 patent through engineering and research and development.

**C. The Activities and Investments of ChriMar's Licensee, Hubbell, Inc.**

128. ChriMar has licensed the '250 patent to Hubbell, Inc. A copy of the license agreement is attached as Confidential Exhibit 68C pursuant to 19 C.F.R. § 210.12(a)(9)(iv).

129. On information and belief, a domestic industry exists or is in the process of being established by virtue of the activities of ChriMar's licensee Hubbell, Inc. pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C).

130. On information and belief, Hubbell and/or its authorized representatives have engaged in manufacturing, sales, advertising, customer support, and engineering and research and development activities in the United States with respect to articles that practice at least one claim of the '250 patent. On information and belief, Hubbell's domestic investments in plant and equipment and in the employment of labor or capital are significant. On information and belief, Hubbell's investments in the exploitation of the '250 patent through engineering and research and development is substantial.

131. ChriMar's license with Hubbell is a production-driven license, which encourages adoption and use of the patented technology to create new products and/or industries, by which ChriMar and Hubbell technically collaborated to develop and establish products, including Hubbell's line of PowerTrac products, that practice at least one claim of the '250 patent. Confidential Exhibit 19C, ¶¶ 13-16; *see also* Exhibit 69. ChriMar's technical collaboration with Hubbell began in 2002. Confidential Exhibit 19C, ¶ 15. The Hubbell employees who collaborated with ChriMar were located in, and worked in, the United States. Confidential Exhibit 19C, ¶ 15.

132. Hubbell stated in its 2005 Form 10-K that it “manufactures and/or sells components designed for use in local area networks (‘LANs’) and other telecommunications applications supporting high-speed data and voice signals. Primary products include . . . cross connect patch panels, connectorized cable assemblies, punch down blocks, free standing racks, enclosures and other products used for installation, testing and distribution of LANs.” Exhibit 72 at 2-3.

133. “Hubbell is primarily engaged in the design, manufacture and sale of quality electrical and electronic products for a broad range of non-residential and residential construction, industrial and utility applications.” Exhibit 73 at 2. In 2010, Hubbell had net sales of over \$2.54 billion. *Id.* at 16.

134. Hubbell began construction in 2005 on a new operations center, located on a 500 acre site in Greenville, South Carolina. Exhibit 72. Hubbell maintains manufacturing and warehousing facilities in the United States. Exhibit 73 at 10. Hubbell has manufactured its PowerTrac line of products in the United States. Confidential Exhibit 19C, ¶ 15.

135. Hubbell’s total rental expense under operating leases was \$22.3 million in 2010, \$22.2 million in 2009 and \$22.4 million in 2008. Exhibit 73 at 66. Hubbell’s “leases consist of operating leases primarily for buildings or equipment.” *Id.* Hubbell’s net investments in property, plant and equipment for 2010 exceeds \$358 million. *Id.* at 49. Hubbell employs approximately 7,200 people in the United States. *Id.* at 7.

136. For 2010, Hubbell’s expenditures in research and development were approximated at about \$17 million. Exhibit 73 at 7 and 18.

137. On information and belief, there is a nexus between Hubbell’s significant investments in plant and equipment and its significant employment of labor or capital and

between its licensed articles that practice the Asserted Patent. On information and belief, there is a nexus between Hubbell's substantial investment in the exploitation of the '250 patent through its engineering and research and development and the Asserted Patent.

138. As shown in the chart attached as Exhibit 69, Hubbell's licensed PowerTrac asset management system product practices at least one claim of the '250 patent. *See also* Exhibits 70-71. ChriMar may also demonstrate at the evidentiary hearing that other claims of the '250 patent are practiced by Hubbell's products.

139. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), a domestic industry exists or is in the process of being established by virtue of the activities of ChriMar's licensee Hubbell, Inc.

**D. ChriMar's Licensing of the '250 Patent**

140. Pursuant to Section 337 (a)(2) and (a)(3)(C), a domestic industry exists or is in the process of being established by virtue of ChriMar's substantial investments in the exploitation of the '250 patent through licensing.

141. ChriMar has made a substantial investment in the exploitation of the '250 patent through its licensing activities in the United States. Further details of ChriMar's substantial investment in the exploitation of the '250 patent through its licensing activities are provided in Confidential Exhibit No. 19C, ¶¶ 17-22.

