

**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 COUNTERCLAIMS OF
DEFENDANT HEWLETT-PACKARD COMPANY**

Plaintiffs ChriMar Systems, Inc. and ChriMar Holding Company, LLC (collectively “ChriMar”), file this Answer and Counterclaims to the Counterclaims of Defendant Hewlett-Packard Company (“Hewlett-Packard”), filed December 26, 2012:

NATURE OF THE ACTION

1. To the extent that any response to Paragraph 1 of the Counterclaims is required, ChriMar denies that Hewlett-Packard 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 Hewlett-Packard 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 Hewlett-Packard.

THE PARTIES

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

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

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

JURISDICTION AND VENUE

5. ChriMar admits that Hewlett-Packard's 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 Hewlett-Packard 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 Hewlett-Packard's claims under the Sherman and Clayton Acts, ChriMar denies all remaining allegations in Paragraph 5 of the Counterclaims.

6. 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 Hewlett-Packard's state law claims, ChriMar denies all remaining allegations in Paragraph 6 of the Counterclaims.

7. ChriMar admits the allegations in Paragraph 7 of the Counterclaims.

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

BACKGROUND

9. ChriMar denies Hewlett-Packard's allegation that the '250 Patent was not duly and legally issued as set forth in Paragraph 9 of the Counterclaims. ChriMar admits the remaining allegations in Paragraph 9 of the Counterclaims.

10. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 10 of the Counterclaims and on that basis denies such allegations.

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

21. 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 Hewlett-Packard in Paragraph 21 of the Counterclaims. ChriMar denies the remaining allegations in Paragraph 21 of the Counterclaims.

22. 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 22 of the Counterclaims.

23. 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 23 of the Counterclaims and on that basis denies such allegations.

24. The allegations in Paragraph 24 of the 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 Counterclaims.

25. 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 25 of the Counterclaims and on that basis denies such allegations.

26. 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 is unaware of any letter having a date December 3, 2011 as described in Paragraph 27 of the Counterclaims. 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 26 of the Counterclaims and on that basis denies such allegations.

27. 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 27 of the Counterclaims.

28. The allegations in Paragraph 28 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 28.

29. The allegations in Paragraph 29 of the 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. ChriMar denies the allegations in Paragraph 30 of the Counterclaims.

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

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

33. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 33 of the Counterclaims and on that basis denies such allegations.

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

35. ChriMar denies that it made misrepresentations to the IEEE. ChriMar also denies that it had a duty to make the disclosures alleged by Hewlett-Packard in Paragraph 35 of the Counterclaims. ChriMar admits that in 1998, the IEEE-SA Standards Board Bylaws contained the language quoted by Hewlett-Packard in Paragraph 35 of the Counterclaims. ChriMar denies the remaining allegations in Paragraph 35 of the Counterclaims.

COUNT I
Noninfringement and Invalidity

36. Answering the allegations in Paragraph 36 of the Counterclaims, ChriMar incorporates by reference paragraphs 1-35 as if fully set forth herein.

37. ChriMar admits the allegations in Paragraph 37 of the Counterclaims.

38. ChriMar admits that there exists an actual and justiciable controversy between Hewlett-Packard and ChriMar regarding the infringement and validity of the '250 Patent. ChriMar otherwise denies the allegations in Paragraph 38 of the Counterclaims.

39. ChriMar denies the allegations in Paragraph 39 of the Counterclaims.

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

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

42. ChriMar denies the allegations in Paragraph 42 of the Counterclaims.

43. ChriMar denies the allegations in Paragraph 43 of the Counterclaims.

COUNT II
Unenforceability

44. Answering the allegations in Paragraph 44 of the Counterclaims, ChriMar incorporates by reference paragraphs 1-43 as if fully set forth herein.

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

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

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

48. ChriMar admits that it seeks damages and injunctive relief against Hewlett-Packard. ChriMar denies the remaining allegations in Paragraph 48 of the Counterclaims.

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

COUNT III
Breach of Contract

50. Answering the allegations in Paragraph 50 of the Counterclaims, ChriMar incorporates by reference paragraphs 1-49 as if fully set forth herein.

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

52. ChriMar denies the allegations in Paragraph 52 of the Counterclaims.

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

54. ChriMar lacks sufficient knowledge to form a belief about the truth of Hewlett-Packard's allegations that it has "invested considerable sums in bringing Power over Ethernet-enabled products to market" as set forth in Paragraph 54 of the Counterclaims and on that basis denies such allegations. ChriMar denies the remaining allegations in Paragraph 54 of the Counterclaims.

COUNT IV
Monopolization

55. Answering the allegations in Paragraph 55 of the Counterclaims, ChriMar incorporates by reference paragraphs 1-54 as if fully set forth herein.

56. 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 56 of the Counterclaims and on that basis denies such allegations.

57. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 57 of the Counterclaims and on that basis denies such allegations.

58. ChriMar admits that it is seeking a permanent injunction against Hewlett-Packard and other defendants who make, use or sell certain power over Ethernet products. ChriMar cannot understand and therefore denies the remaining allegations in Paragraph 58 of the Counterclaims.

