

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

<p>CHRIMAR SYSTEMS, INC., <i>et al.</i>, Plaintiffs, v. ALCATEL-LUCENT, INC., <i>et al.</i>, Defendants.</p>	<p>Case No. 6:13-CV-880-JDL</p>
<p>CHRIMAR SYSTEMS, INC., <i>et al.</i>, Plaintiffs, v. AMX, LLC, Defendant.</p>	<p>Case No. 6:13-CV-881-JDL</p>
<p>CHRIMAR SYSTEMS, INC., <i>et al.</i>, Plaintiffs, v. GRANDSTREAM NETWORKS, INC., Defendant.</p>	<p>Case No. 6:13-CV-882-JDL</p>
<p>CHRIMAR SYSTEMS, INC., <i>et al.</i>, Plaintiffs, v. SAMSUNG ELECTRONICS, CO., <i>et al.</i>, Defendants.</p>	<p>Case No. 6:13-CV-883-JDL</p>

**PLAINTIFFS CHRIMAR SYSTEMS, INC. D/B/A CMS TECHNOLOGIES AND
CHRIMAR HOLDING COMPANY LLC'S OPPOSITION TO DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT OF INVALIDITY DUE TO INDEFINITENESS**

Defendants move for summary judgment on two grounds: (1) under Plaintiffs' proposed construction¹ of the phrases "distinguishing information about the piece of Ethernet data terminal equipment" (claim 31) and "to distinguish the piece of terminal equipment" (claim 67), claims 31 and 67 are indefinite; and (2) the phrases "wherein distinguishing information about the piece of Ethernet data terminal equipment is associated to impedance within the at least on path" (claim 31) and "arranging impedance within the at least one path to distinguish the piece of terminal equipment" (claim 67) render claims 31 and 67 indefinite. (Doc. No. 90, pp. 1-2).² As set forth in more detail below, both intrinsic evidence and the testimony of Plaintiffs' expert, Les Baxter (see Declaration of L. Baxter attached as Exhibit B), show that claims 31 and 67, read in light of the specification delineating the patent, and the prosecution history, inform, with reasonable certainty, those skilled in the art about the scope of the inventions recited in those claims. Defendants fail to show that there is no genuine dispute as to any material fact that claims 31 and 67 are invalid as indefinite. Thus, Plaintiffs respectfully request that the Court deny Defendants' Motion for Summary Judgment.

**A. RESPONSE TO DEFENDANTS' STATEMENT OF UNDISPUTED
MATERIAL FACTS.**

¹ Defendants do not move for summary judgment under any other construction of these phrases.

² Defendants state that "Asserted dependent claims 35, 42, 43, 49, 50, 55, 66, 72, 73, 77, 88, 89, and 106 also fail to provide additional information sufficient to provide reasonable certainty...Accordingly, all asserted claims are invalid due to indefiniteness." (Doc. No. 90, p. 9). Defendants do not move for summary judgment that these dependent claims are invalid as indefinite apart from their independent claims 31 and 67. Therefore, while Plaintiffs maintain that these dependent claims are definite, Plaintiffs have not addressed any claims other than claims 31 and 67.

1. “1. Claims 31 and 67 are the only independent claims asserted by Chrimar. Each of the asserted independent claims includes one of the “distinguishing” limitations. All other asserted claims depend on claim 31 or 67.” **RESPONSE**: Disputed, to the extent that “‘distinguishing’ limitations” refers to anything other than the exact phrases “distinguishing information about the piece of Ethernet data terminal equipment” or “to distinguish the piece of terminal equipment.” read in the context of the entire claim. U.S. Patent No. 8,155,012, Cls. 31 & 67, Col. 18, line 62 to Col. 19, line 5; Col. 21, lines 8 to 21, attached as Exhibit A. Otherwise, Undisputed.

2. “2. Asserted claims 31 and 67 use the terms “distinguish” and “distinguishing” only in relation to the “piece of the Ethernet data terminal equipment” recited in the preambles.” **RESPONSE**: Disputed. U.S. Patent No. 8,155,012, Cls. 31 & 67, Col. 18, line 62 to Col. 19, line 5; Col. 21, lines 8 to 21, attached as Exhibit A.