142. ChriMar's license with Hubbell is a production-driven license, which encourages adoption and use of the technology of the '250 patent to create new products and/or industries. Confidential Exhibit No. 19C, ¶ 14.

143. As set forth in the attached Confidential Exhibit 19C, ChriMar has made and continues to make a substantial investment in licensing the Asserted Patent. ChriMar's United States employees have negotiated royalty bearing license agreements to the '250 patent, each of

which have generated significant royalties in an amount set forth in Confidential Exhibit 19C, ¶ 22.

144. ChriMar also has made substantial investments in exploiting the '250 patent through litigation activities, which are related to its efforts to license that patent. Confidential Exhibit 19C, ¶ 24.

145. There is a nexus between ChriMar's substantial investments and (i) the Asserted Patent, (ii) the licensing of that Asserted Patent, and (iii) the United States.

146. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(C), a domestic industry exists or is in the process of being established by virtue of ChriMar's substantial investment in its licensing activities.

**X. RELIEF REQUESTED**

Wherefore, by reason of the foregoing, Complainant requests that the U.S. International Trade Commission:

147. Institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to violations of Section 337 based on the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of communication equipment, components thereof, and products containing the same, including Power over Ethernet telephones, switches, wireless access points, routers and other devices used in local area networks, and cameras that infringe one or more claims of the Asserted Patent;

148. Determine that there has been a violation of Section 337 based on said unlawful acts;

149. Issue a permanent exclusion order pursuant to 19 U.S.C. § 1337(d) excluding from entry into the United States all infringing articles that are manufactured, imported, or sold

by or on behalf of the proposed respondents, their affiliates, subsidiaries, successors, or assigns that infringe at least one claim of the Asserted Patent;

150. Issue permanent cease and desist orders pursuant to 19 U.S.C. § 1337(f) prohibiting each proposed respondent from engaging in unlawful importation of, sale within the United States after importation of, the distribution and transfer of, and all other commercial activities relating to, communication equipment, components thereof, and products containing the same, including Power over Ethernet telephones, switches, wireless access points, routers and other devices used in local area networks, and cameras that infringe at least one claim of the Asserted Patent;

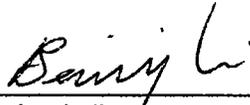
151. Impose a bond upon respondents who continue to import infringing articles during the 60-day-Presidential review period Pursuant to 19 U.S.C. § 1337(j); and,

152. Issue such other and further relief as the Commission deems just and proper.

Dated: November 16, 2011

Respectfully submitted,

**MCKOOL SMITH, P.C.**



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*Counsel for Complainant*  
*ChriMar Systems, Inc. d/b/a CMS Technologies*

**VERIFICATION BY COMPLAINANT**

I, John F. Austermann, III, am employed by ChriMar Systems, Inc. d/b/a CMS Technologies. I am duly authorized to sign the foregoing First Amended Complaint under Section 337 of the Tariff Act of 1930, as Amended ("Complaint") on behalf of Complainant ChriMar Systems, Inc. d/b/a CMS Technologies. I have read the Complaint and am familiar with the allegations and statements contained therein. In accordance with the provisions of 19 C.F.R §§ 210.4(c) and 210.12(a), I hereby declare that, to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

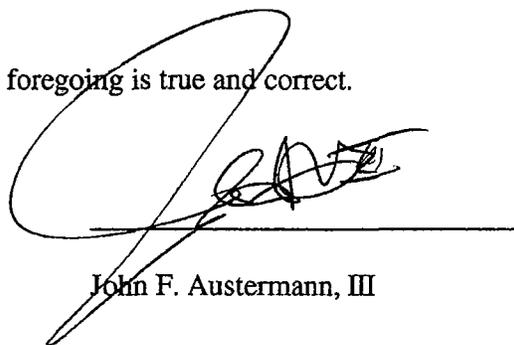
1. The Complaint is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

2. The claims and other legal contentions set forth in the Complaint are warranted by existing law or by a good faith, non-frivolous argument for extension, modification, or reversal of existing law, or by the establishment of new law; and

3. The allegations and other factual contentions have evidentiary support, or where specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on November <sup>15</sup> \_\_, 2011.



John F. Austermann, III