

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

OLLNOVA TECHNOLOGIES LTD.,

Plaintiff,

v.

EMERSON ELECTRIC CO. and VERDANT
ENVIRONMENTAL TECHNOLOGIES,
INC.,

Defendants.

Case No. 6:22-cv-00358-ADA

JURY TRIAL DEMANDED

**PLAINTIFF OLLNOVA TECHNOLOGIES LTD.'S
SUR-REPLY CLAIM CONSTRUCTION BRIEF**

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I. INTRODUCTION

Pursuant to the Court’s Scheduling Order (Dkt. No. 28), Plaintiff Ollnova Technologies Ltd. (“Ollnova”) submits this sur-reply claim construction brief concerning U.S. Patent Nos. 7,746,887 (“the ’887 Patent”) and 8,224,282 (“the ’282 Patent”).

II. 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

Emerson cannot meet its burden to prove by clear and convincing evidence that the disputed term is indefinite. Even assuming the Court were to decide that judicial correction was inappropriate (which it is not), Emerson’s indefiniteness argument fails because a POSITA would understand the scope of the claim with reasonable certainty in the light of the corresponding description in the specification. Dkt. No. 41-2 (“Iglesia Decl.”) ¶ 21. Indeed, Emerson does not dispute that the portion of the specification identified by Ollnova is the disclosure a POSITA would understand to correspond most directly to the claim limitation at issue. ’887 Patent at 2:16-18 (“The controller also controls the transceiver to selectively communicate information associated with the signal from the sensor.”).^{1,2} Emerson also does not dispute that, unlike the specification

¹ All emphasis added unless stated otherwise.

² Emerson’s quibble that this portion of the specification refers to a “signal” instead of a “reading” (Reply at 3) is not persuasive in light of the immediately preceding language in the specification

language that directly supports Ollnova’s construction, there is no directly corresponding language in the specification for Emerson’s purported second and third alternative interpretations. Reply at 2-3. Thus, the specification provides sufficient clarity to a POSITA that the omission of the words “with the” was a typographical error and that there is only one reasonable correction to the claim. Iglesia Decl. ¶¶ 25-31.³

Emerson cites a portion of the specification referring to transmission of stored indicators as support for its purported second and third alternative interpretations. Reply at 2 (quoting ’887 Patent at 11:62-12:3). But this cite does not support Emerson’s alternative interpretations. To the contrary, this portion of the specification merely confirms that there is written description support for the recited “transceiver” limitation in Claim 1 that requires that the “transceiver is configured to transmit a most recent reading of the indicator.” Nothing in Emerson’s specification citations suggests any reasonable debate as to the proper correction for the grammatical error in the disputed term. Thus, Emerson cannot meet its burden to show that the claims, read in light of the specification, fail to inform those skilled in the art about the scope of the invention with reasonable certainty.

In addition, the Court should correct the typographical error because each of the requirements for judicial correction is satisfied here. *See* Dkt. No. 41 (“Resp.”) at 4-6. Emerson admits that the error is evident from the face of the patent and that the prosecution history does not suggest a different interpretation. Emerson fails to show that the correction is subject to reasonable

that explains that “a controller polls the sensor at a variable periodic interval to **read the signal** from the sensor.” ’887 Patent at 2:13-15.

³ Emerson’s citation of *Interval Licensing* (Reply at 4) is inapposite because that case did not involve correction of claim language; rather, it involved the “purely subjective” claim term “unobtrusive manner” that lacked any objective boundary. *See Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014).

debate based on consideration of the claim language and the specification. Emerson's purported second and third alternative interpretations are not persuasive in light of the specification support. The fact that the specification only includes language that mirrors Ollnova's proposed construction confirms that Emerson's purported alternatives do not raise a reasonable debate.

Emerson is also wrong to suggest that words omitted due to a clerical error cannot be corrected by the Court. For example, in *CBT Flint Partners LLC v. Return Path, Inc.*, the Federal Circuit held that the word "and" should be added to correct a grammatical error between the words "detect analyze" in the claim. 654 F.3d 1353, 1358-59 (Fed. Cir. 2011). Thus, the omission of the words "with the" is a typographical or clerical error that is proper for judicial correction.

