IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CHRIMAR SYSTEMS, INC., ET AL., Plaintiffs, v. ALCATEL-LUCENT S.A., ET AL., Defendants.	6:15-CV-163-JDL LEAD CASE PATENT CASE **JURY TRIAL DEMANDED**

DECLARATION OF LES BAXTER

My name is Les Baxter and I declare the following:

1. I have been asked by Plaintiffs to provide opinions as one of ordinary skill in the art in this matter regarding the meaning of certain terms in the four Patents-in-Suit, namely United States Patent Nos. 8,155,012 ("the '012 Patent"); 8,942,107 ("the '107 Patent"); 8,902,760 ("the '760 Patent"); and 9,019,838 ("the '838 Patent").

PROFESSIONAL CREDENTIALS

2. I was employed at Bell Laboratories where I was a Member of the Technical Staff, Technical Manager, and Director in the network cable systems, optical fiber solutions, customer switching systems, and optical networking business units from 1977 through 2001. Since 2001, I have been the Principal of Baxter Enterprises which provides consulting, engineering, and expert witness services specializing in structured cabling systems, local area networks and residential networks.
3. During my thirty-five year career in the networking field I acquired extensive technical expertise and experience in structured cabling (copper and fiber-optic) and physical layer networking in the enterprise, network, and residential markets; local area networks, data communication/networking, protocols (particularly IEEE 1394/FireWire and IEEE 802.3/Ethernet), including connectors; systems engineering (network architecture, product and system specifications and requirements); optical networking; standards strategy and development; switching systems (circuit, packet and optical); prototyping

and product development (hardware and firmware); and commercializing new technology to create successful products and systems.

4. I was named an IEEE fellow in 2009 for my "contributions to high-speed digital communication networks." I am a registered professional engineer in New Jersey and coauthor of the book Premises Cabling (Thomson Delmar Learning, 3rd ed. 2006) and author of the book Residential Networks (Delmar Thompson Learning, 2006).

5. In June 1972, I received an Associate of Arts and Science degree in Electronic Technology from Delaware Technical Community College. In June 1975, I received the degree of Bachelor of Science in Electrical Engineering from the Rochester Institute of Technology. In June 1977, I received the degree of Master of Science in Electrical Engineering from the University of Delaware.

6. I have participated in numerous standards-setting committees under the auspices of the Electronic Industries Association (EIA); Telecommunications Industries Association (TIA); the Institute of Electrical and Electronic Engineers (IEEE), and the International Standards Organization (ISO). I am currently Chair of the IEEE 1394 Committee relating to High Performance Serial Buses and am a member of the IEEE 802.3 Working Group on Ethernet LANs. I am a member of the IEEE Standards Association, TIA, BICSI, NSPE, and the 1394 Trade Association.

7. I have published more than 30 articles in technical and trade journals and have made presentations at technical conferences on five continents. I am an inventor of eight U.S. Patents.

8. Attached as Exhibit 1 is a copy of my current CV which lists all publications that I authored in the previous 10 years and lists all other cases in which, during the previous 4 years, I have testified as an expert at trial or by deposition.

9. I am being compensated at the rate of $250 per hour for my study and testimony in this case. My compensation is based solely on the amount of time that I devote to activity related to this case and is in no way affected by any opinions that I render or the outcome of the litigation.

LEVEL OF ORDINARY SKILL IN THE ART

10. In my opinion, a person of ordinary skill in the relevant art with respect to the Patents-in-Suit would have an undergraduate degree or the equivalent in the field of electrical engineering or a related ancillary field, and one to three years of experience with Ethernet networks. Alternatively, a greater length of experience could replace the degree requirement.

11. I am one of ordinary skill in the art.

THE USE OF THE INFINITIVE "TO ___"

12. I understand that Defendants have asked the Court to construe the infinitive "to" in the following claims to mean that the "[t]he action claimed must occur to meet the limitation:

    '107 Patent: claims 1, 43, 104, and 111

    '760 Patent, claims 1, 58, 69, 73, and 142

    '838 Patent, claims 1, 7, 26, 29, 40, and 69

13. I disagree with Defendants' proposed construction of the infinitive "to."

14. Defendants' proposed construction of the term "to" is incorrect because it would be improperly transforming apparatus claims into hybrid apparatus-method claims.

