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-ADA **JURY TRIAL DEMANDED**

DEFENDANTS' REPLY CLAIM CONSTRUCTION BRIEF

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Pursuant to the Court's Scheduling Order (D.I. 28), Defendants Emerson Electric Co. and Verdant Environmental Technologies Inc. (collectively, "Emerson") hereby present their Reply Claim Construction brief in support of their Opening Claim Construction Brief ("Opening," D.I. 36), and in response to Plaintiff Ollnova Technologies Ltd.'s ("Ollnova") Responsive Claim Construction Brief ("Response," D.I. 41).

I. DISPUTED TERM FOR U.S. PATENT NO. 7,746,887 (THE '887 PATENT)

A. "information associated reading of the indicator" (claim 1)

Emerson's Construction	Ollnova's Construction
Indefinite	information associated with the reading of the indicator

1. The Disputed Term Is Indefinite and Cannot Be Corrected

Ollnova and its expert agree that this term in the claim as originally issued contains an error, and that the prosecution history does not suggest a different interpretation of this term. *See* Response, 3-4; D.I. 41-2 ("Iglesia"), ¶¶ 24, 26. But contrary to Ollnova and its expert, this is not a mere "minor typographical error" that can be corrected. *See Novo Indus. v. Micro Molds Corp.*, 350 F.3d 1348, 1354 (Fed. Cir. 2003) (courts may correct a claim only if the correction "is not subject to reasonable debate" and "the prosecution history does not suggest a different interpretation"); *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") (citation omitted).

Minor typographical errors are "immediately apparent and leave no doubt as to what the mistake is," such as a claim reciting "'frane' instead of 'frame.'" *Superior Fireplace Co. v. Majestic Prod. Co.*, 270 F.3d 1358, 1370 (Fed. Cir. 2001); *see also Cent. Admixture Pharmacy Servs., Inc. v. Advanced Cardiac Sols.*, 482 F.3d 1347, 1354 (Fed. Cir. 2007) (an error that "makes its own correction known to one of skill in the art" can be corrected via certificate of correction,

but an error "not clearly evident to one of skill in the art" cannot). Mistakes where "it is apparent that a mistake has been made, but it is unclear what the mistake is[,]" are not "clerical or typographical" mistakes. *Superior*, 270 F.3d at 1370. The error at issue here is not merely "typographical" because there is a reasonable debate in view of the intrinsic evidence about which of three different interpretations of the term "information associated reading of the indicator" is correct: (1) "information associated [with the] reading of the indicator"—which requires communicating ***information*** associated with the reading; (2) "information [with the] associated reading of the indicator"—which requires communicating both the ***reading and information***; and (3) "[an] information[-]associated reading of the indicator"—which requires communicating an information-associated ***reading***. Opening, 6-7; D.I. 36-1 ("Neikirk"), ¶¶ 36-45.

The specification belies Ollnova's and its expert's bald assertions that the second and third interpretations, which require transmitting the reading of the indicator itself, are not supported. *Contra* Response, 5-6; Iglesia, ¶¶ 27, 30; *see Phillips v. AWH Corp.*, 415 F.3d 1303, 1318 (Fed. Cir. 2005) ("conclusory, unsupported assertions by experts as to the definition of a claim term are not useful to a court" and interpretations that are "clearly at odds with" the specification should be "discount[ed]") (citation omitted). The specification discloses that the controller, which is attached to a sensor, is configured to transmit readings from that sensor, *e.g.*: "each of the five stored indicators V_i [from the sensor] are communicated," and can be transmitted with "timing information or date associated with the indicator V_i and the counter information." D.I. 36-3 ("'887"), 11:62-12:3; Neikirk, ¶ 38; Opening, 6-7. This disclosure plainly supports potential interpretations 2 and 3, in which the reading of the indicator is transmitted. Neither Ollnova nor its expert even attempts to address these disclosures.

Nor is there merit to Ollnova's argument that these second and third interpretations cannot

be correct because their exact phrasing ("information [with the] associated reading of the indicator" and "[an] information[-]associated reading of the indicator") does not appear word-for-word in the specification (Response, 5-6). Contrary to Ollnova's argument, the law is clear that "the exact terms need not be used *in haec verba*" to support the claims. *Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997). Even if there were an "*in haec verba*" test (there is not), the specification passage Ollnova cites also does not use the exact same claim language as the first interpretation—referring to a "signal" instead of a "reading." '887, 2:16-18.

