

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

CHRIMAR SYSTEMS, INC.,)
ET AL.,)
Plaintiffs,)

vs.) No. 6:13-CV-880-JDL

ALCATEL-LUCENT, INC.,)
ET AL.,)
Defendants.)

CHRIMAR SYSTEMS, INC.,)
ET AL.,)
Plaintiffs,)

vs.) No. 6:13-CV-881-JDL

AMX, LLC,)
Defendant.)

CHRIMAR SYSTEMS, INC.,)
ET AL.,)
Plaintiffs,)

vs.) No. 6:13-CV-882-JDL

GRANDSTREAM NETWORKS,)
INC.,)
Defendant.)

CHRIMAR SYSTEMS, INC.,)
ET AL.,)
Plaintiffs,)

vs.) No. 6:13-CV-883-JDL

SAMSUNG ELECTRONICS CO.,)
ET AL.,)
Defendants.)

VIDEOTAPED DEPOSITION OF LESLIE ALAN BAXTER
TAKEN ON BEHALF OF THE DEFENDANT AMX, LLC
OCTOBER 22, 2014



<p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <p>1 WITNESSES</p> <p>2 ALL WITNESSES PAGE</p> <p>3 For Defendant AMX, LLC</p> <p>4 LESLIE ALAN BAXTER</p> <p>5 Examination by Mr. Bluestone 8</p> <p>6 Examination by Mr. Krieger 172</p> <p>7 Re-Examination by Mr. Bluestone 173</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 NO. PAGE</p> <p>11 Exhibit 1 US Patent No. 8,155,012 10</p> <p>12 Exhibit 2 October 20, 2014, Declaration 52</p> <p>13</p> <p>14 Exhibit 3 August 11, 2014, Declaration 63</p> <p>15 Exhibit 4 9/22/14 Declaration of Les Baxter 110</p> <p>16</p> <p>17 Exhibit 5 Claims 31 and 67 116</p> <p>18</p> <p>19 Exhibit 6 US Patent No. 4,723,267 123</p> <p>20</p> <p>21 Exhibit 7 Figure from paragraph 77 126</p> <p>22</p> <p>23 Exhibit 8 Case No. 12-cv-623, Document 94, filed on July 25, 2014, Declaration of Les Baxter 144</p> <p>24</p> <p>25 Exhibit 9 Modification of Figure 2 169</p> <p>26</p> <p>27 (Exhibits attached to transcript.)</p>	<p style="text-align: right;">Page 4</p> <p>1 eight o'clock in the forenoon and six o'clock in</p> <p>2 the afternoon of that day, at the offices of The</p> <p>3 Simon Law Firm, 800 Market Street, St. Louis,</p> <p>4 Missouri, before Tara Schwake, a Certified Realtime</p> <p>5 Reporter and Notary Public within and for the State</p> <p>6 of Illinois, in a certain cause now pending in the</p> <p>7 United States District Court, Eastern District of</p> <p>8 Texas, Tyler Division, wherein Chrimar Systems,</p> <p>9 Inc., et al., are Plaintiffs and Alcatel-Lucent,</p> <p>10 Inc., et al., are Defendants; et cetera.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF TEXAS</p> <p>3 TYLER DIVISION</p> <p>4 CHRIMAR SYSTEMS, INC.,)</p> <p>5 ET AL.,)</p> <p>6 Plaintiffs,)</p> <p>7 vs.) No. 6:13-CV-880-JDL</p> <p>8)</p> <p>9 ALCATEL-LUCENT, INC.,)</p> <p>10 ET AL.,)</p> <p>11 Defendants.)</p> <p>12)</p> <p>13 CHRIMAR SYSTEMS, INC.,)</p> <p>14 ET AL.,)</p> <p>15 Plaintiffs,)</p> <p>16 vs.) No. 6:13-CV-881-JDL</p> <p>17)</p> <p>18 AMX, LLC,)</p> <p>19 Defendant.)</p> <p>20)</p> <p>21 CHRIMAR SYSTEMS, INC.,)</p> <p>22 ET AL.,)</p> <p>23 Plaintiffs,)</p> <p>24 vs.) No. 6:13-CV-882-JDL</p> <p>25)</p> <p>26 GRANDSTREAM NETWORKS,)</p> <p>27 INC.,)</p> <p>28 Defendant.)</p> <p>29)</p> <p>30 CHRIMAR SYSTEMS, INC.,)</p> <p>31 ET AL.,)</p> <p>32 Plaintiffs,)</p> <p>33 vs.) No. 6:13-CV-883-JDL</p> <p>34)</p> <p>35 SAMSUNG ELECTRONICS CO.,)</p> <p>36 ET AL.,)</p> <p>37 Defendants.)</p> <p>38</p> <p>39 VIDEOTAPED DEPOSITION OF WITNESS,</p> <p>40 LESLIE ALAN BAXTER, produced, sworn and examined on</p> <p>41 the 22nd day of October, 2014, between the hours of</p>	<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 THE SIMON LAW FIRM, P.C.</p> <p>5 800 Market Street, Suite 1700</p> <p>6 St. Louis, Missouri 63101</p> <p>7 (314) 241-2929</p> <p>8 by: Mr. Timothy D. Krieger</p> <p>9 tkrieger@simonlawpc.com</p> <p>10</p> <p>11 FOR THE DEFENDANT AMX, LLC:</p> <p>12 McDERMOTT WILL & EMERY, LLP</p> <p>13 227 West Monroe Street</p> <p>14 Chicago, Illinois 60606-5096</p> <p>15 (312) 984-5484</p> <p>16 by: Mr. David H. Bluestone</p> <p>17 dbluestone@mwe.com</p> <p>18</p> <p>19 DUANE MORRIS, LLP</p> <p>20 1075 Peachtree Street, NE, Suite 2000</p> <p>21 Atlanta, Georgia 30309</p> <p>22 (404) 253-6935</p> <p>23 by: Mr. Matthew S. Yungwirth</p> <p>24 (via telephone)</p> <p>25 msyungwirth@duanemorris.com</p>

