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

OLLNOVA TECHNOLOGIES LTD., Plaintiff, v. EMERSON ELECTRIC CO. and VERDANT ENVIRIONMENTAL TECHNOLOGIES, INC., Defendants.	Case No. 6:22-cv-00358-ADA **JURY TRIAL DEMANDED**

PLAINTIFF OLLNOVA TECHNOLOGIES LTD.'S
RESPONSIVE CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

III. LEGAL STANDARD 2

IV. AGREED TERMS 3

V. DISPUTED TERMS 3

A. The '887 Patent 3

i. "information associated reading of the indicator", '887 Patent, Claim 1 3

a) The term is not indefinite and the Court should correct the typographical error ... 3

b) The Certificate of Correction is valid 7

B. The '282 Patent 8

i. "identification flag for each identified sensor value", '282 Patent, Claims 4, 10, 16 ... 8

ii. "power-down command," '282 Patent, Claim 13 10

C. "the received status information", '282 Patent, Claim 17 12

VI. CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Adv. Tech. Incubator, Inc. v. Sharp Corp.,
No. 5:09-CV-135, 2010 WL 1170227 (E.D. Tex. Feb. 24, 2010).....8

Aventis Pharm. Inc. v. Amino Chems. Ltd.,
715 F.3d 1363 (Fed. Cir. 2013).....2

CBT Flint Partners LLC v. ReturnPath, Inc.,
654 F.3d 1353 (Fed. Cir. 2011).....6

Cent. Admixture Pharmacy Servs., Inc. v. Adv. Cardiac Sols., P.C.,
482 F.3d 1347 (Fed. Cir. 2007).....7, 8

Hill-Rom Servs., Inc. v. Stryker Corp.,
755 F.3d 1367 (Fed. Cir. 2014).....10, 12

Image Processing Techs., LLC v. Samsung Elecs. Co. Ltd.,
No. 2:16-CV-505, 2017 WL 2672616 (E.D. Tex. Jun. 21, 2017).....10

Interactive Gift Express, Inc. v. CompuServe, Inc.,
256 F.3d 1323 (Fed. Cir. 2001).....2

Liebel-Flarsheim Co. v. Medrad, Inc.,
358 F.3d 898 (Fed. Cir. 2004).....12

Markman v. Westview Instrus., Inc.,
517 U.S. 370 (1996).....2

Media Rights Techs., Inc. v. Capital One Fin. Corp.,
800 F.3d 1366 (Fed. Cir. 2015).....5

Mobile Telcoms. Techs., LLC v. LG Elecs. Mobilecomm USA, Inc.,
No. 2:13-CV-947-JRG-RSP, 2015 WL 2250418 (E.D. Tex. May 12, 2015).....6

Nautilus, Inc. v. Biosig Instrus., Inc.,
572 U.S. 898 (2014).....7

Pavo Sols. LLC v. Kingston Tech. Co.,
35 F. 4th 1367 (Fed. Cir. 2022).....4, 5

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005).....3

Power-One, Inc. v. Artesyn Techs., Inc.,
599 F.3d 1343 (Fed. Cir. 2010) 2

R2 Sols. LLC v. Deezer S.A.,
No. 4:21-CV-90, 2022 WL 36240 (E.D. Tex. Jan. 4, 2022) 6

SourceProse Corp. v. AT & T Mobility, LLC,
No. A-11-CV-117-LY, 2014 WL 2879694 (W.D. Tex. June 24, 2014) 10

Superior Fireplace Co. v. Majestic Prod. Co.,
270 F.3d 1358 (Fed. Cir. 2001) 7

I. INTRODUCTION

Pursuant to the Court's Scheduling Order (Dkt. No. 28), Plaintiff Ollnova Technologies Ltd. ("Ollnova") submits this opening claim construction brief concerning U.S. Patent Nos. 7,746,887 ("the '887 Patent") and 8,224,282 ("the '282 Patent").