Emerson further fails to identify any meaningful difference in claim scope for its purported second and third alternative interpretations. While Emerson's Opening Brief argued that the hypothetical example of merely communicating "the location of a thermostat" would meet Ollnova's proposed construction, Ollnova showed that Emerson was wrong because the claim separately requires that the "transceiver is configured to transmit a most recent reading of the indicator." Resp. at 5-6. Emerson's Reply concedes this point and fails to provide any new hypothetical example that proves any meaningful difference in claim scope. Emerson's new argument that the "transceiver" limitation is "irrelevant" (Reply at 3) is not persuasive because the "transceiver" limitation is part of a "wherein" clause that clarifies the operation of the recited "transceiver" from the "controller" limitation. Moreover, Emerson does not explain why the mere fact that the "transceiver" limitation is recited later in the claim would result in any meaningful difference in the overall scope of Claim 1. Finally, Emerson's argument that the "transceiver" limitation refers to the "most recent reading" fails because the "controller" limitation similarly refers to "the indicator during a current period of the polling interval." Thus, both limitations are

referring to the same “reading.” Because there is no meaningful difference in claim scope, *CBT Flint Partners* squarely applies here. 654 F.3d at 1358-59 (holding that district court had authority to correct patent where three plausible corrections existed but all three resulted in the same claim scope); *see also Pavo Sols. LLC v. Kingston Tech. Co.*, 35 F. 4th 1367, 1376-77 (Fed. Cir. 2022).

In short, Emerson fails to establish that the correction is subject to reasonable debate, and the Court should correct the claim just like the USPTO issued the CoC. And even if Emerson could show that judicial correction was inappropriate, Emerson cannot prove indefiniteness by clear and convincing evidence in light of the corresponding teaching in the specification.

b) The Certificate of Correction is valid

Emerson cannot meet its burden to prove by clear and convincing evidence that the CoC is invalid. First, Emerson fails to prove that the corrected claims are broader than the original claims. Aside from the conclusory allegation that the originally-drafted term is indefinite, Emerson makes no effort to show any substantive broadening in the scope of the claim. This is not surprising as Ollnova directly rebutted Emerson’s prior arguments showing the corrected claim is not broader. Resp. at 7-8. Second, Emerson fails to prove that there is no genuine issue of material fact as to whether the typographical error is clearly evident to one of skill in the art. Contrary to Emerson’s argument, Ollnova’s expert declaration addressed the disclosures in the specification that show why the error is clearly evident to a POSITA. Iglesia Decl. ¶¶ 20-31. 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 must 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	Indefinite
Plain and ordinary meaning	
Preamble: "The automation component of claim [3] / [9] / [15]"	

The term "identification flag for each identified sensor value" should be interpreted in light of its plain and ordinary meaning. However, the Court should correct the typographical error in the claim dependency because the correction is not subject to reasonable debate based on consideration of the claim language and the specification. First, the claim language confirms that the only reasonable antecedent basis for the term "each identified sensor value" is found in dependent Claim 3, 9, and 15's "identify sensor values." Independent Claims 1, 7, and 13 do not include any similar language with respect to "identify" or "sensor values." As such, Emerson's argument that the antecedent basis could be found in some other language reciting "sensor data" in Claim 1 is not reasonable.

The fact that Emerson is forced to turn to the specification in an attempt to import the concepts of "sensor values" and "identified" into the plain language of Claim 1 only underscores that there is no reasonable antecedent for these terms in Claim 1. Reply at 7-8. Notably, Emerson does not explain what edits it would propose making to the claim language to make clear its purported antecedent basis in Claim 1—which further underscores that there is not a reasonable alternative correction to the claim language.⁵

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.

⁵ Because there is only one reasonable antecedent in the claims here, Emerson's cited cases involving multiple reasonable antecedents are inapposite. Reply at 9.