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24
25

Page 7

1 IT IS HEREBY STIPULATED AND AGREED by
2 and between Counsel for Plaintiffs and Counsel for
3 Defendants that this deposition may be taken by
4 Tara Schwake, Notary Public and Certified Realtime
5 Reporter, thereafter transcribed into typewriting,
6 with the signature of the witness being expressly
7 reserved.
8 * * * * *
9 (Deposition commenced at 9:01 a.m.)
10 THE VIDEOGRAPHER: My name is John
11 Niehaus of Veritext, the date today is October 22,
12 2014, and the time is approximately 9:01 a.m. This
13 deposition is being held in the office of The Simon
14 Law Firm located at 800 Market Street, St. Louis,
15 Missouri 63101.
16 The caption of this case is Chrimar
17 Systems, Inc., et al., versus AMX, LLC, in the U.S.
18 District Court, Eastern District of Texas, Tyler
19 Division, Case Number 6:13-CV-881-JDL. The name of
20 the witness is Les Baxter.
21 At this time the attorneys will
22 identify themselves and the parties they represent,
23 after which our court reporter, Tara Schwake of
24 Veritext, will swear in the witness and we can
25 proceed.

Page 8

1 MR. BLUESTONE: David Bluestone,
2 McDermott Will & Emery on behalf of Defendant AMX.
3 MR. KRIEGER: Tim Krieger with The
4 Simon Law Firm on behalf of Plaintiffs.
5 MS. PESCHEL: Leisa Peschel with
6 Williams Morgan, P.C., on behalf of the
7 Alcatel-Lucent Defendants in the 880 case.
8 MR. PARK: Jin-Suk Park with the law
9 firm of Akin Gump for Samsung.
10 MR. YUNGWIRTH: This is Matt
11 Yungwirth of the law firm Duane Morris for AMX.
12 MR. AUSTERMANN: John Austermann,
13 CMS.
14 LESLIE ALAN BAXTER,
15 of lawful age, having been produced, sworn, and
16 examined on the part of Defendant AMX, LLC,
17 testified as follows:
18 EXAMINATION
19 QUESTIONS BY MR. BLUESTONE:
20 Q Good morning, Mr. Baxter.
21 A Good morning.
22 Q Could you please state your full name
23 for the record?
24 A My name is Leslie Alan Baxter.
25 Q Is there anything preventing you