II. BACKGROUND

The Asserted Patents are directed to improvements in communications among HVAC, security services, fire systems, and other related building automation system components. *See* '282 Patent at 1:15-23; '887 Patent at 1:6-19. The components for these systems "include controllers, sensors, switches, alarms, actuators, chillers, fans, humidifiers, and/or air handling units configured to automate process control for heating, ventilation, air conditioning (HVAC), environmental air quality, safety and security, fire, hazard prevention, or other processes for a building or facility." '887 Patent at 1:11-17. "The components may detect events, sense conditions, respond to detected events or changes in conditions, and/or control operation of other devices." *Id.* at 1:20-22.

Wireless devices "may be implemented within the control scheme of a building automation system without incurring additional wiring or installation costs." '282 Patent at 1:63-66. "The devices may communicate information over a wired network and/or by wirelessly broadcasting information between and among the components." '887 Patent at 1:17-19. The Asserted Patents are directed to improvements to problems presented by wireless communications within a building automation system, including but not limited to maximizing power conservation, improving bandwidth efficiency, reducing network traffic, and avoiding network interference. *See, e.g.*, '282 Patent at 2:14-28, 9:30-36, 10:5-10; '887 Patent at 1:47-62. Specifically, the Asserted Patents are directed to the following inventions:

- **'282 Patent:** The '282 Patent claims are directed to an automation component comprising a multi-sensor package and wireless communications component, and provides for the exchange of certain information—such as sensor control information, status data, and "wake-up"/"power-down" commands—among and between wireless devices and automation components operating within a building automation system.

- **'887 Patent:** The '887 Patent claims are directed to an improved wireless automation device comprising a controller configured to poll a sensor and selectively operate a transceiver to communicate information. Specifically, the wireless automation device is configured to transmit a most recent reading of the indicator for a sensed condition in response to detecting a change in the condition outside a predetermined range, and to suspend transmission of the most recent reading in response to detecting a change within the predetermined range.

III. LEGAL STANDARD

Claim construction is a question of law to be determined by the Court. *Markman v. Westview Instrus., Inc.*, 517 U.S. 370, 390 (1996). When construing claims, "[t]here is a heavy presumption that claim terms are to be given their ordinary and customary meaning." *Aventis Pharm. Inc. v. Amino Chems. Ltd.*, 715 F.3d 1363, 1373 (Fed. Cir. 2013).[1] Intrinsic evidence is the primary resource for claim construction. *See Power-One, Inc. v. Artesyn Techs., Inc.*, 599 F.3d 1343, 1348 (Fed. Cir. 2010). "It is well-settled that, in interpreting an asserted claim, the court should look first to the intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if in evidence, the prosecution history." *Interactive Gift Express, Inc. v. CompuServe, Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) (citation omitted). District courts may also consider "extrinsic evidence," such as dictionaries or technical treatises, to help understand

[1] All emphasis added unless stated otherwise.

the underlying technology and the manner in which one skilled in the art might use claim terms. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005). Ultimately, however, "extrinsic evidence" is "less significant than the intrinsic record in determining the legally operative meaning of claim language." *Id*. at 1317.

IV. AGREED TERMS

After Emerson filed its Opening Claim Construction Brief, the parties agreed to the following construction for Claim 1 of the '887 Patent.

Term	Agreed Construction
"chance"	"change"

V. DISPUTED TERMS

A. The '887 Patent

i. "information associated reading of the indicator", '887 Patent, Claim 1

Ollnova's Proposed Construction	Emerson's Proposed Construction
information associated <u>with the</u> reading of the indicator	Indefinite

a) The term is not indefinite and the Court should correct the typographical error

On March 22, 2022, before the complaint in this action was filed, the USPTO issued a certificate of correction ("CoC") to correct the typographical error that omitted the words "with the" from this claim term. Emerson asks the Court to overrule the USPTO and declare the CoC invalid. Dkt. No. 36 ("Br.") at 2-10. But the CoC was properly granted by the USPTO. Because the issue here involves a minor typographical error, the Court should correct the error as part of claim construction.