15. A person of ordinary skill in the art would readily understand the term "to" such that it needs no construction. Further, I note that Defendants are not proposing a construction for the word "to," but seeking to require that the function following the word "to" must be actually performed in order to infringe each claim identified above.

16. A person of ordinary skill in the art, reading the claims in light of the specification and file history, would understand that the infinitive "to" as used in these claims means that the claimed apparatus or structure is "configured to" or "designed to" perform the function recited in the claim.

17. For example, claim 1 of the '107 Patent states the following:

> A piece of Ethernet terminal equipment comprising:
>
> an Ethernet connector comprising first and second pairs of contacts used to carry Ethernet communication signals,
>
> at least one path for the purpose of drawing DC current, the at least one path coupled across at least one of the contacts of the first pair

> of contacts and at least one of the contacts of the second pair of contacts, ***the piece of Ethernet terminal equipment to draw different magnitudes of DC current flow via the at least one path, the different magnitudes of DC current flow to result from at least one condition applied to at least one of the contacts of the first and second pairs of contacts, wherein at least one of the magnitudes of the DC current flow to convey information about the piece of Ethernet terminal equipment***.

18. For example, that the claimed "Ethernet terminal device" is configured to "draw different magnitudes of DC current flow via the at least one path" as recited in claim 1 of the '107 Patent. In my opinion, a person of ordinary skill in the art would understand that this means that the equipment is configured or designed to draw different magnitudes of (DC) current flow."

19. Support for these constructions can be found in the intrinsic evidence, including the claim language itself.

20. Claim 1 of the '107 Patent, like all of the claims identified above associated with the word "to" is an apparatus claim, not a method claim.

21. Nothing in claim 1 of the '107 Patent, or any of the other claims identified above, requires the piece of Ethernet terminal equipment to actually draw current in the context of this apparatus claim.

22. Each claim identified above recites a structural component.

23. Defendants' proposal is also problematic as the word "to" appears in other places where it would not make sense that some action must occur. For example, in claim 1 of the '107 Patent, "an Ethernet connector comprising first and second pairs of contacts used ***to carry*** Ethernet communication signals." One of ordinary skill in the art would understand that this means that the Ethernet connector includes pairs of contacts that are configured to carry Ethernet communication signals—not that the Ethernet connector was actually carrying those signals.

24. As detailed below, I disagree with Defendants that where the infinitive "to" is used that an action must occur:

> "to detect at least two different magnitudes of the current flow" ('760 Patent, claims 1, 73)

25. In my opinion, a person of ordinary skill in the art would understand that this means that the BaseT Ethernet equipment is configured or designed to detect at least two different magnitudes of the current flow.

"to detect current flow" ('760 Patent, claim 58)

26. In my opinion, a person of ordinary skill in the art would understand that this means that the BaseT Ethernet equipment is configured or designed to detect current flow.

"to detect different magnitudes of DC current flow" ('838 Patent, claim 1)

27. In my opinion, a person of ordinary skill in the art would understand that this means that the network equipment is configured or designed to detect different magnitudes of DC current flow.

"to detect distinguishing information within the DC current" ('838 Patent, claim 7)

28. In my opinion, a person of ordinary skill in the art would understand that this means that the network equipment is configured or designed to detect distinguishing information within the DC current.

"to distinguish one end device from at least one other end device" ('838 Patent, claim 26)

29. In my opinion, a person of ordinary skill in the art would understand that this means that the network equipment is configured or designed to distinguish one end device from at least one other end device.

"to distinguish one network object from at least one other network object" ('838 Patent, claim 29)

30. In my opinion, a person of ordinary skill in the art would understand that this means that the network equipment is configured or designed to distinguish one network object from at least one other network object.

"to distinguish the piece of Ethernet terminal equipment from at least one other piece of Ethernet terminal equipment" ('107 Patent, claim 43)

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