59. ChriMar admits that it has been assigned the '250 patent, and that ChriMar has accused Hewlett-Packard and other defendants who sell such products of infringing the '250 patent. Upon information and belief, ChriMar admits that Hewlett-Packard sells these infringing products through interstate commerce. ChriMar otherwise denies the allegations in Paragraph 59 of the Counterclaims.

60. ChriMar admits that it has accused Hewlett-Packard and other defendants of making, using, or selling products that infringe the '250 Patent. ChriMar otherwise denies the allegations in Paragraph 60 of the Counterclaims.

61. ChriMar denies the allegations in Paragraph 61 of the Counterclaims.

62. ChriMar denies the allegations in Paragraph 62 of the Counterclaims.

63. ChriMar denies the allegations in Paragraph 63 of the Counterclaims.

64. ChriMar denies the allegations in Paragraph 64 of the Counterclaims.

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

COUNT V
Attempted Monopolization

66. Answering the allegations in Paragraph 66 of the Counterclaims, ChriMar incorporates by reference paragraphs 1-65 as if fully set forth herein.

67. ChriMar admits that it developed and licenses technology essential to implementation of the IEEE 802.3af and 802.3at amendments to the 802.3 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 67 of the Counterclaims and on that basis denies such allegations.

68. ChriMar lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 68 of the Counterclaims and on that basis denies such allegations.

69. ChriMar admits that on November 16, 2011, it filed a First Amended Complaint with the United States International Trade Commission (“the ITC”) pursuant to Section 337 of the Tariff Act of 1930 as amended, 19 U.S.C. § 1337, that ChriMar verified this complaint, that ChriMar sought as relief in that complaint an exclusion order barring from entry into the United States infringing communications 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 in that action. Wi-LAN also admits that the ITS investigation was entitled *In the Matter of Certain Communications Equipment, Components Thereof, and Products Containing the Same, Including Power Over Ethernet Telephones, Switches, Wireless Access Points, Router, and Other Devices Used in LANs, and Cameras*, and that its corresponding investigation number was 337-TA-817. ChriMar otherwise denies the allegations in Paragraph 69 of the Counterclaims.

70. ChriMar admits that in the First Amended Complaint with the United States International Trade Commission filed on November 16, 2011, ChriMar named 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. as Respondents. ChriMar otherwise lacks sufficient knowledge to form a belief about the truth of the allegations set forth in Paragraph 70 of the Counterclaims and on that basis denies such allegations.

71. ChriMar admits that in the ITC investigation, ChriMar asserted infringement of the '250 patent on the basis that Hewlett-Packard "manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation devices that are compliant with" the IEEE 802.3af and/or 802.3at amendments to the IEEE 802.3 standard. ChriMar otherwise denies the allegations in Paragraph 71 of the Counterclaims.

72. ChriMar admits that it stated in its First Amended Complaint with the International Trade Commission filed on November 16, 2011 that: (a) ChriMar Systems, Inc. d/b/a CMS Technologies owns by assignment all right, title, and interest in and to the '250 patent; (b) that it accused Respondents of selling products that practice at least one claim of the '250 patent, including that Hewlett-Packard sold such products in interstate commerce; and (c) that Respondents in the ITC investigation sell products compliant with the 802.3af and 802.3at amendments to the IEEE 802.3 standard. ChriMar otherwise denies the allegations in Paragraph 71 of the Counterclaims.

73. ChriMar admits that it has accused Hewlett-Packard and other defendants of making, using, or selling products that infringe the '250 Patent. ChriMar otherwise denies the allegations in Paragraph 73 of the Counterclaims.

74. ChriMar admits that Hewlett-Packard accurately quoted from 19 U.S.C. § 1337. ChriMar denies that the ITC investigation was a baseless action. Otherwise, the allegations in Paragraph 74 of the 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 admits that it stated in its First Amended Complaint with the International Trade Commission filed on November 16, 2011 that: “a domestic industry exists or is in the process of being established,” that “ChriMar has made a significant investment in plant and equipment in the United States,” that it had “significant employment of labor or capital,” and that “total sales of its products that practice at least one claim of the ’250 patent are substantial” with respect to products that practice its ’250 patent. ChriMar otherwise denies the allegations in Paragraph 75 of the Counterclaims.

76. ChriMar admits that it stated in its First Amended Complaint with the International Trade Commission filed on November 16, 2011 that: “Hubbell and/or its authorized representatives have engaged in manufacturing, sales, advertising, customer support, and engineering and research and development activities” and that Hubbell’s investments in the exploitation of the ’250 patent through engineering and research and development is substantial.” ChriMar admits that Hewlett-Packard has accurately quoted a portion of paragraph 131 of its First Amended Complaint with the International Trade Commission filed on November 16, 2011. ChriMar otherwise denies the allegations in Paragraph 76 of the Counterclaims.

