IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

OLLNOVA TECHNOLOGIES LTD. Plaintiff, vs. EMERSON ELECTRIC CO. and VERDANT ENVIRONMENTAL TECHNOLOGIES INC., Defendants.	No. 6:22-cv-00358

DEFENDANTS' OPENING CLAIM CONSTRUCTION BRIEF

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Exhibit	Description
A	Declaration of Dr. Dean Neikirk
B	U.S. Patent No. 7,746,887
C	U.S. Patent No. 8,224,282
D	U.S. Patent Application No. 11/402,743 Request for Certificate of Correction (2/16/2022)
E	U.S. Patent Application No. 11/402,743 Certificate of Correction (3/22/2022)
F	U.S. Patent Application No. 11/402,743 Certificate of Correction (2/8/2022)

Pursuant to the Court's Scheduling Order (D.I. 28), Defendants Emerson Electric Co. and Verdant Environmental Technologies Inc. (collectively, "Emerson") hereby present their opening *Markman* brief.

I. LEGAL STANDARD

"[A] claim construction analysis must begin and remain centered on the claim language itself, for that is the language the patentee has chosen to particularly point out and distinctly claim the subject matter which the patentee regards as his invention." *Innova/Pure Water, Inc. v. Sanofi Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004);[1] *see also Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). In doing so, the words of the claim must be interpreted "in view of the specification, of which they are a part." *SkinMedica, Inc. v. Histogen Inc.*, 727 F.3d 1187, 1195 (Fed. Cir. 2013). In addition to the specification, the Federal Circuit has held that a court "should also consider the patent's prosecution history, if it is in evidence," as it reflects how the PTO and the named inventors understood the terms of the patent. *Phillips*, 415 F.3d at 1317 (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995)).

II. U.S. PATENT NO. 7,746,887 (THE '887 PATENT)

A. Overview

The '887 patent (Ex. B) is directed to a wireless automation device that monitors and reports a condition over a network. Ex. B, Abstract. The patent contends that "[w]ireless networks are limited by the amount of available bandwidth over which the devices may communicate" and that "there is a need for a system for reducing an amount of communication over a wireless automated system using dynamic value reporting." *Id.*, 1:34-35, 1:47-49. The '887 patent purports to resolve such issues by transmitting information only in response to a change in a sensed

[1] Unless indicated otherwise, all internal citations and quotation marks are omitted.

condition. *Id.*, 2:19-24. In particular, the '887 patent recites a transceiver that transmits an indicator generated by a sensor "in response to detecting a change in the sensed condition outside a predetermined range" and suspending the transmission "in response to detecting a change in the sensed condition within the predetermined range." *E.g.*, *id.*, Cl. 1.

B. Disputed Term for Construction: "information associated reading of the indicator" (claim 1)

Emerson's Construction	Ollnova's Construction
Indefinite	No construction necessary or plain-and-ordinary meaning

Plaintiff Ollnova Technologies Ltd.'s ("Ollnova") proposed construction of plain and ordinary meaning for this term fails for two related reasons: (1) the term "information associated reading of the indicator" is indefinite; and (2) the certificate of correction requested by Ollnova (Ex. D) under 35 U.S.C. § 255 and issued on March 22, 2022 (Ex. E, "CoC"), revising the claim language from "information associated reading of the indicator" to "information associated ***with the*** reading of the indicator," is invalid.[2]

Because the CoC is not retroactive and Ollnova has sought past damages (Dkt. No. 1 at ¶ 23) including the period prior to the issuance of the CoC, the term must be construed first as it appeared before the CoC (to determine if the claim was valid prior to the CoC), and second in light of the CoC (to determine if the CoC is valid and cures any indefiniteness). *H-W Tech., L.C. v. Overstock.com, Inc.*, 758 F.3d 1329, 1334 (Fed. Cir. 2014) ("the certificate of correction is only effective for causes of action arising after it was issued"); *Sw. Software, Inc. v. Harlequin Inc.*, 226 F.3d 1280, 1297 (Fed. Cir. 2000) (remanding the case to address indefiniteness of a claim prior to the CoC, and noting that if the claim is "found to have been invalid … the invalidity ceased[] when

[2] The CoC made the same revision to claim 21, which likewise recited "information associated reading of the indicator." *See* Ex. E.

