

**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

**PLAINTIFFS' ANSWER TO THE FIRST AMENDED COUNTERCLAIMS OF
DEFENDANTS CISCO SYSTEMS, INC AND
CISCO CONSUMER PRODUCTS, LLC F/K/A CISCO-LINKSYS LLC**

Plaintiffs ChriMar Systems, Inc. and ChriMar Holding Company, LLC (collectively "ChriMar"), file this Answer and Counterclaims to the First Amended Counterclaims of Defendants Cisco Systems, Inc. and Cisco Consumer Products LLC f/k/a Cisco-Linksys LLC (collectively, "Cisco"), filed December 26, 2012:

NATURE OF THE ACTION

1. To the extent that any response to Paragraph 1 of the First Amended Counterclaims is required, ChriMar denies that Cisco has any valid claims pursuant to 35 U.S.C. § 100 *et seq.*, Sherman Act § 2, or § 17200 *et seq.* of the California Business and Professions Code. ChriMar further denies that it has violated any law with respect to the '250 Patent. ChriMar further denies that Cisco is entitled to any of the requested relief, including damages or

an injunction, with respect to ChriMar and requests that the Court deny the relief requested by Cisco.

THE PARTIES

2. Upon information and belief, ChriMar admits the allegations in Paragraph 2 of the First Amended Counterclaims.

3. Upon information and belief, ChriMar admits the allegations in Paragraph 3 of the First Amended Counterclaims.

4. ChriMar admits the allegations in Paragraph 4 of the First Amended Counterclaims.

5. ChriMar admits the allegations in Paragraph 5 of the First Amended Counterclaims.

JURISDICTION AND VENUE

6. ChriMar admits that Cisco's First Amended Counterclaims purport to invoke the United States Patent Laws and that this Court has subject matter jurisdiction over patent law claims generally, as well as certain valid claims arising under the Sherman and Clayton Acts. ChriMar denies that Cisco has any valid claims under the Patent Laws, the Sherman Act or the Clayton Act with respect to ChriMar. At least because of the vague and ambiguous nature of Cisco's claims under the Sherman and Clayton Acts, ChriMar denies all remaining allegations in Paragraph 6 of the First Amended Counterclaims.

7. ChriMar admits that the Court has supplemental jurisdiction over state law claims that arise from a common nucleus of operative facts as those raised by federal claims over which the Court properly has jurisdiction. At least because of the vague and ambiguous nature of Cisco's state law claims, ChriMar denies all remaining allegations in Paragraph 7 of the First Amended Counterclaims.

8. ChriMar admits the allegations in Paragraph 8 of the First Amended Counterclaims.

9. ChriMar admits the allegations in Paragraph 9 of the First Amended Counterclaims.

BACKGROUND

10. ChriMar denies Cisco's allegation that the '250 Patent was not duly and legally issued as set forth in Paragraph 10 of the First Amended Counterclaims. ChriMar admits the remaining allegations in Paragraph 10 of the First Amended Counterclaims.

11. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 11 of the First Amended Counterclaims and on that basis denies such allegations.

12. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 12 of the First Amended Counterclaims and on that basis denies such allegations.

13. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 13 of the First Amended Counterclaims and on that basis denies such allegations.

14. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 14 of the First Amended Counterclaims and on that basis denies such allegations.

15. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 15 of the First Amended Counterclaims and on that basis denies such allegations.

16. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 16 of the First Amended Counterclaims and on that basis denies such allegations.

17. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 17 of the First Amended Counterclaims and on that basis denies such allegations.

18. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 18 of the First Amended Counterclaims and on that basis denies such allegations.

19. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 19 of the First Amended Counterclaims and on that basis denies such allegations.

20. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 20 of the First Amended Counterclaims and on that basis denies such allegations.

21. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 21 of the First Amended Counterclaims and on that basis denies such allegations.

22. ChriMar admits that the IEEE has from time to time published IEEE-SA Standards Board Bylaws and an IEEE-SA Standard Board Operations Manual. ChriMar admits that at one time these documents contained the language quoted by Cisco in Paragraph 22 of the First Amended Counterclaims. ChriMar denies the remaining allegations in Paragraph 22 of the First Amended Counterclaims.