77. ChriMar admits that Hewlett-Packard has accurately quoted portions of paragraphs 141 and 143 of the First Amended Complaint with the International Trade Commission filed on November 16, 2011. ChriMar otherwise denies the allegations in Paragraph 77 of the Counterclaims.

78. ChriMar admits that it withdrew its complaint in the ITC investigation and that the ITC investigation was subsequently terminated. ChriMar otherwise denies the allegations in Paragraph 78 of the Counterclaims.

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

80. ChriMar denies the allegations in Paragraph 80 of the Counterclaims.

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

82. ChriMar denies the allegations in Paragraph 82 of the Counterclaims.

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

84. ChriMar lacks sufficient knowledge regarding Hewlett-Packard's expenses as set forth in Paragraph 84 of the Counterclaims and on that basis denies such allegations. ChriMar denies the remaining allegations in Paragraph 84 of the Counterclaims.

85. ChriMar denies the allegations in Paragraph 85 of the Counterclaims.

86. ChriMar denies the allegations in Paragraph 86 of the Counterclaims.

87. ChriMar denies the allegations in Paragraph 87 of the Counterclaims.

COUNT VI
Unfair Business Practices

88. Answering the allegations in Paragraph 88 of the Counterclaims, ChriMar incorporates by reference paragraphs 1-87 as if fully set forth herein.

89. The allegations in Paragraph 89 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 89.

90. The allegations in Paragraph 90 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 90.

91. Upon information and belief, ChriMar admits that Hewlett-Packard's principal place of business is located 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 91 of the Counterclaims.

92. The allegations in Paragraph 92 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 92.

93. ChriMar denies the allegations in Paragraph 93 of the Counterclaims.

94. The allegations in Paragraph 94 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 94.

95. ChriMar denies that Hewlett-Packard 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 95 of the Counterclaims.

96. 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 96 of the Counterclaims.

97. ChriMar denies the allegations in Paragraph 97 of the Counterclaims.

98. The allegations in Paragraph 98 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 98.

99. ChriMar denies the allegations in Paragraph 99 of the Counterclaims.

100. The allegations in Paragraph 100 of the Counterclaims contain conclusions of law to which no response is required. To the extent a response is required, ChriMar denies the allegations in Paragraph 100.

101. ChriMar denies the allegations in Paragraph 101 of the Counterclaims.

102. No response is required to the statement made by Hewlett-Packard in Paragraph 102 of the Counterclaims. To the extent a response is required, ChriMar denies the allegations in Paragraph 102 of the Counterclaims.

RESPONSE TO PRAYER FOR RELIEF

103. To the extent that any response to the Requested Relief in Counterclaims ¶¶ (a)-(l) is required, ChriMar denies that Hewlett-Packard 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. 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 Hewlett-Packard is entitled to any of the requested relief with respect to ChriMar and requests that the Court deny the relief requested by Hewlett-Packard.

GENERAL DENIAL

104. ChriMar further denies each allegation contained in Hewlett-Packard's Counterclaims that is not specifically admitted, denied, or otherwise responded to in this Answer to Hewlett-Packard's Affirmative Defenses and Counterclaims.

FIRST AFFIRMATIVE DEFENSE

105. Count I of Hewlett-Packard's Counterclaims fails to state a claim upon which relief can be granted because Hewlett-Packard 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, Hewlett-Packard 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

106. Counts II through VI of Hewlett-Packard's Counterclaims fail to state a claim upon which relief can be granted because Hewlett-Packard has not alleged facts with sufficient particularity to support its claim for the relief sought.

THIRD AFFIRMATIVE DEFENSE

107. Count III of Hewlett-Packard's Counterclaims fails to state a claim upon which relief can be granted because Hewlett-Packard has not alleged facts sufficient to establish the existence of a contract.

FOURTH AFFIRMATIVE DEFENSE

108. Counts III through VI of Hewlett-Packard's Counterclaims fail to state a claim upon which relief can be granted because Hewlett-Packard lacks standing to seek the relief it requests.

FIFTH AFFIRMATIVE DEFENSE

109. Counts II and VI of Hewlett-Packard's Counterclaims fail to state a claim upon which relief can be granted because Hewlett-Packard has not plead with particularity the requirements for fraud as required by Fed. R. Civ. Pro. 9(b).

SIXTH AFFIRMATIVE DEFENSE

110. Count III of Hewlett-Packard's Counterclaims is barred, in whole or in part, by Hewlett-Packard's lack of privity.

SEVENTH AFFIRMATIVE DEFENSE

111. Counts IV and V of Hewlett-Packard's Counterclaims fail to state a claim upon which relief can be granted because ChriMar's conduct was protected conduct.

EIGHTH AFFIRMATIVE DEFENSE

112. Count VI of Hewlett-Packard's Counterclaims is barred by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

113. Hewlett-Packard's Counterclaims are barred, in whole or in part, by the equitable defenses of estoppel, waiver, laches and/or unclean hands.

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

115. Hewlett-Packard has failed to make reasonable efforts to mitigate its damages, if any.

OTHER AFFIRMATIVE DEFENSES

116. 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 Hewlett-Packard'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

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