Similarly, Ollnova's assertion that there is no "meaningful difference in claim scope" between the three interpretations (Response, 5-6) ignores that the first requires transmission of only the "information" and not the "reading," while both the second and third require transmitting the "reading" itself. *See* Neikirk, ¶¶ 36-45. Ollnova's citation to a later limitation in claim 1, which recites that the "***transceiver*** is configured" to "transmit a most recent reading of the indicator" in response to a "change in the sensed condition outside a predetermined range," is irrelevant, as the limitation at issue is instead directed to how the "***controller*** [is] configured." *Compare* '887, 14:63-64, *with* 14:53-57. Moreover, this later limitation requires the transceiver to communicate the "most recent reading" at a specific time not recited in the limitation at issue.

Ollnova's cases are likewise inapposite. In *CBT Flint Partners, LLC v. Return Path, Inc.*, all potential corrections resulted in the revised claim having the identical scope. 654 F.3d 1353, 1358-59 (Fed. Cir. 2011). And in *Pavo Solutions LLC v. Kingston Technology Co.*, the claim itself clarified what it meant to recite. 35 F.4th 1367, 1374 (Fed. Cir. 2022). Here, unlike in those cases, each of the potential interpretations results in a different scope, and the intrinsic evidence does not clarify which is correct.

Ollnova's further assertion that there is "no requirement for the Court to correct or redraft

the claim" (Response, 6-7) to save the term at issue lacks merit because it is unclear which interpretation is correct, so the term is indefinite without correction. *See Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014) (claim is indefinite if "no informed and confident choice is available among the contending" interpretations).[1] The cases Ollnova cites did not involve a disputed term subject to multiple reasonable interpretations such that it is indefinite without correction, and instead addressed claim language that could be construed as drafted. *See, e.g.*, *Mobile Telecoms. Techs., LLC v. LG Elecs. Mobilecomm USA, Inc.*, No. 2:13-cv-00947, 2015 WL 2250418, at *12-13 (E.D. Tex. May 12, 2015) (rejecting proposed correction to change dependency, but finding the claim as drafted already provided "antecedent basis for the terms at issue"); *R2 Sols. LLC v. Deezer S.A.*, No. 4:21-CV-90, 2022 WL 36240, at *20 (E.D. Tex. Jan. 4, 2022) (rejecting proposed correction, but finding the claim itself "support[ed] interpreting the disputed term as referring to using the at least one computing device" without correction).

Because a POSITA would not have been able to make an "informed and confident choice … among the contending" interpretations, the term is indefinite. *Interval Licensing*, 766 F.3d at 1371; Neikirk ¶¶ 36-45. And because the correct interpretation is subject to "reasonable debate," the claim cannot satisfy the "nearly impossible standard for judicial correction of a patent." *Contentguard*, 2015 WL 8073722, at *36 (citation omitted); *see also Fargo Elecs. Inc. v. Iris, Ltd. Inc.*, 287 F. App'x 96, 102 (Fed. Cir. 2008) ("[W]e are not persuaded by [Patent Owner's] arguments that all of the reasonable ways to correct the error result in the same claim scope and that the correction is not subject to reasonable debate.").

[1] Ollnova erroneously argues that *Media Rights Technologies, Inc. v. Capital One Financial Corp.* should be ignored (Response, 5 n.2) because it involves a means-plus-function term. 800 F.3d 1366, 1371 (Fed. Cir. 2015). But as noted above, *Interval Licensing*, which does not involve a means-plus-function term, applies the same standard.

2. The Certificate of Correction Was Improperly Granted and Cannot Rescue the Claim

The Certification of Correction ("CoC") cannot save the indefinite term because "(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*, 482 F.3d at 1353 (finding CoC invalid). Ollnova denies that the CoC was broadening, but its arguments again address "[t]he last limitation in the claim," reciting how the "***transceiver*** is configured" as opposed to the disputed term regarding how the "***controller*** [is] configured." Response, 7. As explained above in § I.A.1, the originally-drafted term is indefinite. The CoC is therefore broadening because "an indefinite claim effectively has no scope because it cannot be infringed." *Advanced Tech. Incubator, Inc. v. Sharp Corp.*, No. 5:09-CV-135, 2010 WL 1170227, at *2 (E.D. Tex. Feb. 24, 2010). Moreover, this is not a minor "clerical or typographical" error that can be corrected because it is unclear here what the mistake is, or how to appropriately correct the mistake. *Superior Fireplace*, 270 F.3d at 1370.