"A district court may correct obvious minor typographical and clerical errors in patents." *Pavo Sols. LLC v. Kingston Tech. Co.*, 35 F. 4th 1367, 1373 (Fed. Cir. 2022) (citation omitted). "Correction is appropriate 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." *Id*. (citation omitted).

The Court should correct the typographical error here because it is evident from the face of the patent, not subject to reasonable debate based on consideration of the claim language and the specification, and the prosecution history does not suggest a different interpretation. First, the typographical error is evident from the face of the patent, as Emerson admits that "it is apparent that there is a grammatical error in the disputed term." Br. at 4. Second, the correction is not subject to reasonable debate because the related discussion in the specification makes clear that the words "with the" were inadvertently omitted: "The controller also controls the transceiver to selectively communicate information associated **with the** signal from the sensor." '887 Patent at 2:16-18. This description in the specification is directly related to the claim limitation at issue:

> 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;

A POSITA would understand that this description in the specification is directly related to the claim limitation and that it confirms that the omission of the words "with the" was a typographical error. Ex. 1, Iglesia Decl. ¶¶ 24-26. Indeed, Emerson recognizes that this portion of the specification supports Ollnova's proposed correction to the claim. Br. at 6 (quoting '887 Patent at 2:16-18). Finally, as Emerson admits, the prosecution history does not suggest a different interpretation. Br. at 7 ("[w]ithout any discussion of this term in the prosecution history").

Emerson is wrong to suggest that the correction is subject to reasonable debate in light of the specification. Br. at 5-7.[2] Despite Emerson's admission that the specification supports Ollnova's proposed correction, Emerson argues two alternative interpretations of the claim language are possible. But Emerson's purported alternatives are not supported by the specification and would not result in any meaningful difference (*i.e.*, narrowing) of claim scope. Emerson's first alternative suggests that the term could be "interpreted such that claimed controller should communicate 'information [with the] associated reading of the indicator.'" Br. at 5. But no corresponding language can be found anywhere in the specification to support Emerson's supposed interpretation. *See Pavo*, 35 F. 4th at 1376 ("Any correction of a claim has to be consistent with the invention described in the specification and drawings of the original patent.").

Moreover, Emerson fails to establish that its alternative interpretation would result in any meaningful difference in claim scope—namely, that its interpretation (communicate "information [with the] associated reading of the indicator") results in a different claim scope than the CoC's correction (communicate "information associated <u>with the</u> reading of the indicator"). Emerson's hypothetical example that merely communicating "the location of a thermostat" (Br. at 7) would meet Ollnova's proposed construction is incorrect because the claim separately requires that the "transceiver is configured to transmit a most recent reading of the indicator." In other words, the transceiver must transmit the thermostat's reading even under Ollnova's proposed construction—meaning that merely transmitting the "location of a thermostat" is insufficient to meet the requisite claim limitations. And, in any event, Emerson also fails to explain how the "location of a

[2] Emerson's citation of *Media Rights Techs., Inc. v. Capital One Fin. Corp.*, 800 F.3d 1366, 1371 (Fed. Cir. 2015) is inapposite because that case involved analysis of a means-plus-function term. *Id*. at 1375 ("Here, the district court properly determined that 'compliance mechanism' is a means-plus-function term, and that the specification fails to adequately disclose the structure to perform all four of its functions.").

thermostat" is not covered by its supposed alternative requiring communication of "information [with the] associated reading of the indicator" because the "location of a thermostat" can be "information" that is communicated "with the associated reading of the indicator." As such, Emerson's argument fails because the scope of the claim is the same under both constructions. Iglesia Decl. ¶¶ 27-29; *see also CBT Flint Partners LLC v. ReturnPath, Inc.*, 654 F.3d 1353, 1358-59 (Fed. Cir. 2011) (holding that district court had authority to correct patent where three plausible corrections existed but all three resulted in the same claim scope); *Pavo*, 35 F. 4th at 1376-77 (same).

