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

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|---|---|---|
| **CHRIMAR SYSTEMS, INC. d/b/a CMS TECHNOLOGIES AND CHRIMAR HOLDING COMPANY, LLC,** | § | |
| **vs.** | § | **Civil No. 6:15-cv-163-JDL** |
| **ALCATEL-LUCENT USA, INC. et al.,** | § | |
| **CHRIMAR SYSTEMS, INC. d/b/a CMS TECHNOLOGIES AND CHRIMAR HOLDING COMPANY, LLC,** | § | |
| **vs.** | § | **Civil No. 6:15-cv-164-JDL** |
| **AMX, LLC,** | § | |

**MEMORANDUM OPINION AND ORDER**

Before the Court is Defendants Alcatel-Lucent USA, Inc., Alcatel-Lucent Holdings, Inc., ALE USA Inc., and AMX LLC's (collectively, "Defendants") Motion for Summary Judgment of Indefiniteness. (Doc. No. 99.) Plaintiffs Chrimar Systems, Inc. d/b/a CMS Technologies and Chrimar Holding Company LLC ("Plaintiffs" or "Chrimar") filed a response (Doc. No. 101) and Defendants filed a reply (Doc. No. 105). On March 10, 2016, the Court held a hearing. Having considered the parties' arguments and for the reasons stated below, the Court **DENIES** Defendants' Motion for Summary Judgment (Doc. No. 99).

**BACKGROUND**

Plaintiffs allege Defendants infringe claims 31, 35, 36, 43, 56, and 60 of the '012 Patent, claims 1, 5, 43, 72, 83, 103, 104, 111, and 125 of the '107 Patent, claims 1, 31, 59, 69, 72, 73,

106, 142, and 145 of the '760 Patent, and claims 1, 7, 26, 40, and 69 of the '838 Patent. (Doc. No. 99, at 2.) Plaintiffs contend that "[a]ll four patents share, in substance, a common specification and disclose inventions related to managing devices that connect to a wired network." (Doc. No. 97, at 1.) Specifically, the '107 Patent is a continuation of the '012 Patent, and the '760 Patent and the '838 Patent are continuations of the '107 Patent.

For reference, background on the '012 Patent is provided. 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. *See generally* '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. The '012 Patent refers to that device as the "remote module." *Id.* at 3:22–26. The asset can then be managed, tracked, or identified by using the remote module to communicate a unique identification number, port ID, or wall jack location to the network monitoring equipment, or "central module." *Id.* at 6:7–13, 8:66–9:4. The '012 Patent further discloses that "asset identification" may be done in a way "that does not use existing network bandwidth." *Id.* at 3:10–12. These concepts are reflected in the patents' asserted claims, and independent claim 31 is set forth below for reference:

> 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.

'012 Patent at 18:62–19:5 (Claim 31).

Defendants move for summary judgment that the certain asserted claims of the '012, '107, and '760 Patents are invalid because the following phrases fail to comply with the definiteness requirement of 35 U.S.C. § 112, ¶ 2: (1) "at least one condition [applied]" ('107 Patent, Claims 1, 104); (2) "detection protocol" ('012 Patent, Claim 35; '107 Patent, Claim 72; '760 Patent, Claim 59); and (3) "DC current" ('107 Patent, Claim 72).

## 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 2130, 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).

The Supreme Court did not apply the new standard in *Nautilus.*[1] The Federal Circuit, however, has both applied the new standard and provided guidance on the level of precision

[1] The court declined to apply the new "reasonable certainty" standard to the claim language at issue in *Nautilus,* "mounted ... in spaced relationship with each other." *Nautilus,* 134 S.Ct. at 2131. The language describes the location of two electrodes on a cylinder held in the user's hand. *Id.* at 2127. In concluding the language was not

required. *Interval*, 766 F.3d at 1369–71. "Although absolute precision or mathematical precision is not required, it is not enough as some of the language in ... prior cases may have suggested, to identify 'some standard for measuring the scope of the phrase.'" *Id.* at 1370–71 (quoting *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1351 (Fed. Cir. 2005)). "The claims, when read in light of the specification and the prosecution history, must provide *objective boundaries* for those of skill in the art." *Id* at 1371 (emphasis added) (relying on *Nautilus*, 134 S.Ct. at 2130 & n. 8). In noting the necessity for objective boundaries, the Federal Circuit relied on the finding in *Halliburton Energy Servs., Inc. v. M–I LLC* that "[e]ven if a claim term's definition can be reduced to words, the claim is still indefinite if a person of ordinary skill in the art cannot translate the definition into *meaningfully precise* claim scope." *Id.* (emphasis added) (relying on *Halliburton*, 514 F.3d 1244, 1251 (Fed. Cir. 2008)).

Other parts of the indefiniteness inquiry remain the same. Indefiniteness is still "evaluated from the perspective of someone skilled in the relevant art at the time the patent was filed." *Nautilus*, 134 S.Ct. at 2128. Claims must also still "be read in light of the patent's specification and prosecution history." *Id.* at 2128.

## DISCUSSION

### I. "at least one condition [applied]" ('107 Patent, Claims 1, 104)

| Plaintiffs' Proposal | Defendants' Proposal |
|---|---|
| No construction necessary, as the term should be afforded its plain and ordinary meaning. | Indefinite |

indefinite, the reversed Federal Circuit decision had concluded the spaced relationship could not be greater than the width of a user's hand. *Id.* at 2127.

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