

# McKool Smith

Benjamin Levi  
Direct Dial: (202) 370-8320  
blevi@mckoolsmith.com  
Admitted in New York  
Admission pending in D.C.

1999 K Street NW  
Suite 600  
Washington, D.C. 20006-1101

Telephone: (202) 370-8300  
Telecopier: (202) 370-8344

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  
36528 Grand River Avenue, Suite A-1  
Farmington Hills, MI 48335  
Tel: (248) 478-4400

COUNSEL FOR COMPLAINANT

Benjamin Levi  
Robert A. Auchter  
Jeffrey I. Frey  
**McKool Smith, P.C.**  
1999 K Street, N.W., Suite 600  
Washington, D.C. 20006  
Telephone: (202) 370-8300  
Telecopier: (202) 370-8344

PROPOSED RESPONDENTS

Cisco Systems, Inc.  
170 West Tasman Drive  
San Jose, CA 95134  
Tel: (408) 526-4000

Cisco Consumer Products LLC  
120 Theory Drive  
Irvine, CA 92617  
Tel: (949) 823-3000

Cisco Systems International B.V.  
Haarlerbergpark,  
Haarlerbergweg 13-19,  
1101 CH, Amsterdam,  
Netherlands  
Tel: 31 0800 0200 791

Cisco-Linksys LLC  
121 Theory Drive  
Irvine, CA 92617  
Tel: (949) 823-3000

**PROPOSED RESPONDENTS (Cont.)**

Hewlett-Packard Co.  
3000 Hanover Street  
Palo Alto, CA 94304  
Tel: (650) 857-1501

3Com Corporation  
350 Campus Drive  
Marlborough, MA 01752  
Tel: (508) 353-5000

Avaya Inc.  
211 Mt. Airy Road  
Basking Ridge, NJ 07920  
Tel: (866) 462-8292

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

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## 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;

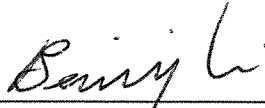
151. Impose a bond upon respondents who continue to import infringing articles during the 60-day-Presidential review period Pursuant to 19 U.S.C. § 1337(j); and,

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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Benjamin Levi  
Robert A. Auchter  
Jeffrey I. Frey  
1999 K Street, N.W., Suite 600  
Washington DC 20006  
Telephone: (202) 370-8300  
Telecopier: (202) 370-8344

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

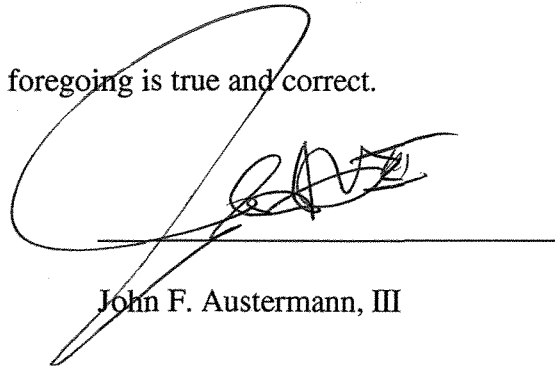
**VERIFICATION BY COMPLAINANT**

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