23. ChriMar admits that the IEEE 802.3af standard was published on or around June 18, 2003, and that the IEEE 802.3at standard was published on or around October 30, 2009. ChriMar denies the remaining allegations in Paragraph 23 of the First Amended Counterclaims.

24. ChriMar admits that devices compliant with the IEEE 802.3af and/or IEEE 802.3at standards include network switches that supply power over the Ethernet lines to devices that may include Power over Ethernet telephones, switches, wireless access points, routers and cameras. ChriMar lacks sufficient knowledge to form a belief about the truth of the remaining allegations set forth in Paragraph 24 of the First Amended Counterclaims and on that basis denies such allegations.

25. The allegations in Paragraph 25 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 25 of the First Amended Counterclaims.

26. ChriMar admits that Mr. John Austermann, III, is President and Chief Executive Officer of ChriMar, as well as one of the named inventors on the '250 patent and other patent applications in the same patent family. ChriMar further admits that Mr. Austermann was invited to attend a meeting of the IEEE 802.3af task force and that he made a presentation during a portion of that July 11-12, 2000 meeting, which was held in La Jolla, California. ChriMar further admits that Mr. Austermann made a presentation during the January 26-27, 2005 meeting of a PoE-Plus Study Group. ChriMar denies that Mr. Austermann had a duty to disclose patents, applications or beliefs that proposals to the IEEE would be "covered" by patents or applications to the IEEE. ChriMar lacks sufficient knowledge to form a belief about the truth of the remaining allegations set forth in Paragraph 26 of the First Amended Counterclaims and on that basis denies such allegations.

27. ChriMar admits that ChriMar Systems, Inc. submitted a letter to the IEEE on or about December 3, 2001, that the letter disclosed U.S. Patent No. 5,406,260, and that the letter contained the phrase “grant a license to an unrestricted number of applicants on a world-wide, non-discriminatory basis”. ChriMar admits that a copy of that letter was at the time of filing this Answer available at an IEEE hosted website http://standards.ieee.org/about/sasb/patcom/loa-802_3af-chrimar-03Dec2001.pdf. ChriMar states that the '250 Patent did not exist as of December 3, 2001. ChriMar lacks sufficient knowledge to form a belief about the truth of the remaining allegations set forth in Paragraph 27 of the First Amended Counterclaims and on that basis denies such allegations.

28. ChriMar denies that it had any duty to disclose patents, patent applications, patent coverage, or its willingness to license patents to the IEEE, and therefore denies the allegations set forth in Paragraph 28 of the First Amended Counterclaims.

29. The allegations in Paragraph 29 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 29.

30. The allegations in Paragraph 30 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 30.

31. ChriMar denies the allegations in Paragraph 31 of the First Amended Counterclaims.

32. ChriMar denies the allegations in Paragraph 32 of the First Amended Counterclaims.

33. ChriMar denies the allegations in Paragraph 33 of the First Amended Counterclaims.

34. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 34 of the First Amended Counterclaims and on that basis denies such allegations.

35. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 35 of the First Amended Counterclaims and on that basis denies such allegations.

36. ChriMar denies that it made misrepresentations to the IEEE. ChriMar also denies that it had a duty to make the disclosures alleged by Cisco in Paragraph 36 of the First Amended Counterclaims. ChriMar admits that in 1998, the IEEE-SA Standards Board Bylaws contained the language quoted by Cisco in Paragraph 36 of the First Amended Counterclaims. ChriMar denies the remaining allegations in Paragraph 36 of the First Amended Counterclaims.

COUNT I
Noninfringement

37. Answering the allegations in Paragraph 37 of the First Amended Counterclaims, ChriMar incorporates by reference paragraphs 1-36 as if fully set forth herein.

38. ChriMar admits the allegations in Paragraph 38 of the First Amended Counterclaims.

39. ChriMar admits that there exists an actual and justiciable controversy between Cisco and ChriMar regarding the infringement of the '250 Patent. ChriMar otherwise denies the allegations in Paragraph 39 of the First Amended Counterclaims.