3. “3. The term “distinguish” is not used in the ‘012 patent specification other than in the claims themselves.” **RESPONSE**: Undisputed, to the extent that this statement is referring to the exact term “distinguish.” To the extent that this statement is referring to the understanding of one of ordinary skill in the art and/or the phrases “distinguishing information about the piece of Ethernet data terminal equipment” or “to distinguish the piece of terminal equipment,” read in the context of the entire claim. Disputed. Exhibit A, Col. 4, lines 48-53; Col. 2, lines 49-58; Col. 6, lines 33-41; Col. 15, line 67 to Col. 16, line 4; Declaration of Les Baxter, Ex. B, ¶¶ 32-52.

B. STATEMENT OF THE LAW.

A claim is definite if it, read in light of the specification delineating the patent, and the prosecution history, informs, with reasonable certainty, those skilled in the art about the scope of

the invention. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S.Ct. 2120, 2124 (2014). General principles of claim construction apply to a determination of indefiniteness. *Young v. Lumenis, Inc.*, 492 F.3d 1336, 1346 (Fed. Cir. 2007). Indefiniteness must be shown by clear and convincing evidence. *Id.* at 1344-45.

“The definiteness requirement . . . mandates clarity, while recognizing that absolute precision is unattainable.” *Nautilus*, 134 S.Ct. at 2129. “ “[T]he certainty which the law requires in patents is not greater than is reasonable, having regard to their subject-matter.” *Id.* “[A] patentee need not define his invention with mathematical precision in order to comply with the definiteness requirement.” *Oakley, Inc. v. Sunglass Hut Intern.*, 316 F.3d 1331, 1341 (Fed. Cir. 2003).

The Federal Circuit recently stated that “[w]e recognize that a patent which defines a claim phrase through examples may satisfy the definiteness requirement.” *Interval Licensing LLC v. AOL, Inc.*, No. 2013-1282, 2014 WL 4435871, at *8 (Fed. Cir. Sept. 10, 2014). “[A] patent applicant need not include in the specification that which is already known to and available to a person of ordinary skill in the art.” *Wellman, Inc. v. Eastman Chemical Co.*, 642 F.3d 1355, (Fed. Cir. 2011)(“Because a person of ordinary skill in the art would have followed published industry standards, the asserted claims of the Wellman patents are not indefinite for failing to specify moisture conditions.”).

C. DEFENDANTS FAILED TO SHOW THAT THERE IS NO GENUINE DISPUTE AS TO ANY MATERIAL FACT.

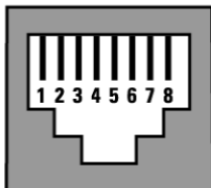
a. **One of ordinary skill in the art knows the scope of “an Ethernet connector comprising a plurality of contacts.”**

Claim 31 recites “an Ethernet connector comprising a plurality of contacts.” Ex. A, Cl.

31. Claim 67 recites “the Ethernet connector comprising the contact 1 through the contact 8.”

Ex. A, Cl. 67. Dependent claims provide that the Ethernet connector could be an RJ45 Jack. Ex. A, Cl. 34, Col. 19, lines 15-18, Cl. 92, Col. 22, lines 45-47. Ethernet connectors were also explained during the prosecution of the '012 Patent. See '012 File History, 12/6/2011 Amendment and Petition for Extension of Time, CMS001221-001226, attached as Exhibit C.

Below is an example of a Ethernet Connector with multiple contacts:



Baxter Decl., Ex B, ¶ 59. There is no dispute that Ethernet connectors were known in the art at the time the '012 patent was filed. (Doc. No. 90-1, ¶ 6). Thus, the “Ethernet connector” phrases above inform, with reasonable certainty, those skilled in the art about the scope of the inventions recited in claims 31 and 67. Baxter Decl., Ex. B, ¶¶ 53-60; *See Power-One, Inc. v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1350 (Fed. Cir. 2010)(“ Because a person having ordinary skill in the art would know where to place the POL regulator and how to use it, we find that the claim term “POL regulator” is not indefinite and does not render the claims of the '125 patent indefinite.”).

- b. **One of ordinary skill in the art knows the scope of an “at least one path coupled across selected contacts.”**

Claim 31 recites “at least one path coupled across selected contacts.” Ex. A, Cl. 31. Claim 31 further explains that “the selected contacts comprising at least one of the plurality of contacts of the Ethernet connector and at least another one of the plurality of contacts of the Ethernet connector.” Id. Claim 67 recites “coupling at least one path across specific contacts of

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