Although Ollnova relies on *Central Admixture*, that case undercuts Ollnova's position. Just as in *Central Admixture*, the "undisputed facts" here demonstrate that the "error cannot be repaired via a certificate of correction." 482 F.3d at 1354 (quoting in part *Superior Fireplace*, 270 F.3d at 1370) (reversing district court's grant of summary judgment and finding CoC invalid). For the reasons discussed in § I.A.1, "it is apparent that a mistake has been made, but it is unclear what the mistake is." *Id.* The contents of the intrinsic record are undisputed, and conclusory and flawed expert testimony that fails to address the disclosures in the specification cannot raise a genuine dispute of material fact. *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1310 (Fed. Cir. 2008) (an expert declaration that "does not cite in a persuasive way any supporting references … was not sufficient to raise a genuine issue of material fact"); *MyMail, Ltd. v. Am. Online, Inc.*, 476

F.3d 1372, 1378, n.1 (Fed. Cir. 2007) (Because an expert's opinions "are contradicted by the specification, [the expert's] evidence does not create a genuine issue of material fact."). Indeed, other courts have also addressed the validity of a CoC during claim construction. *E.g., Express Mobile, Inc. v. GoDaddy.com, LLC*, No. 19-1937, 2021 WL 2209868, at *8 (D. Del. June 1, 2021) (addressing validity of a CoC in a claim construction proceeding). And while the issue can also be considered at summary judgment, where—as here—the Court must already decide whether there are multiple potential interpretations as part of claim construction (*see* § I.A.1), the validity of the CoC should be addressed now, as the same question of whether it is "unclear how to address the error" must be decided. *Central Admixture*, 482 F.3d at 1353; *see also Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 989 (Fed. Cir. 1995), *aff'd*, 517 U.S. 370 (1996) ("claim interpretation is a matter of law depending on underlying factual inquiries").

This term is indefinite, and the CoC purporting to correct the term is invalid.

II. DISPUTED TERMS FOR U.S. PATENT NO. 8,224,282 (THE '282 PATENT)

A. "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 Preamble: "The automation component of claim [3] / [9] / [15]"

Ollnova and its expert do not dispute that as written there is no clear antecedent to "each identified sensor value" in dependent claims 4, 10, and 16, or independent claims 1, 7 and 13, from which they depend. Response, 8; Iglesia, ¶ 33. Consequently, dependent claims 4, 10, and 16 as written are indefinite, and the only dispute therefore is whether this Court can correct the error. Again, where, as here, there are multiple potential corrections "subject to reasonable debate," judicial correction is inappropriate. *Novo Indus.*, 350 F.3d at 1354; *see also STMicroelectronics,*

Inc. v. Motorola, Inc., 327 F. Supp. 2d 687, 703-04 (E.D. Tex. 2004) ("The Court may not debate whether [a correction] is a more appropriate correction than [another correction], because both are at least 'reasonable.'").

Contrary to Ollnova and its expert (Response, 9; Iglesia, ¶ 33), Defendants' Opening brief ***did not*** assert that independent claims 1, 7, and 13, from which the claims at issue depend, provide ***no*** antecedent basis for the recited "sensor value" in claims 4, 10 and 16. Rather, Defendants' Opening explained that the independent claims each provide at least ***four*** possible antecedents: (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. Opening, 10-11; Neikirk, ¶¶ 48-54. Neither Ollnova nor its expert addresses these potential antecedent bases.

Instead of narrowing the number of potential antecedent bases, Ollnova alters its proposed construction of "plain and ordinary meaning," identifying yet another potential antecedent basis that requires the dependency of claims 4, 10, and 16 to be changed such that they depend on claims 3, 9, and 15, reciting "identify sensor values within the sensor data." Response, 9-10. Rather than support Ollnova's argument, dependent claims 3, 9, and 15 confirm that, as the plain language of the claims indicates, the four recitations of "sensor data" in the independent claims each includes a "sensor value" and thus provide a potential antecedent basis. D.I. 36-4 ("'282"), Cls. 1, 3, 7, 9, 13, 15; Neikirk, ¶ 53. Similarly, the specification confirms that "sensor data" includes "sensor values." '282, 3:13-15 ("…identifying changed sensor values within the sensor data"). The prosecution history's silence on the issue further confirms that judicial correction is inappropriate. And unlike the alleged antecedents in claims 3, 9, and 15 and Ollnova's tacit assertion that the

claims contain three separate typos, the claims at issue actually depend from the corresponding independent claims—thus making their potential antecedents all the more likely.

Indeed, each of the independent claims' four recitations of "sensor data" is disclosed in the specification as being "identified," such that each could provide the antecedent basis for "each identified sensor value." With respect to the potential antecedents 1 and 2 ("sensor data" from the sensor package or stored in the memory), the specification discloses scanning "each of the sensors operating within the sensor package 220 and/or the sensor data stored in the memory" such that "the ***sensor data identified***" from the scan may subsequently "be compared to a COV threshold value." *Id.*, 8:65-9:7. The specification further discloses that "***sensor*** usage or ***control information*** … ***identifies the sensor values*** … that are controlling and driving the receiving device," such that the potential antecedent 3 ("sensor data" in control at a second automation component identified by the sensor control information) could also provide an antecedent basis. *Id.*, 9:13-16. Similarly, the specification discloses that "[t]he communicated ***sensor control information*** … ***identifies*** … ***which sensor and/or sensor value is driving or controlling*** the receiving device"—demonstrating that potential antecedent 4 ("sensor data" communicated by the first automation component) could provide an antecedent basis. *Id.*, 9:19-22.