40. ChriMar denies the allegations in Paragraph 40 of the First Amended Counterclaims.

41. ChriMar denies the allegations in Paragraph 41 of the First Amended Counterclaims.

COUNT II
Invalidity

42. Answering the allegations in Paragraph 42 of the First Amended Counterclaims, ChriMar incorporates by reference paragraphs 1-41 as if fully set forth herein.

43. ChriMar admits that there exists an actual and justiciable controversy between Cisco and ChriMar regarding the validity of the '250 Patent. ChriMar otherwise denies the allegations in Paragraph 39 of the First Amended Counterclaims.

44. ChriMar denies the allegations in Paragraph 44 of the First Amended Counterclaims.

45. ChriMar denies the allegations in Paragraph 45 of the First Amended Counterclaims.

46. ChriMar denies the allegations in Paragraph 46 of the First Amended Counterclaims.

47. ChriMar denies the allegations in Paragraph 47 of the First Amended Counterclaims.

COUNT III
Unenforceability

48. Answering the allegations in Paragraph 48 of the First Amended Counterclaims, ChriMar incorporates by reference paragraphs 1-47 as if fully set forth herein.

49. ChriMar denies the allegations in Paragraph 49 of the First Amended Counterclaims.

50. ChriMar denies the allegations in Paragraph 50 of the First Amended Counterclaims.

51. ChriMar denies the allegations in Paragraph 51 of the First Amended Counterclaims.

52. ChriMar admits that it seeks damages and injunctive relief against Cisco. ChriMar denies the remaining allegations in Paragraph 52 of the First Amended Counterclaims.

53. ChriMar denies the allegations in Paragraph 53 of the First Amended Counterclaims.

COUNT IV
Breach of Contract

54. Answering the allegations in Paragraph 54 of the First Amended Counterclaims, ChriMar incorporates by reference paragraphs 1-53 as if fully set forth herein.

55. ChriMar denies the allegations in Paragraph 55 of the First Amended Counterclaims.

56. ChriMar denies the allegations in Paragraph 56 of the First Amended Counterclaims.

57. ChriMar denies the allegations in Paragraph 57 of the First Amended Counterclaims.

58. ChriMar lacks sufficient knowledge to form a belief about the truth of Cisco's allegations that it has "invested considerable sums in bringing Power over Ethernet-enabled products to market" as set forth in Paragraph 58 of the First Amended Counterclaims and on that basis denies such allegations. ChriMar denies the remaining allegations in Paragraph 58 of the First Amended Counterclaims.

COUNT V
Monopolization

59. Answering the allegations in Paragraph 59 of the First Amended Counterclaims, ChriMar incorporates by reference paragraphs 1-58 as if fully set forth herein.

60. ChriMar admits that it developed and licenses technology essential to implementation of the IEEE 802.3af and 802.3at standards, and that practice of its '250 patent is necessary to implement these two standards. ChriMar otherwise lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 60 of the First Amended Counterclaims and on that basis denies such allegations.

61. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 61 of the First Amended Counterclaims and on that basis denies such allegations.

62. ChriMar admits that it is seeking a permanent injunction and damages against Cisco and other defendants who make, use or sell certain power over Ethernet products. ChriMar cannot understand and therefore denies the remaining allegations in Paragraph 62 of the First Amended Counterclaims.

63. ChriMar admits that it has been assigned the '250 patent, and that ChriMar has accused Cisco and other defendants who sell such products of infringing the '250 patent. Upon information and belief, ChriMar admits that Cisco sells these infringing products through interstate commerce. ChriMar otherwise denies the allegations in Paragraph 63 of the First Amended Counterclaims.

64. ChriMar admits that it has accused Cisco and other defendants of making, using, or selling products that infringe the '250 Patent. ChriMar otherwise denies the allegations in Paragraph 64 of the First Amended Counterclaims.