Emerson's second purported alternative of "[an] information[-]associated reading of the indicator" is also not supported by any corresponding language in the specification. Br. at 7. Emerson also fails to show this second alternative would result in a narrower claim scope. Iglesia Decl. ¶ 30.

Importantly, Emerson cannot prove by clear and convincing evidence that the claim without the words "with the" is indefinite. There is no requirement for the Court to correct or redraft the claim in order to reject Emerson's indefiniteness argument. *See, e.g.*, *R2 Sols. LLC v. Deezer S.A.*, No. 4:21-CV-90, 2022 WL 36240, at *20 (E.D. Tex. Jan. 4, 2022) (rejecting an indefiniteness argument and holding that "the unavailability of judicial correction does not foreclose claim construction as to this disputed term"); *Mobile Telcoms. Techs., LLC v. LG Elecs. Mobilecomm USA, Inc.*, No. 2:13-CV-947-JRG-RSP, 2015 WL 2250418, at *12-13 (E.D. Tex. May 12, 2015) (rejecting an indefiniteness argument and holding that no construction was necessary despite rejecting Plaintiff's request for judicial correction). Accordingly, even if the Court were to decide judicial correction was inappropriate, Emerson's indefiniteness argument should be rejected. Even without the correction, a POSITA would understand the scope of the

claim with reasonable certainty in light of the corresponding description in the specification. Iglesia Decl. ¶ 31; *Nautilus, Inc. v. Biosig Instrus., Inc.*, 572 U.S. 898, 908 (2014) ("[I]n assessing definiteness, claims are to be read in light of the patent's specification and prosecution history."). In light of the specification's teachings ('887 Patent at 2:16-18), a POSITA would understand that the omission of the words "with the" was a typographical error and would not have any uncertainty about the scope of the claim. Iglesia Decl. ¶ 31. Thus, Emerson cannot meet its burden to prove that the claim is indefinite.

b) The Certificate of Correction is valid

Emerson cannot meet its burden to prove by clear and convincing evidence that the CoC is invalid. *See Superior Fireplace Co. v. Majestic Prod. Co.*, 270 F.3d 1358, 1367 (Fed. Cir. 2001) ("[T]he clear and convincing standard applicable under our precedent to other validity challenges should also apply to the present challenge to the validity of the certificate of correction."). "Invalidating a certificate of correction for impermissible broadening ... requires proof of two elements: (1) the corrected claims are broader than the original claims; and (2) 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." *Cent. Admixture Pharmacy Servs., Inc. v. Adv. Cardiac Sols., P.C.*, 482 F.3d 1347, 1353 (Fed. Cir. 2007). Emerson's arguments fail on both points.

First, Emerson fails to prove that the corrected claim is broader than the original claim. As explained above, Emerson is wrong that the corrected claim does not require "both the 'information' and a 'reading' need to be communicated." Br. at 9. The last limitation in the claim plainly requires that the "transceiver is configured to transmit a most recent <u>reading</u> of the indicator." In other words, the transceiver must transmit the thermostat's reading even under the

CoC.[3] Second, Emerson fails to prove that the typographical error is not clearly evident to one of skill in the art. This second element raises a question of fact. *See Cent. Admixture Pharmacy Servs.*, 482 F.3d at 1354 ("The second element, whether the error and its correction would both be clearly evident to one of skill in the art, has been treated as a factual question."). In light of the specification ('887 Patent at 2:16-18), a POSITA would understand that the omission of the words "with the" was a typographical error that is clearly evident to one of skill in the art. Iglesia Decl. ¶ 31. A POSITA would understand that there is only one reasonable correction to the claim. *Id.* At a minimum, the genuine issue of material fact here requires resolution by a jury. Accordingly, Emerson's request for the Court to declare the CoC invalid should be denied.