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1 today from providing complete testimony, like any
2 medications or anything like that?
3 A No.
4 Q And you got a good night's sleep?
5 A Yes.
6 Q I know you've been deposed before, so
7 I'll skip with a lot of the formalities but one
8 thing I want to make clear. If there's anything
9 that I ask you that's unclear, please ask for
10 clarification.
11 If you don't ask for clarification,
12 the record will assume that you understood the
13 question; is that fair?
14 A Yes.
15 Q Okay. Why don't we --
16 MR. PARK: I apologize for
17 interrupting --
18 MR. BLUESTONE:
19 MR. PARK: -- but I can't really hear
20 the witness's response. If there's any way to push
21 the telephone closer to him, that would be
22 appreciated.
23 THE VIDEOGRAPHER: One moment please,
24 we're going off the record at approximately 9:03
25 a.m.

<p style="text-align: right;">Page 10</p> <p>1 (Off the record.)</p> <p>2 THE VIDEOGRAPHER: We're back on the</p> <p>3 record at approximately 9:05 a.m.</p> <p>4 Q (BY MR. BLUESTONE) I'm going to mark</p> <p>5 as Exhibit 1 a copy of US Patent No. 8,155,012.</p> <p>6 (Exhibit 1 marked for identification</p> <p>7 by the court reporter.)</p> <p>8 Q (BY MR. BLUESTONE) I am assuming you</p> <p>9 have seen Exhibit 1 before, sir?</p> <p>10 A Yes. Yes, I have.</p> <p>11 Q If you could turn to claim 31,</p> <p>12 please? Do you see that claim 31 uses the term</p> <p>13 "distinguishing information"; correct?</p> <p>14 A Yes, I do.</p> <p>15 Q I'd just like to ask you some</p> <p>16 questions about distinguishing information as you</p> <p>17 understand it.</p> <p>18 A Okay.</p> <p>19 Q Who decides what is distinguishing</p> <p>20 information under the claims?</p> <p>21 A Who decides? Well, distinguishing</p> <p>22 information is information that can allow you to</p> <p>23 classify or categorize the equipment.</p> <p>24 Q Okay. Is there -- does the person</p> <p>25 making the device decide whether they have</p>	<p style="text-align: right;">Page 12</p> <p>1 A Well, I think -- obviously if it's a</p> <p>2 dispute we can't resolve, the court will decide for</p> <p>3 us, correct? That's the way any patent would work.</p> <p>4 Q Fair enough. But if we're going to</p> <p>5 go look at just the term "distinguishing</p> <p>6 information," where do we go to decide what that</p> <p>7 means? Is it the intent of the person making the</p> <p>8 device? Is it the intent of the patent owner, for</p> <p>9 example, either or both?</p> <p>10 A Well, I would look at the device and</p> <p>11 the way it operates, the supporting documentation</p> <p>12 and so on, and if the elements of this claim were</p> <p>13 met, then I would say it infringes.</p> <p>14 Q Okay. But -- and you are not -- you</p> <p>15 are a third party, you are not the manufacturer?