65. ChriMar denies the allegations in Paragraph 65 of the First Amended Counterclaims.

66. ChriMar denies the allegations in Paragraph 66 of the First Amended Counterclaims.

67. ChriMar denies the allegations in Paragraph 67 of the First Amended Counterclaims.

68. ChriMar denies the allegations in Paragraph 68 of the First Amended Counterclaims.

69. ChriMar denies the allegations in Paragraph 69 of the First Amended Counterclaims.

COUNT VI
Unfair Business Practices

70. Answering the allegations in Paragraph 70 of the First Amended Counterclaims, ChriMar incorporates by reference paragraphs 1-69 as if fully set forth herein.

71. The allegations in Paragraph 71 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 71.

72. The allegations in Paragraph 72 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 72.

73. Upon information and belief, ChriMar admits that Cisco Systems, Inc. and Cisco Consumer Products LLC are corporations organized and existing under the laws of California, with their principal places of business in California. ChriMar admits that Mr. John Austermann, III is President and Chief Executive Office of ChriMar, and that he made a presentation during a portion of the July 11-12, 2000 meeting of the IEEE 802.3af task force, which was in La Jolla,

California. ChriMar otherwise denies the allegations in Paragraph 73 of the First Amended Counterclaims.

74. The allegations in Paragraph 74 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 74.

75. ChriMar denies the allegations in Paragraph 75 of the First Amended Counterclaims.

76. The allegations in Paragraph 76 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 76.

77. ChriMar denies that Cisco has accurately set forth the language contained in Plaintiffs Objections to Special Master in *ChriMar Sys., Inc. v. Powerdsine Ltd.*, 2:01-cv-74081-AC (E.D. Mich.). ChriMar denies the remaining allegations in Paragraph 77 of the First Amended Counterclaims.

78. ChriMar admits that it has sought to enforce its rights in the '250 Patent against companies that practice the patent without a license. ChriMar denies the remaining allegations in Paragraph 78 of the First Amended Counterclaims.

79. ChriMar denies the allegations in Paragraph 79 of the First Amended Counterclaims.

80. The allegations in Paragraph 80 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 80.

81. ChriMar denies the allegations in Paragraph 81 of the First Amended Counterclaims.

82. The allegations in Paragraph 82 of the First Amended Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 82.

83. ChriMar denies the allegations in Paragraph 83 of the First Amended Counterclaims.

84. No response is required to the statement made by Cisco in Paragraph 84 of the First Amended Counterclaims. To the extent a response is required, ChriMar denies the allegations in Paragraph 84 of the First Amended Counterclaims.

COUNT VII
Fraud

85. Answering the allegations in Paragraph 85 of the First Amended First Amended Counterclaims, ChriMar incorporates by reference paragraphs 1-84 as if fully set forth herein.

86. ChriMar admits that it developed and licenses technology essential to implementation of the IEEE 802.3af and 802.3at standards, and that practice of its '250 patent is necessary to implement these two standards. ChriMar otherwise denies the allegations in Paragraph 86 of the First Amended Counterclaims.

87. ChriMar admits that Mr. John Austermann, III is one of the named inventors on the '250 patent. ChriMar further admits that Mr. Austermann was invited to attend a meeting of the IEEE 802.3af task force and that he made a presentation during a portion of that July 11-12, 2000 meeting, which was held in La Jolla, California. ChriMar further admits that Mr. Austermann made a presentation during the January 26-27, 2005 meeting of a PoE-Plus Study Group. ChriMar also admits that ChriMar Systems, Inc. submitted a letter to the IEEE on or

about December 3, 2001, that the letter disclosed U.S. Patent No. 5,406,260, and that the letter contained the phrase “grant a license to an unrestricted number of applicants on a world-wide, non-discriminatory basis”. ChriMar otherwise denies the allegations in Paragraph 87 of the First Amended Counterclaims.