the PTO issued the certificate of correction."); *see also* 35 U.S.C. § 255 ("Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.").[3]

1. *"information associated reading of the indicator" is indefinite*

An applicant must "particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention." 35 U.S.C. § 112, ¶ 2. It is accordingly incumbent on the patentee to "afford clear notice of what is claimed, thereby apprising the public of what is still open to them," rather than forcing the public and the Court to guess the meaning of a broken claim. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 899 (2014); *Haliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1255 (Fed. Cir. 2008) ("[T]he ***patent drafter is in the best position to resolve the ambiguity in the patent claims***" and it must do so "***during prosecution rather than attempting to resolve the ambiguity in litigation***."); *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371-74 (Fed. Cir. 2004) ("[W]e must construe the claims based on the patentee's version of the claim as he himself drafted it."); *see also* MPEP 2173.02 ("During prosecution, ***applicant has an opportunity and a duty to amend ambiguous claims*** to clearly and precisely define the metes and bounds of the claimed invention.") (citing *Johnson & Johnston Assoc. Inc. v. R.E. Serv. Co.*, 285 F.3d 1046, 1052 (Fed. Cir. 2002) (en banc)).

Accordingly, a claim is indefinite if it fails to "inform, with reasonable certainty, those skilled in the art about the scope of the invention" in light of "the specification[,] and the prosecution history." *Nautilus*, 572 U.S. at 901. That is precisely the case for the term "information associated reading of the indicator" as the claims and specification support multiple

[3] The impact of the CoC is properly before this Court, and the Court should address it during claim construction. *See STMicroelectronics, Inc. v. Motorola, Inc.*, 327 F. Supp. 2d 687, 700-01 (E.D. Tex. 2004) (addressing the impact of a certificate of correction during claim construction).

interpretations without providing reasonable certainty as to which is correct.

The broken term at issue cannot be saved by this Court either because it is not a court's "function to rewrite claims to preserve their validity." *Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336, 1349 (Fed. Cir. 2002). To the contrary, the Court may correct a claim "***only if*** (1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims." *Novo Indus. v. Micro Molds Corp.*, 350 F.3d 1348, 1354 (Fed. Cir. 2003) (holding that judicial correction of a claim was inappropriate because there was more than one possible meaning); *see also Contentguard Holdings, Inc. v. Amazon.com, Inc.*, No. 2:13-CV-1112, 2015 WL 8073722, at *36 (E.D. Tex. Dec. 4, 2015) (noting the "nearly impossible standard for judicial correction of a patent"). With multiple potential interpretations for "information associated reading of the indicator," a judicial correction is improper here.

The relevant portion of claim 1, within which the disputed term appears, recites "a controller configured to poll the sensor at a polling interval to read the indicator during a current period of the polling interval and to selectively operate the transceiver to communicate ***information associated reading of the indicator***."[4] Ex. B, Cl. 1. While it is apparent that there is a grammatical error in the disputed term, the claim is subject to multiple different interpretations, and a person of ordinary skill in the art ("POSITA") would have been unable to make an "informed and confident choice among the contending" interpretations. *See Media Rights Techs., Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366, 1371 (Fed. Cir. 2015) (citing *Nautilus*, 572 U.S. at 912 n.8); Ex. A (Neikirk Decl.), ¶ 36. For example, as the CoC arbitrarily did, it could be interpreted as "information associated [with the] reading of the indicator," or the same inserted phrase, "with

[4] All emphases are added unless indicated otherwise.

the," could instead be placed elsewhere to recite "information [with the] associated reading of the indicator." Ex. A, ¶¶ 37-38. Likewise, the claim can be interpreted to reference "[an] information[-]associated reading of the indicator." *Id.*, ¶ 40. The problem is that the claim language, specification, and prosecution history do not provide sufficient guidance as to which of those interpretations is correct, let alone do so with reasonable certainty. *Id.* at ¶¶ 36-45; *see also Nautilus*, 572 U.S. at 901.