Moreover, Emerson entirely ignores the highly relevant excerpt from the specification that Ollnova quoted in its Response that confirms the antecedent basis for the term. Resp. at 9-10. The specification explains that identified sensor data that is found to exceed the threshold may be flagged:

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 un rebutted evidence shows that 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. In light of this clear teaching in the specification, there cannot be any reasonable debate that the proper antecedent basis is found in Claims 3, 9, and 15. *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.”). Accordingly, the Court should correct the claim dependency.

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

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

Emerson cannot justify limiting the plain and ordinary meaning of the term “power-down command” to its unduly narrow construction. “Absent disclaimer or lexicography, the plain meaning of the claim controls.” *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1369 (Fed. Cir. 2012). Here, Emerson does not identify any disclaimer or lexicography the warrants limiting the plain and ordinary meaning of the term to the exemplary embodiments. Emerson’s proposed construction should be rejected.

Emerson is wrong that the '282 Patent claims should be limited to the exemplary embodiments because Ollnova somehow “fail[s] to identify what else, if anything, is included within the scope of the term.” Reply at 10. As an initial matter, the Federal Circuit has “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.” *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014) (citation omitted). Emerson does not (as it cannot) cite any authority that permits the Court to limit the term “power-down command” to the preferred embodiments simply because the patentee did not specifically identify other hypothetical instances of infringement. To the contrary, Federal Circuit “case law makes clear that a patentee need not ‘describe in the specification every conceivable and possible future embodiment of his invention.’” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (citation omitted). And, here, the patentee expressly noted that “various changes and modifications to the presently preferred embodiments described herein will be apparent to those skilled in the art” and that “such changes and modifications be covered by the appended claims.” See '282 Patent at 10:30-40.⁶

Regardless, Ollnova did in fact explain why Emerson’s attempt to limit the term “power-down command” to the two exemplary embodiments was unduly narrow. For example, Ollnova explained that because “the '282 Patent contemplates the[] two possible functional states in connection with the ‘power-down’ command does not mean that the term must be limited to only the[] two examples.” Dkt. No. 41 at 11. Notably, the '282 Patent does not require that the device

⁶ Emerson’s reliance on *IP Innovation* is unpersuasive because, unlike that case, Ollnova does not concede that the specification only discloses a single embodiment of the claimed invention. See *IP Innovation, L.L.C. v. Ecollege.com*, 156 F. App’x 317, 321 (Fed. Cir. 2005). Further, the '282 Patent—unlike the one at issue in *IP Innovation*—discusses the inventive features in terms of “embodiments.” See '282 Patent at 2:29 – 3:23, 3:51-52, 4:66 – 5:2, 5:49-51, 5:57-62. And, Ollnova does not seek a “broader” construction, but rather requests that the Court not unduly limit the scope of the plain and ordinary meaning of the term.

as a whole “return to a low-power state” (as required by Emerson’s construction), as opposed to, for example, returning certain components that comprise the automation device to a “low-power state.” *See, e.g.*, ’282 Patent at 3:51 – 4:4 (“the disclosed building automation system describes automation components that may include separate wireless devices and transceivers, however it will be understood that that the wireless device and transceiver may be integrated into a single automation component operable within the building automation system.”).

Finally, Claim 13 of the ’282 Patent merely requires that the claimed automation component “receive” a “power-down command from the second automation component”—not that it actually “turn off” or “return[] to a lower-power state,” as required by Emerson’s construction. As such, Emerson’s proposed construction is confusing because it suggests to the jury that the automation component must also “turn off” or enter a “low-power state” in order to infringe Claim 13—which is a requirement not found in the Claim. *See Thorner v. Sony Comput. Ent. Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012) (“We do not read limitations from the specification into claims; we do not redefine words.”). As such, Emerson’s proposed construction should be rejected.

III. CONCLUSION

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

Dated: December 15, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on December 15, 2022 with a copy of this document via the Court's ECF system.

/s/ Drew Hollander

Drew Hollander