88. ChriMar denies the allegations in Paragraph 88 of the First Amended Counterclaims.

89. ChriMar denies the allegations in Paragraph 89 of the First Amended Counterclaims.

90. ChriMar denies the allegations in Paragraph 90 of the First Amended Counterclaims.

91. ChriMar denies the allegations in Paragraph 91 of the First Amended Counterclaims.

RESPONSE TO PRAYER FOR RELIEF

92. To the extent that any response to the Requested Relief in Cisco’s First Amended Counterclaims ¶¶ (a)-(m) is required, ChriMar denies that Cisco has any valid claim pursuant to 35 U.S.C. §§ 101, 102, 103, 112, 116, 285; 15 U.S.C. §§ 2 or 15; Section 17200, *et seq.*, of the California Business and Professions Code, or any other applicable statutes, rules or common law, including fraud. ChriMar further denies that it has violated any of the Patent Laws with respect to the '250 Patent, the Sherman or Clayton Acts, or the cited section(s) of California’s Business and Professions Code. ChriMar further denies that Cisco is entitled to any of the requested relief with respect to ChriMar and requests that the Court deny the relief requested by Cisco.

GENERAL DENIAL

93. ChriMar further denies each allegation contained in Cisco's First Amended Counterclaims that is not specifically admitted, denied, or otherwise responded to in this Answer to Cisco's First Amended Counterclaims.

FIRST AFFIRMATIVE DEFENSE

94. Count II of Cisco's First Amended Counterclaims fails to state a claim upon which relief can be granted because Cisco has not alleged any facts upon which the '250 Patent can be adjudged invalid under any provision of Title 35, United States Code. Further, or in the alternative, Cisco has failed to state its claim of invalidity of the '250 Patent with sufficient particularity to support its claim for the relief sought.

SECOND AFFIRMATIVE DEFENSE

95. Counts III through VI of Cisco's First Amended Counterclaims fail to state a claim upon which relief can be granted because Cisco has not alleged facts with sufficient particularity to support its claim for the relief sought.

THIRD AFFIRMATIVE DEFENSE

96. Count IV of Cisco's First Amended Counterclaims fails to state a claim upon which relief can be granted because Cisco has not alleged facts sufficient to establish the existence of a contract.

FOURTH AFFIRMATIVE DEFENSE

97. Counts IV through VI of Cisco's First Amended Counterclaims fail to state a claim upon which relief can be granted because Cisco lacks standing to seek the relief it requests.

FIFTH AFFIRMATIVE DEFENSE

98. Counts III and VII of Cisco's First Amended Counterclaims fail to state a claim upon which relief can be granted because Cisco has not plead with particularity the requirements for fraud as required by Fed. R. Civ. Pro. 9(b).

SIXTH AFFIRMATIVE DEFENSE

99. Count IV of Cisco's First Amended Counterclaims is barred, in whole or in part, by Cisco's lack of privity.

SEVENTH AFFIRMATIVE DEFENSE

100. Count VI of Cisco's First Amended Counterclaims is barred by the applicable statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

101. Cisco's First Amended Counterclaims are barred, in whole or in part, by the equitable defenses of estoppel, waiver, laches and/or unclean hands.

NINTH AFFIRMATIVE DEFENSE

102. Cisco's First Amended Counterclaims fail to state a claim upon which relief can be granted because Cisco has not alleged a factual or legal basis sufficient to permit recovery of its attorneys' fees for defending this suit.

TENTH AFFIRMATIVE DEFENSE

103. Cisco has failed to make reasonable efforts to mitigate its damages, if any.

OTHER AFFIRMATIVE DEFENSES

104. ChriMar hereby gives notice that it intends to rely upon any other defense that may become available in this case and hereby reserves the right to amend this Answer to Cisco's First Amended Counterclaims to assert any such defense.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38, ChriMar respectfully demands a jury trial of all issues triable to a jury in this action.

ASHBY & GEDDES

/s/ Lauren E. Maguire

Steven J. Balick (#2114)
Tiffany Geyer Lydon (#3950)
Lauren E. Maguire (#4261)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899
sbalick@ashby-geddes.com
tlydon@ashby-geddes.com
lmauire@ashby-geddes.com

Attorneys for Plaintiffs

Of Counsel:

Dirk Thomas
Benjamin Levi
Robert A. Auchter
Jeffrey I. Frey
Robert Kramer
Brandon Jordan
MCKOOL SMITH, P.C.
1999 K Street, N.W., Suite 600
Washington, DC 20006
(202) 370-8300

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