For example, claim 1 requires "a transceiver operable to wirelessly ***communicate packets of information*** over a wireless network," which might suggest that the disputed claim term should be interpreted such that a claimed controller "selectively operate[s] the transceiver to ***communicate information*** associated [with the] reading of the indicator." Ex. B, Cl. 1; Ex. A, ¶ 37. In another element, however, claim 1 also recites that "the transceiver is configured to ***transmit a most recent reading*** of the indicator," which might suggest that the disputed term should be interpreted such that claimed controller should communicate "***information*** [***with*** the] associated ***reading*** of the indicator" or "[an] information[-]associated ***reading*** of the indicator." Ex. B, Cl. 1; Ex. A, ¶ 38. The claims provide no guidance as to which of these different interpretations is correct. *See generally* Ex. B; *see also* Ex. A, ¶¶ 37-44.

Claims 2-21, which depend from claim 1, do not clarify the term "information associated reading of the indicator" or allow an "informed and confident choice among the contending" interpretations. *See Media Rights*, 800 F.3d at 1371; Ex. B., Cls. 2-21; *see also* Ex. A, ¶¶ 44-45.[5] None of these dependent claims recite any further limitations that would have allowed a POSITA to make an informed and confident choice as to whether the controller in claim 1 must operate the

[5] Claims 2, 9-13, 16-17, and 19-21 are not asserted in this case. To the extent Ollnova later asserts any of those claims, Emerson reserves its right to address those claims.

transceiver to communicate the claimed "information," "reading," or both. *See* Cls. 2-21; Ex. A, ¶ 44. Indeed, claim 21—the only claim referring to the "information associated reading of the indicator"—merely recites that the controller must be configured to operate the transceiver to communicate whatever is required by this term "during the current period of the transmission interval"—which can be done under any of the possible interpretations. Ex. A, ¶ 44.[6] The dependent claims therefore would not have helped a POSITA make an informed and confident choice among these interpretations.

Likewise, the specification allows all three interpretations without rendering one reasonably certain. For example, in one embodiment, the specification discloses communicating "information associated [with the] reading of the indicator," supporting one of the potential interpretations: "[t]he controller also controls the transceiver to selectively communicate ***information associated with*** the signal from the sensor." Ex. B, 2:16-18; Ex. A, ¶ 37. In another embodiment, however, the specification discloses communicating "information [with the] associated reading of the indicator," *i.e.*, communicating both the "reading" itself and additional "information," such as the date or time of the "reading": "[t]he transmission of information is suspended during a transmission period 436 until the counter is increment [sic] to the send limit (i.e., 5). When the counter reaches the send limit, ***each of the five stored indicators V_i are communicated***. The information ***may include timing information or date*** associated with the indicator V_i and the counter information." Ex. B. 11:62-12:3; Ex. A, ¶ 38. This disclosure also supports transmission of the "reading," which may be associated with information, but without

[6] Claim 21 was also amended in the same CoC to recite "information associated [with the] reading of the indicator." *See* Ex. E.

necessarily transmitting the associated information (*i.e.*, "[an] information[-]associated reading of the indicator"). *Id.*

Thus, for example, a controller configured to operate a transceiver to communicate "information" associated with a "reading," such as the location of a thermostat, would meet the limitation under Ollnova's proposed alteration to the term, but would not meet the claim according to the alternate interpretation of the term requiring communicating "information [with the] associated reading of the indicator." Instead, under that latter interpretation, such a controller would need to be configured to operate a transceiver to communicate both the thermostat's reading and location to infringe/invalidate the claim.

Without any discussion of this term in the prosecution history, the disputed term, therefore, "might mean several different things and no informed and confident choice is available among the contending definitions." *See Media Rights Techs.*, 800 F.3d at 1371; Ex. A, ¶¶ 43, 45. It is indefinite.

And, given multiple potential and reasonable interpretations, the term cannot be corrected by this Court. *Novo Indus.*, 350 F.3d at 1358 (reversing the district court's decision correcting the claim-at-issue and holding the claim invalid); *see also STMicroelectronics*, 327 F. Supp. 2d at 702-03 ("District courts should not adopt one correction over another simply because one more closely matches the specification.").

