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

CHRIMAR SYSTEMS, INC. d/b/a CMS TECHNOLOGIES AND CHRIMAR HOLDING COMPANY, LLC,	§	
vs.	§	**Civil No. 6:13-cv-880-JDL**
ALCATEL-LUCENT, INC. et al.,	§	
CHRIMAR SYSTEMS, INC. d/b/a CMS TECHNOLOGIES AND CHRIMAR HOLDING COMPANY, LLC,	§	
vs.	§	**Civil No. 6:13-cv-881-JDL**
AMX, LLC.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants Alcatel-Lucent USA, Inc., Alcatel-Lucent Holdings, Inc., and AMX LLC's (collectively, "Defendants")[1] Motion for Summary Judgment of Indefiniteness. Case No. 6:13cv880, Doc. No. 87; Case No. 6:13cv881, Doc. No. 90 ("Mot.").[2] Plaintiffs ChriMar Systems, Inc. d/b/a CMS Technologies and Chrimar Holding Company LLC ("Plaintiffs" or "Chrimar") filed a Response (Doc. No. 90) ("Resp.") and Defendants filed a Reply (Doc. No. 94). The Court additionally considers arguments contained within Plaintiffs' Opening Brief on Claim Construction (Doc. No. 83) ("Pls.' Br."), Defendants' response (Doc. No. 88) and Plaintiffs' reply (Doc No 91). On October 30, 2014, the Court held a hearing.

[1] Defendants Grandstream Networks, Inc. and Samsung Electronics Co., Ltd. have since settled. *Chrimar Systems, Inc. v. Grandstream Networks, Inc.*, No. 6:13-cv-882, Doc. No. 92; *Chrimar Systems, Inc. v. Samsung Electronics Co., Ltd*, No. 6:13-cv-883, Doc. No. 96. Defendant Samsung Electronics Co., Ltd. was substituted for Samsung Telecommunications America, LLC. Doc. No. 94.

[2] Hereinafter, all citations will be to the Docket in Case No. 6:13-cv-880 unless otherwise indicated.

Having considered the parties' arguments and for the reasons stated below, the Court **DENIES** Defendants' Motion for Summary Judgment.

BACKGROUND

Plaintiffs allege Defendants infringe independent claims 31 and 67 and dependent claims 35, 42, 43, 49, 50, 55, 66, 72, 73, 77, 88, 89, and 106 ("the asserted claims") of U.S. Patent No. 8,115,012 ("the '012 Patent"). COMPL. The '012 Patent is titled "System and Method for Adapting a Piece of Terminal Equipment," and relates to tracking of devices that are connected to a wired network. '012 Patent. More specifically, the '012 patent describes permanently identifying an "asset," such as a computer, "by attaching an external or internal device to the asset and communicating with that device using existing network wiring or cabling." '012 Patent at 1:67–2:2. Independent claims 31 and 67 are recited as set forth below:

> 31. An adapted piece of Ethernet data terminal equipment comprising:
> an Ethernet connector comprising a plurality of contacts;
> and
> at least one path coupled across selected contacts, 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,
> wherein distinguishing information about the piece of Ethernet data terminal equipment is associated to impedance within the at least one path.
>
> 67. A method for adapting a piece of terminal equipment, the piece of terminal equipment having an Ethernet connector, the method comprising:
> coupling at least one path across specific contacts of the Ethernet connector, the at least one path permits use of the specific contacts for Ethernet communication, the Ethernet connector comprising the contact 1 through the contact 8, the specific contacts of the Ethernet connector comprising at least one of the contacts of the Ethernet connector and at least another one of the contacts of the Ethernet connector; and
> arranging impedance within the at least one path to distinguish the piece of terminal equipment.

'012 Patent, claims 31 and 67.

Defendants move for summary judgment that the asserted claims of the '012 Patent are invalid because the following phrases fail to comply with the definiteness requirement of 35 U.S.C. § 112, ¶2: (1) the "distinguishing" terms (claims 31 and 67); and (2) the entire clauses "distinguishing information . . . associated to impedance" (claim 31) and "arranging impedance . . . to distinguish" (claim 67).

