

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



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1 eight o'clock in the forenoon and six o'clock in  
2 the afternoon of that day, at the offices of The  
3 Simon Law Firm, 800 Market Street, St. Louis,  
4 Missouri, before Tara Schwake, a Certified Realtime  
5 Reporter and Notary Public within and for the State  
6 of Illinois, in a certain cause now pending in the  
7 United States District Court, Eastern District of  
8 Texas, Tyler Division, wherein Chrimar Systems,  
9 Inc., et al., are Plaintiffs and Alcatel-Lucent,  
10 Inc., et al., are Defendants; et cetera.  
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Page 3

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34 )  
35 SAMSUNG ELECTRONICS CO. )  
36 ET AL. , )  
37 Defendants )  
38 )  
39 VIDEOTAPED DEPOSITION OF WITNESS,  
40 LESLIE ALAN BAXTER, produced, sworn and examined on  
41 the 22nd day of October, 2014, between the hours of

Page 5

1 APPEARANCES  
2  
3 FOR THE PLAINTIFFS:  
4 THE SIMON LAW FIRM, P.C.  
5 800 Market Street, Suite 1700  
6 St. Louis, Missouri 63101  
7 (314) 241-2929  
8 by: Mr. Timothy D. Krieger  
9 tkrieger@simonlawpc.com  
10  
11 FOR THE DEFENDANT AMX, LLC:  
12 McDERMOTT WILL & EMERY, LLP  
13 227 West Monroe Street  
14 Chicago, Illinois 60606-5096  
15 (312) 984-5484  
16 by: Mr. David H. Bluestone  
17 dbluestone@mwe.com  
18  
19 DUANE MORRIS, LLP  
20 1075 Peachtree Street, NE, Suite 2000  
21 Atlanta, Georgia 30309  
22 (404) 253-6935  
23 by: Mr. Matthew S. Yungwirth  
24 (via telephone)  
25 msyungwirth@duanemorris.com

Page 6	<p>1 FOR THE DEFENDANT ALCATEL-LUCENT, INC.:</p> <p>2 WILLIAMS MORGAN, P.C.</p> <p>3 10333 Richmond, Suite 1100</p> <p>4 Houston, Texas 77042</p> <p>5 (713) 934-4096</p> <p>6 by: Ms. Leisa Talbert Peschel, Ph.D.</p> <p>7 lpeschel@wmalaw.com</p> <p>8</p> <p>9 FOR THE DEFENDANT SAMSUNG ELECTRONICS, CO.:</p> <p>10 AKIN GUMP STRAUSS HAUER &amp; FELD, LLP</p> <p>11 1333 New Hampshire Avenue, N.W.</p> <p>12 Washington, DC 20036</p> <p>13 (202) 887-4465</p> <p>14 by: Mr. Jin-Suk Park</p> <p>15 (via telephone)</p> <p>16 jspark@akingump.com</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 Mr. John F. Austermann, III</p> <p>20 President &amp; CEO, CMS Technologies</p> <p>21</p> <p>22 Ms. Tara Schwake, CRR, RPR</p> <p>23 Mr. John Niehaus, Videographer</p> <p>24</p> <p>25</p>	Page 8
Page 7	<p>1 IT IS HEREBY STIPULATED AND AGREED BY</p> <p>2 and between Counsel for Plaintiffs and Counsel for</p> <p>3 Defendants that this deposition may be taken by</p> <p>4 Tara Schwake, Notary Public and Certified Realtime</p> <p>5 Reporter, thereafter transcribed into typewriting,</p> <p>6 with the signature of the witness being expressly</p> <p>7 reserved.</p> <p>8 * * * * *</p> <p>9 (Deposition commenced at 9:01 a.m.)</p> <p>10 THE VIDEOGRAPHER: My name is John</p> <p>11 Niehaus of Veritext, the date today is October 22,</p> <p>12 2014, and the time is approximately 9:01 a.m. This</p> <p>13 deposition is being held in the office of The Simon</p> <p>14 Law Firm located at 800 Market Street, St. Louis,</p> <p>15 Missouri 63101.</p> <p>16 The caption of this case is Chrimar</p> <p>17 Systems, Inc., et al., versus AMX, LLC, in the U.S.</p> <p>18 District Court, Eastern District of Texas, Tyler</p> <p>19 Division, Case Number 6:13-CV-881-JDL. The name of</p> <p>20 the witness is Les Baxter.</p> <p>21 At this time the attorneys will</p> <p>22 identify themselves and the parties they represent,</p> <p>23 after which our court reporter, Tara Schwake of</p> <p>24 Veritext, will swear in the witness and we can</p> <p>25 proceed.</p>	Page 9
	<p>1 MR. BLUESTONE: David Bluestone,</p> <p>2 McDermott Will &amp; Emery on behalf of Defendant AMX.</p> <p>3 MR. KRIEGER: Tim Krieger with The</p> <p>4 Simon Law Firm on behalf of Plaintiffs.</p> <p>5 MS. PESCHEL: Leisa Peschel with</p> <p>6 Williams Morgan, P.C., on behalf of the</p> <p>7 Alcatel-Lucent Defendants in the 880 case.</p> <p>8 MR. PARK: Jin-Suk Park with the law</p> <p>9 firm of Akin Gump for Samsung.</p> <p>10 MR. YUNGWIRTH: This is Matt</p> <p>11 Yungwirth of the law firm Duane Morris for AMX.</p> <p>12 MR. AUSTERMANN: John Austermann,</p> <p>13 CMS.</p> <p>14 LESLIE ALAN BAXTER,</p> <p>15 of lawful age, having been produced, sworn, and</p> <p>16 examined on the part of Defendant AMX, LLC,</p> <p>17 testified as follows:</p> <p>18 EXAMINATION</p> <p>19 QUESTIONS BY MR. BLUESTONE:</p> <p>20 Q Good morning, Mr. Baxter.</p> <p>21 A Good morning.</p> <p>22 Q Could you please state your full name</p> <p>23 for the record?</p> <p>24 A My name is Leslie Alan Baxter.</p> <p>25 Q Is there anything preventing you</p>	
	<p>1 today from providing complete testimony, like any</p> <p>2 medications or anything like that?</p> <p>3 A No.</p> <p>4 Q And you got a good night's sleep?</p> <p>5 A Yes.</p> <p>6 Q I know you've been deposed before, so</p> <p>7 I'll skip with a lot of the formalities but one</p> <p>8 thing I want to make clear. If there's anything</p> <p>9 that I ask you that's unclear, please ask for</p> <p>10 clarification.</p> <p>11 If you don't ask for clarification,</p> <p>12 the record will assume that you understood the</p> <p>13 question; is that fair?</p> <p>14 A Yes.</p> <p>15 Q Okay. Why don't we --</p> <p>16 MR. PARK: I apologize for</p> <p>17 interrupting --</p> <p>18 MR. BLUESTONE:</p> <p>19 MR. PARK: -- but I can't really hear</p> <p>20 the witness's response. If there's any way to push</p> <p>21 the telephone closer to him, that would be</p> <p>22 appreciated.</p> <p>23 THE VIDEOGRAPHER: One moment please,</p> <p>24 we're going off the record at approximately 9:03</p> <p>25 a.m.</p>	

<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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