2. *The CoC is invalid and thus cannot save the term "information associated reading of the indicator"*

The CoC revising the broken language in claims 1 and 21 is also invalid, and cannot be used to "correct" this indefinite claim term. On February 16, 2022, Ollnova filed a request for a certificate of correction under 37 C.F.R. § 1.323 seeking to revise the disputed term as

"information associated [with the] reading of the indicator." Exs. D & E.[7] In requesting the correction, the patentee simply provided boilerplate language that the error in the disputed term, without its improper correction, "is typographical in nature and is of minor character, and does not constitute new matter or require reexamination. [And t]he requested change does not materially affect the scope or meaning of the patent." Ex. D. at 1-2. Each of those representations is false. The patentee's correction here went beyond those that would be clerical or typographical in nature and warrants invalidating the CoC. *Superior Fireplace Co. v. Majestic Prods. Co.*, 270 F.3d 1358, 1375 (Fed. Cir. 2001) (finding the certificate of correction invalid and noting that a mistake is of typographical or clerical nature if the requested correction is "apparent from the specification, drawings, and prosecution history.").

Where, as here, a certificate of correction broadens the scope of the term, such as by correcting an indefinite term, the certificate is valid ***only if*** "it corrects a 'clerical or typographical' error that would have been clearly evident to one of skill in the art reading the intrinsic evidence." *Central Admixture Pharm. Services, Inc. v. Advanced Cardiac Sols., P.C.*, 482 F.3d 1347, 1353 (Fed. Cir. 2007) (finding the certificate of correction at issue invalid); *see also Advanced Tech. Incubator, Inc. v. Sharp Corp.*, 5:09-CV-135, 2010 WL 1170227, at *2 (E.D. Tex. Feb. 24, 2010) (finding the certificate of correction at issue invalid because "an indefinite claim effectively has no scope because it cannot be infringed" and "[t]he [certificate of correction] therefore broadened the scope of Claim 26 from no scope to some scope.").

As discussed in detail above (*see supra* Section III.B.1), the disputed term "information

[7] 37 C.F.R. § 1.323 requires that the conditions specified in 35 U.S.C. § 255 be satisfied before the Office issues a certificate of correction. 35 U.S.C. § 255, in turn, requires that the mistake be "of a clerical or typographical nature, or of minor character, which was not the fault of the Patent and Trademark Office, appears in a patent" and that "a showing has been made that such mistake occurred in good faith" for a certificate of correction to issue.

associated reading of the indicator" is indefinite and had no scope before the CoC—accordingly, the CoC "broadened the scope of [claim 1] from no scope to some scope." *Advanced Tech.*, 2010 WL 1170227, at *2. In fact, among the potential and reasonable interpretations, the patentee chose the broader interpretation (*i.e.*, "information associated [with the] reading of the indicator") where only "information" associated with the "reading" needs to be communicated, rather than a narrower interpretation (*e.g.*, "information [with the] associated reading of the indicator") where ***both*** the "information" and a "reading" need to be communicated. Ex. A, ¶ 39; *see also supra* Section II.B.1.

To be clear, not every certificate of correction fixing an indefinite term, and thereby broadening the scope of the claim, is invalid. Such a certificate, however, is invalid when "the presence of the clerical or typographical error, or how to correct that error, is not clearly evident to one of skill in the art." *Central Admixture Pharm.*, 482 F.3d at 1353. That is precisely the case with the CoC here.[8] As the Federal Circuit noted, for a category of mistakes "where it is apparent that a mistake has been made, but it is unclear what the mistake is," "it is not evident to the reader of the public record how to appropriately correct [the] mistake." *Superior Fireplace*, 270 F.3d at 1370. That is precisely the case here, where a POSITA is left to guess which of multiple potential and reasonable corrections was correct. *See supra* Section III.B.2 (discussing multiple ways to read the disputed term prior to the CoC); *see also* Ex. A, ¶¶ 37-45. Any such mistakes "cannot be repaired via a certificate of correction" because "the effect would be to broaden the claim." *Central Admixture*, 482 F.3d at 1354. The CoC is therefore invalid and cannot cure the

[8] For example, in contrast, the other certificate of correction for the '887 patent changes "detecting a ***chance*** in the sensed condition" to "detecting a ***change*** in the sensed condition." Ex. F. While as written, the initial claim may have been indefinite, Emerson does not dispute that this other certificate of correction is valid as the correction is evident to one skilled in the art.

indefiniteness of the term "information associated reading of the indicator."