Ollnova's cited cases are again inapposite. In those cases, the independent claims, from which the dependent claims at issue depended, did not provide an antecedent, but another claim would have. *Image Processing Techs., LLC v. Samsung Elecs. Co.*, No. 2:16-cv-00505, 2017 WL 2672616, at *30 (E.D. Tex. June 21, 2017) ("[T]here is no [antecedent basis] in independent claim 24" from which claims 26-27 at issue depend and claims 4-6 provided the correct dependency); *SourceProse Corp. v. AT&T Mobility, LLC*, No. A-11-CV-117, 2014 WL 2879694, at *13 (W.D. Tex. June 24, 2014) (claim 1 from which dependent claim 12 at issue depends "does not contain a

reference to" the term at issue and claims 13-14 provided the correct dependency). By contrast, the disputed dependent claim terms here have multiple reasonable potential antecedents in the independent claims. Where there are multiple reasonable antecedents, courts have repeatedly found the claims indefinite. *See, e.g., 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."); *XR Commc'ns, LLC v. D-Link Sys., Inc.*, No. 8:17-CV-00596, 2022 WL 2288913, at *28 (C.D. Cal. Jan. 27, 2022) ("[T]he claim language is unclear as to whether 'the signal' refers to 'the first signal,' 'the other signal,' or some other signal. This ambiguity gives rise to indefiniteness."). Indeed, in *Digital Retail Apps, Inc. v. H-E-B, LP*, the court found dependent claims invalid for reciting a term without proper antecedent basis in the independent claim upon which the dependent claims depend, despite the term itself also appearing in another dependent claim. No. 6:19-CV-00167, 2020 WL 376664, at *10, n.7 (E.D. Tex. Jan. 23, 2020).

Accordingly, "it is apparent that a mistake has been made, but it is unclear what the mistake is"—this is not a "clerical or typographical" mistake that the Court may correct. *Superior Fireplace*, 270 F.3d at 1370; *Pavo Sols.*, 35 F. 4th at 1373 (allowing correction of only "clerical or typographical" mistakes). Rather, with multiple potential antecedent bases leading to multiple potential corrections in light of the claims and the specification, Ollnova's proposed corrections to change dependency three times is at least subject to "reasonable debate," and judicial correction is inappropriate. *Contentguard*, 2015 WL 8073722, at *35-36 (refusing to change dependency when another potential correction is available).

B. "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

The parties agree that the disputed term includes a "command that turns off a device or returns it to a low-power state." Response, 10-11. Based on that agreement and Ollnova's failure to identify what else, if anything, is included within the scope of the term, Emerson's construction should be adopted. *O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1361 (Fed. Cir. 2008) ("A determination that a claim term 'needs no construction' or has the 'plain and ordinary meaning' may be inadequate when … reliance on a term's 'ordinary' meaning does not resolve the parties' dispute."). Specifically, Emerson's proposed construction gives the term its full potential scope, incorporating ***all*** intrinsic record for the "power-down command." Emerson's supporting disclosures—what Ollnova argues as nothing but exemplary embodiments—are the ***entirety*** of the disclosure relating to the disputed term. *See Phillips*, 415 F.3d at 1328-29 (claims "are limited to what is contained in the overall disclosure of the specification."); *Black & Decker, Inc. v. Robert Bosch Tool Corp.*, 260 F. App'x 284, 289 (Fed. Cir. 2008) (a construction limited to preferred embodiment is proper as "nothing in the patent discloses [the term] other than the one shown in the preferred embodiment"). Ollnova's citation to boilerplate language at the end of the specification (Response, 11 (citing '282, 10:30-40)) cannot expand the scope beyond what is disclosed. *IP Innovation, L.L.C. v. Ecollege.com*, 156 F. App'x 317, 321 (Fed. Cir. 2005) (explaining that "common boilerplate" language does not support a broader construction).

C. "the received status information" (claim 17)

Ollnova contends that it is no longer asserting claim 17 against Emerson and thus the Court need not construe the term.

Dated December 1, 2022

/s/ J. Stephen Ravel

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on December 1, 2022, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ J. Stephen Ravel
J. Stephen Ravel