</p> <p>16 A Correct.</p> <p>17 Q So it could be the person making the</p> <p>18 device, it could be you in your role as an expert</p> <p>19 witness, for example?</p> <p>20 MR. KRIEGER: Objection, form.</p> <p>21 A I don't quite follow that.</p> <p>22 Q (BY MR. BLUESTONE) I guess what I'm</p> <p>23 jut trying to figure out is there's obviously</p> <p>24 disputes in this case as to what is distinguishing</p> <p>25 information.</p>
<p style="text-align: right;">Page 11</p> <p>1 categorized or classified the equipment, or is it</p> <p>2 someone else?</p> <p>3 A Yes, I believe at the time of</p> <p>4 manufacture you have done that.</p> <p>5 Q Okay. But from -- let's start kind</p> <p>6 of from an expansive thing and funnel it down. I'd</p> <p>7 like to just get a sense of who all the respective</p> <p>8 parties could be that would make that</p> <p>9 determination.</p> <p>10 So it could be the person making a</p> <p>11 device; correct?</p> <p>12 A Yeah.</p> <p>13 Q Could it be anyone else?</p> <p>14 MR. KRIEGER: Objection, form.</p> <p>15 A I think the -- I guess the way I read</p> <p>16 this, the distinguishing information would be</p> <p>17 defined and built into the device. So that it</p> <p>18 would be recognized by another device.</p> <p>19 Q (BY MR. BLUESTONE) Okay. But let's</p> <p>20 say you and I have a dispute as to whether it's</p> <p>21 distinguishing information.</p> <p>22 A Mm-hmm.</p> <p>23 Q Whose -- whose -- and I am the</p> <p>24 manufacturer. Whose determination governs whether</p> <p>25 it's distinguishing or not?</p>	<p style="text-align: right;">Page 13</p> <p>1 In looking at the Exhibit 1, is there</p> <p>2 anything in Exhibit 1 that defines an objective</p> <p>3 standard of what is distinguishing information?</p> <p>4 A They give a number of examples.</p> <p>5 Q Okay. But is there one objective</p> <p>6 standard beyond the examples that's provided?</p> <p>7 MR. KRIEGER: Objection, vague.</p> <p>8 A Well, in my opinion, plain and</p> <p>9 ordinary meaning of the term coupled with the</p> <p>10 examples they give would allow one of skill in the</p> <p>11 art to determine that.</p> <p>12 Q (BY MR. BLUESTONE) Okay. Now, with</p> <p>13 respect to distinguishing information, I'd like to</p> <p>14 know, from a temporal aspect, at what time does</p> <p>15 information become distinguishing? And let me</p> <p>16 rephrase that, that was a little long.</p> <p>17 When does -- when do you evaluate</p> <p>18 when the information is distinguishing? At what</p> <p>19 time frame?</p> <p>20 A I'm sorry, you lost me there.</p> <p>21 Q Okay. You had referred previously</p> <p>22 about the manufacturer of a product.</p> <p>23 A Correct.</p> <p>24 Q When you are assessing whether that</p> <p>25 product has distinguishing information, do you look</p>