III. U.S. PATENT NO. 8,224,282 (THE '282 PATENT)

A. Overview

The '282 patent (Ex. C) is directed to an automation component for wireless communication with a building automation system. Ex. C, Abstract. The patent explains that building automation systems were known in the art to contain application-specific or process-specific controllers, sensors, actuators, or other devices to form a network. *Id.*, 1:20-27. The patent, however, contends that "[w]ireless devices for use within the building automation system must operate for an extended period on a limited battery charge," *id.*, 2:14-16, and purports to address the power-saving problem by optimizing radio and/or data communications to extend battery life, *id.*, 2:26-28. In particular, the '282 patent recites a processor that operates an automation component to communicate a portion of the stored sensor data corresponding to the received sensor control information. *E.g.*, *id.*, Cl. 1.

B. Agreed Constructions

Term	Agreed-Upon Construction
"a multi-sensor package" (claims 1, 7, 13, 20)	"a single packaged sensor device, not a group of individual sensors"

C. Disputed Terms for Construction

1. *"identification flag for each identified sensor value" (claims 4, 10, 16)*

Emerson's Construction	Ollnova's Construction
Indefinite	No construction necessary or plain-and-ordinary meaning

Dependent claims 4, 10 and 16 recite an "identification flag for each identified sensor value" without an ascertainable antecedent basis for "each identified sensor value" either in these dependent claims themselves or in the independent claims 1, 7 and 13 from which they depend.

See Ex. C, Cls. 1, 4, 7, 10, 13, 16. The term is indefinite. *See Halliburton Energy Serv's, Inc. v. M-I LLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008) ("[A] claim could be indefinite if a term does not have proper antecedent basis where such basis is not otherwise present by implication or the meaning is not reasonably ascertainable.") (overruled on other grounds); *Cellular Comm'cns Equip. LLC v. AT&T, Inc.*, No. 2:15-CV-576, 2016 WL 7364266, *11 (E.D. Tex. Dec. 19, 2016) ("[T]he disputed term lacks explicit antecedent basis, and Plaintiff has not shown any implicit antecedent basis. The disputed term is therefore indefinite.").

Despite reciting "each identified sensor value," claims 4, 10 and 16 do not otherwise recite any "sensor value." Ex. C, Cls. 4, 10, 16. Claims 1, 7 and 13, upon which claims 4, 10 and 16 depend, recite multiple potential antecedents for the "identified sensor value." For example, claim 1 provides at least four potential antecedent bases of different "sensor data" that could be the antecedent for the recited "identified sensor value," as illustrated below:

> 1. An automation component configured for wireless communication within a building automation system, the automation component comprising:
>
> a multi-sensor package configured to detect a plurality of variables and generate ***sensor data*** for each detected variable;
>
> a wireless communications component;
>
> a processor in communication with the wireless communications component and the sensor package;
>
> a memory in communication with the processor, the memory configured to ***store sensor data provided by the sensor package*** and computer readable instructions which are executable by the processor; wherein the computer readable instructions are programmed to:
>
> > receive sensor control information related to ***sensor data in control at a second automation component*** in communication with the building automation system; and
> >
> > ***communicate a portion of the stored sensor data*** corresponding to the received sensor control information to the second automation component.

Id., Cl. 1; *see also* Ex. A, ¶ 49. Claims 7 and 13 likewise recite at least four potential antecedent bases that could have supplied the claimed "identified sensor value": (1) the "sensor data" detected/generated by the multi-sensor package of the first automation component, (2) the "sensor data" stored in the memory of the first automation component, (3) the "sensor data" in control at a second automation component, and (4) the "sensor data" communicated by the first automation component. *Id.*, Cls. 7, 13; *see also* Ex. A, ¶¶ 50-52. And, none of these claims provides a POSITA with any basis for determining, with reasonable certainty, which possible antecedent basis is correct. Ex. A, ¶¶ 48-54.

Nothing in the specification or the prosecution history provides guidance as to which of the four possible antecedents the disputed term references, let alone with reasonable certainty. Ex. A, ¶ 53. A POSITA can only guess the sensor value to which "each identified sensor value" refers. Ex. A, ¶¶ 48-54. This uncertainty renders the disputed term indefinite. *See Bushnell Hawthorne, LLC v. Cisco Sys., Inc.*, 813 F. App'x 522, 526 (Fed. Cir. 2020) ("With three different IP addresses to choose from, a [POSITA] faced with the 'said different IP address' limitation is left to wonder which of the different IP addresses is 'said' different one."); *Nautilus*, 572 U.S. at 901 (a claim is indefinite if it fails to "inform, with reasonable certainty, [a POSITA] about the scope of the invention" in light of "the specification[,] and the prosecution history.").