In total, there are six disputed terms or phrases in the asserted claims. One term has been construed by the Court following early claim construction briefing and oral argument on September 3, 2014. Doc. No. 92 ("EARLY CLAIM CONSTRUCTION"). In its Order, the Court denied Defendants' summary judgment motion and construed the "distinguishing" term as follows:

Term	**Construction**
"distinguishing information about the piece of Ethernet terminal equipment" (Claim 31)	"information to distinguish the piece of Ethernet data terminal equipment from at least one other piece of Ethernet data terminal equipment"
"to distinguish the piece of terminal equipment" (Claim 67)	"to distinguish the piece of terminal equipment having an Ethernet connector from at least one other piece of terminal equipment having an Ethernet connector"

EARLY CLAIM CONSTRUCTION at 15.

Following further briefing and oral argument on October 30, 2014, the terms "impedance," "terminal equipment," "Ethernet data terminal equipment," "a method for adapting a piece of terminal equipment" and "an adapted piece of Ethernet data terminal equipment" were construed as follows:

Term	**Construction**
"impedance" (Claims 31, 35, 50, 67, 73, 77, and 72)	"opposition to the flow of current."

"terminal equipment" (Claims 67, 72 & 106)	"device at which data transmission can originate or terminate"
"Ethernet data terminal equipment" (Claims 31, 35, 42, 43, 49, 50 & 55)	"device at which data transmission can originate or terminate and that is capable of Ethernet communication"
"a method for adapting a piece of terminal equipment" and "an adapted piece of Ethernet data terminal equipment" (Claims 31 and 67)	These preambles *are* limiting and have their plain and ordinary meaning.

Doc. No. 99 ("CLAIM CONSTRUCTION ORDER").

Pursuant to the parties' briefings and oral argument on October 30, 2014, the Court now considers whether the terms "distinguishing," "distinguishing information . . . associated to impedance," and "arranging impedance . . . to distinguish" are indefinite. Trial is scheduled for September 8, 2015.

LEGAL STANDARD

I. Summary Judgment Standard

"Summary judgment is appropriate in a patent case, as in other cases, when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Nike Inc. v. Wolverine World Wide, Inc.*, 43 F.3d 644, 646 (Fed. Cir. 1994); FED. R. CIV. P. 56(c).

II. Indefiniteness

Indefiniteness is a question of law. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 723 F.3d 1363, 1368 (Fed. Cir. 2013). "[D]etermination of claim indefiniteness is a legal conclusion that is drawn from the court's performance of its duty as the construer of patent claims." *Exxon Research & Eng'g Co. v. United States*, 265 F.3d 1371, 1376 (Fed. Cir. 2001) *abrogated on other grounds by Nautilus v. Biosig Instruments, Inc.*, - U.S. -, - n. 9, 134 S.Ct. 2120, 2130 n. 9, 189 L.Ed.2d 37 (2014). Indefiniteness is a challenge to the validity of the patent that must be

established by clear and convincing evidence. *Nautilus*, 134 S.Ct. at 2230, n. 10 (citing *Microsoft Corp. v. i4i Ltd. Partnership*, - U.S. -, -, 131 S.Ct. 2238, 2242, 180 L.Ed.2d 131 (2011) for the clear-and-convincing standard applicable to challenges to invalidity and declining to alter this standard).

Under 35 U.S.C. § 112 ¶ 2, "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." "A lack of definiteness renders invalid 'the patent or any claim in suit.'" *Nautilus*, 134 S.Ct. at 2125 (citing 35 U.S.C. § 282, ¶ 2(3)). Until recently, a claim was indefinite "only when it [was] not amendable to construction or insolubly ambiguous." *Id.* at 2127. The Supreme Court rejected this standard as too imprecise. *Id.* at 2130.

Under the new standard, "a patent is invalid for indefiniteness if its claims, read in light of the specification ..., and the prosecution history, fail to inform, with *reasonable certainty*, those skilled in the art about the scope of the invention." *Id.* at 2124 (emphasis added). In rejecting the prior standard, the court found it insufficient "that a court [could] ascribe *some* meaning to a patent's claims." *Id.* at 2130. Reasonable certainty is something more precise than insolubly ambiguous, but short of absolute precision. *Id.* at 2129–30. In describing the new standard the court "mandates clarity." *Id.* at 2129.

The Supreme Court noted the "delicate balance" to the indefiniteness analysis. *Id.* at 2128. In summarizing this balance *post-Nautilus*, the Federal Circuit explained that "[t]he definiteness standard 'must allow for a modicum of uncertainty' to provide incentives for innovation, but must also require '*clear notice* of what is claimed, thereby appris[ing] the public of what is still open to them.'" *Interval Licensing LLC v. AOL*, 766 F.3d 1364, 1370 (Fed. Cir. 2014) (emphasis added) (quoting *Nautilus*, 134 S.Ct. at 2128–29).

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