B. The '282 Patent

i. "identification flag for each identified sensor value", '282 Patent, Claims 4, 10, 16

Ollnova's Proposed Construction	Emerson's Proposed Construction
No construction necessary[4] Plain and ordinary meaning Preamble: "The automation component of claim [3] / [9] / [15]"	Indefinite

Dependent claims 4, 10, and 16 recite their dependency on their respective independent claims (1, 7, and 13). However, the lack of antecedent basis for the term "each identified sensor value" confirms that each claim was intended to refer back to the preceding dependent claim 3, 9,

[3] Emerson's citation of *Adv. Tech. Incubator, Inc. v. Sharp Corp.*, No. 5:09-CV-135, 2010 WL 1170227, at *2 (E.D. Tex. Feb. 24, 2010) is inapposite because in that case the patentee conceded that the scope of the original claim was "indeterminable." *Id.* In contrast, claim 1 here is not indefinite without the CoC because the scope of the claim is reasonably certain to a POSITA in light of the description in the specification.

[4] For terms where Ollnova has indicated that no construction is necessary, Ollnova contends that either no construction is necessary or the term should be construed according to its plain and ordinary meaning.

and 15. The Court should correct the typographical error here because it is evident from the face of the patent, not subject to reasonable debate based on consideration of the claim language and the specification, and the prosecution history does not suggest a different interpretation. *See Pavo*, 35 F. 4th at 1373.

Specifically, dependent claims 3 and 4 recite (including Ollnova's proposed correction):

> 3. The automation component of claim 1, wherein the computer readable instructions are further programmed to:
> **identify sensor values** within the sensor data that exceed a corresponding change-of-value threshold.
> 4. The automation component of **claim ~~1~~ [3]**, wherein the computer readable instructions are further programmed to:
> set an identification flag for **each identified sensor value**.

As Emerson explains, there is no antecedent basis for the term "each identified sensor value" in independent claim 1. Br. at 10-11. Rather, the antecedent basis is clearly found in claim 3 (as shown above). As such, the Court should correct the claims to refer back to the appropriate dependent claim (*i.e.*, change "claim 1" to "claim 3" as shown in claim 4 above).

The error in the claim dependency is evident from the face of the patent based on the lack of antecedent basis. Indeed, Emerson admits as much by explaining that there is no antecedent basis in the independent claims. Br. at 10-11. Moreover, the correction is not subject to reasonable debate because there is no other antecedent basis for the term "each identified sensor value" (other than in dependent claim 3). The term "sensor value" does not appear in any of the other dependent claims. The proper antecedent basis is further confirmed by the relevant discussion in the specification:

> At block 604, the sensor data identified during the sensor and memory scan may be compared to a **COV [change-of-value] threshold** value corresponding to each individual sensor and/or sensor value. **Sensor data found to exceed the COV [change-of-value] threshold may be flagged** for later transmission.

’282 Patent at 9:4-8. The specification explains that identified sensor data that is found to exceed the threshold may be flagged. A POSITA would understand that this discussion is directly tied to dependent claims 3 and 4, and that it confirms claim 4 was intended to depend on claim 3. Iglesia Decl. ¶¶ 35-37.

Finally, nothing in the prosecution history suggests a different interpretation here. *Id.* ¶ 38. The prosecution history merely confirms that this was a typographical error introduced in the original claim set. Thus, it is proper for the Court to correct the typographical error in claims 4, 10, and 16. *See, e.g.*, *Image Processing Techs., LLC v. Samsung Elecs. Co. Ltd.*, No. 2:16-CV-505, 2017 WL 2672616, at *31 (E.D. Tex. Jun. 21, 2017) (“A finding by this Court that claims 26 and 27 should have recited their dependency on claim 25 instead of claim 24, similar to claims 4-6, does not require guesswork and is not a substantive correction to the claims.”); *SourceProse Corp. v. AT & T Mobility, LLC*, No. A-11-CV-117-LY, 2014 WL 2879694, at *13 (W.D. Tex. June 24, 2014) (“The court believes that a person skilled in the art would almost certainly have read the patent claims in context of the entire patent and realized that Claim 12 was intended to be dependent upon Claim 11 of the ’604 patent.”).