2. *"power-down command" (claim 13)*

Emerson's Construction	Ollnova's Construction
"command that turns off a device or returns it to a low-power state"	No construction necessary or plain-and-ordinary meaning

As the Federal Circuit noted in *O2 Micro*, "[a] determination that a claim term 'needs no construction' or has the 'plain and ordinary meaning' may be inadequate when a term has more than one 'ordinary' meaning or when reliance on a term's 'ordinary' meaning does not resolve the

parties' dispute." *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. co., Ltd.*, 521 F.3d 1351, 1361-1362 (Fed. Cir. 2008) ("When the parties raise an actual dispute regarding the scope of the[] claims, the court, not the jury, must resolve that dispute."). That is precisely the case with this term, where Ollnova's proposed construction does not clarify whether its construction encompasses turning off a device, returning it to a low-power state, or both.

Here, both the claim language and the specification indicate that the term should be construed to mean "command that turns off a device or returns it to a low-power state," as Emerson proposes. For example, the claim language recites receiving "a ***wake-up*** command from a second automation component," indicating that the term "a power-down command" should at least encompass putting the device back to sleep or low-power state. *See, e.g.*, Ex. C, Cl. 13. This is further supported by the specification, which discloses that once a "POWER DOWN" command is received, "the automation component may return to a low-power state." *See id.*, 10:25-28. The specification, however, further indicates the term "POWER DOWN" can also refer to "off." Ex. C, 10:25-28 ("At block 806, the exemplary multi-sensor automation component 200 may receive a 'POWER DOWN' or 'OFF' command from another device.").

Accordingly, the disputed term should be construed as a "command that turns off a device or returns it to a low-power state." *See SynQor, Inc. v. Artesyn Techs., Inc.*, 709 F.3d 1365, 1378-79 (Fed. Cir. 2013) ("A claim construction that 'excludes the preferred embodiment is rarely, if ever, correct and would require highly persuasive evidentiary support.'").

3. *"the received status information" (claim 17)*

Emerson's Construction	Ollnova's Construction
Indefinite	No construction necessary or plain-and-ordinary meaning

As noted in Section III.C.1, "a claim could be indefinite if a term does not have proper

antecedent basis where such basis is not otherwise present by implication or the meaning is not reasonably ascertainable." *Halliburton Energy*, 514 F.3d at 1249. Here, claim 17 of the '282 patent recites "***the*** received status information," but there is no ascertainable antecedent basis for that term. That leaves a POSITA unable to discern the meaning of this term with reasonable certainty, and the term is therefore indefinite. *See Nautilus*, 572 U.S. at 901.

Specifically, despite reciting the term "the received status information," claim 17 does not recite receiving anything, and claim 13, upon which claim 17 depends, recites receiving only two different commands—"a wake-up command" and "a power-down command"—neither of which is "status information." *See* Ex. C, Cls. 13 & 17. The specification does not resolve the ambiguity either. Ex. A, ¶¶ 60-61. In one embodiment, the specification discloses that "status information" may "relate[] to sensor data in control at a second automation component." Ex. C, 2:38-40. In another embodiment, however, "status information provides the complete status for each of the control routines or algorithm running in connection with each of the sensor elements in the sensor package." *Id.*, 9:57-60. Without any other reference to "received status information" in claims 13 and 17, let alone any indication as to what status information is received, a POSITA is left to guess what status information is being referenced. Ex. A, ¶¶ 56-61.

Where, as here, a dependent claim recites a term that finds ***no disclosure***, let alone a proper antecedent basis, in the independent claim upon which the claim depends, a POSITA would not have known with reasonable certainty what the term references. Ex. A, ¶ 61. The term is therefore indefinite. *See Digital Retail Apps, Inc. v. H-E-B, LP*, No. 6:19-CV-00167, 2020 WL 376664, at *10, n.7 (E.D. Tex. Jan. 23, 2020) (finding dependent claims invalid for reciting the term "the purchase information" when there is no disclosure of "purchase information" in the independent claim upon which the dependent claims depend); *see also Nautilus*, 572 U.S. at 901.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record are being served with a copy of the foregoing document via the Court's CM/ECF system on October 27, 2022.

/s/ J. Stephen Ravel
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