<p style="text-align: right;">Page 14</p> <p>1 at it as of the date of manufacture?</p> <p>2 MR. KRIEGER: Objection, form.</p> <p>3 A Well, for a product, I would look at</p> <p>4 the product as it's made.</p> <p>5 Q (BY MR. BLUESTONE) Okay. And are</p> <p>6 you analyzing whether it had distinguishing</p> <p>7 information as of the time that I manufactured it,</p> <p>8 or at the time you are looking at it?</p> <p>9 MR. KRIEGER: Objection, form.</p> <p>10 A Well, unless someone has done</p> <p>11 something to it in the meantime, I would assume</p> <p>12 those are the same.</p> <p>13 Q (BY MR. BLUESTONE) What if a</p> <p>14 standard has come out in the meantime that would</p> <p>15 apply to that device? Would that change the</p> <p>16 analysis?</p> <p>17 A In terms of whether it meets these</p> <p>18 claim elements?</p> <p>19 Q In terms of whether it has</p> <p>20 distinguishing information.</p> <p>21 A Well, I -- it would I guess make it</p> <p>22 easier to show if the standard defines some</p> <p>23 distinguishing information and the device includes</p> <p>24 it, that would be one way to show that it is</p> <p>25 distinguishing. I don't know if that's what you're</p>	<p style="text-align: right;">Page 16</p> <p>1 more at prior art than infringement.</p> <p>2 Q Well, pick any date. It doesn't</p> <p>3 matter to me. You know, you could say it's 2000</p> <p>4 and 2005. I don't care.</p> <p>5 A Okay.</p> <p>6 Q Same -- same hypothetical, though,</p> <p>7 you know, at the -- at 2000 it's designed and first</p> <p>8 manufactured, 2002 a standard comes out that</p> <p>9 applies to it --</p> <p>10 A Okay.</p> <p>11 Q -- and 2005 we are looking at the</p> <p>12 same exact product again. Could it be that in 2000</p> <p>13 it didn't have distinguishing information but now</p> <p>14 in 2005 it does?</p> <p>15 MR. KRIEGER: Objection, form.</p> <p>16 A Well, again, you know, I look back at</p> <p>17 the claims and if it does every element of the</p> <p>18 claims, if it puts the distinguishing, if it puts</p> <p>19 the impedance there, puts impedance in the path to</p> <p>20 associate with that distinguishing information,</p> <p>21 then I think it would.</p> <p>22 Q (BY MR. BLUESTONE) Okay. But how do</p> <p>23 we know if it's put in the path to be associated</p> <p>24 with distinguishing information?</p> <p>25 A Well, you would have to look at the</p>
<p style="text-align: right;">Page 15</p> <p>1 looking for or not.</p> <p>2 Q Could it be that you, as of the date</p> <p>3 of the design of the product, there was no</p> <p>4 standard, but subsequent manufacture there was a</p> <p>5 standard and now distinguishing information applies</p> <p>6 where it previously did not?</p> <p>7 MR. KRIEGER: Objection, form.</p> <p>8 A Can you give me that a little -- I'm</p> <p>9 not quite sure what you're getting at.</p> <p>10 Q (BY MR. BLUESTONE) Sure. Well,</p> <p>11 let's say you're looking at the first -- let's say</p> <p>12 you have a product that was manufactured in 1995,</p> <p>13 and it's continuously being manufactured for ten</p> <p>14 years, let's say.</p> <p>15 Could it be that the information --</p> <p>16 that it didn't have any distinguishing information</p> <p>17 in 1995 but the same exact design manufacture in</p> <p>18 2005 has distinguishing information now?</p> <p>19 A The same exact product ten years</p> <p>20 later?</p> <p>21 Q The same exact product, yeah, ten</p> <p>22 years later.</p> <p>23 A If at the time it was manufactured in</p> <p>24 1995, which, of course, predates the priority of</p> <p>25 this thing, right? Then I think you're looking</p>	<p style="text-align: right;">Page 17</p> <p>1 product, the documentation and so on. If the</p> <p>2 product manual has -- says, hey, under these</p> <p>3 conditions we put X impedance on this path to</p> <p>4 indicate Y, then that's a pretty strong indication</p> <p>5 that maybe you're doing that.</p> <p>6 Q Okay.</p> <p>7 A If it just happens to have some</p> <p>8 random impedance because we're trying to mask the</p> <p>9 transmission log or something, then I would not</p> <p>10 think that would be distinguishing information.</p> <p>11 Q Okay. So if you had a product that</p> <p>12 was doing -- putting in 150 ohms resistor for the</p> <p>13 purpose of impedance matching, for example --</p> <p>14 A Correct.</p> <p>15 Q -- and at that time there was no</p> <p>16 standard ascribing any meaning to 150 ohms, it</p> <p>17 would not read on those elements that you're</p> <p>18 referencing?</p> <p>19 MR. KRIEGER: Objection, form.</p> <p>20 A I would not think so. I mean, again,</p> <p>21 you have to analyze the entire product. We are</p> <p>22 taking one isolated feature out of context, but</p> <p>23 yeah, I think that's very possible.</p> <p>24 Q (BY MR. BLUESTONE) Okay. And just</p> <p>25 to make sure that I'm understanding, your point was</p>

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