ii. “power-down command,” ’282 Patent, Claim 13

Ollnova’s Proposed Construction	Emerson’s Proposed Construction
No construction necessary Plain and ordinary meaning	“command that turns off a device or returns it to a low-power state”

Emerson’s construction improperly seeks to limit the term “power-down command” to the exemplary embodiments of the ’282 Patent. But it is axiomatic that the Court should not import limitations from the preferred embodiments in the claims. *See Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014) (“While we read claims in view of the specification, of which they are a part, we do not read limitations from the embodiments in the specification into

the claims."). The Federal Circuit has explained that "[w]e depart from the plain and ordinary meaning of claim terms based on the specification in only two instances: lexicography and disavowal." *Id.* at 1371. And, here, Emerson cannot identify any lexicography or disclaimer that warrants a departure from the plain and ordinary meaning of the term "power-down command." The Court should reject Emerson's construction.

The parties do not dispute that the '282 Patent teaches that upon receiving a "power down" command, "the automation component 200 may return to a low-power state." '282 Patent at 10:25-29. The parties also do not dispute that the '282 Patent discusses a "power down" command in conjunction with an "off" command, which suggests that a "power down command" may refer to "off." *Id.* ("At block 806, the exemplary multi-sensor automation component 200 may receive a 'POWER DOWN' or 'OFF' command from another device."). However, contrary to Emerson's construction, the fact that the '282 Patent contemplates these two possible functional states in connection with the "power-down command" does not mean that the term must be limited to only these two examples. Indeed, the '282 Patent expressly contemplate that the claims are not limited to the exemplary embodiments:

> It should be understood that various changes and modifications to the presently preferred embodiments described herein will be apparent to those skilled in the art. For example, the elements of these configurations could be arranged and interchanged in any known manner depending upon the system requirements, performance requirements, and other desired capabilities. Well understood changes and modifications can be made based on the teachings and disclosure provided by the present invention and without diminishing from the intended advantages disclosed herein. It is therefore intended that such changes and modifications be covered by the appended claims.

'282 Patent at 10:30-40.

The Federal Circuit has "expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that

embodiment." *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004); *see also Hill-Rom*, 755 F.3d at 1371 ("While we read claims in view of the specification, of which they are a part, we do not read limitations from the embodiments in the specification into the claims."). While Emerson's construction embraces two preferred embodiments, it fails to identify any lexicography or disclaimer that supports limiting the plain and ordinary meaning of the term "power-down command" to the '282 Patent's exemplary embodiments. As such, Emerson's proposed construction should be rejected.

C. "the received status information", '282 Patent, Claim 17

Ollnova's Proposed Construction	Emerson's Proposed Construction
No construction necessary Plain and ordinary meaning	Indefinite

Ollnova is no longer asserting Claim 17 of the '282 Patent. Accordingly, this term is not at issue for construction.

VI. CONCLUSION

For the forgoing reasons, Ollnova respectfully requests that the Court adopt its proposed construction for each of the disputed claim terms.

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Respectfully submitted,

By: */s/ Brett E. Cooper*

Brett E. Cooper (NY SBN 4011011)
bcooper@bc-lawgroup.com
Seth Hasenour (TX SBN 24059910)
shasenour@bc-lawgroup.com
Drew B. Hollander (NY SBN 5378096)
dhollander@bc-lawgroup.com

BC LAW GROUP, P.C.
200 Madison Avenue, 24th Floor
New York, NY 10016
Tel.: (212) 951-0100
Fax: (646) 293-2201

Attorneys for Plaintiff Ollnova Technologies Limited

CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on November 17, 2022 with a copy of this document via the Court's ECF system.

/s/ Drew Hollander
Drew Hollander