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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

M2M SOLUTIONS, LLC, a Delaware)	
limited liability company,)	C.A. NO.
)	1:12-cv-032-RGA
Plaintiff,)	
)	
-vs-)	
)	
ENFORA, INC., a Delaware)	
corporation, NOVATEL WIRELESS)	
SOLUTIONS, INC., a Delaware)	
corporation, and NOVATEL WIRELESS)	
INC., a Delaware corporation,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION
OF
EVELINE WESBY-van-SWAAY

on Tuesday, January 21, 2014
commencing at 9:12 a.m.
Taken at the offices of:
K&L Gates LLP
One New Change
London EC4M 9AF
United Kingdom

Reported by: Thelma Harries, MBIVR, ACR

Page 2

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1 I N D E X

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3 Deponent Page

4 DR. EVELINE WESBY-van-SWAAY

5 CROSS-EXAMINATION BY MS. HAYES 7

6 CROSS-EXAMINATION BY MR. RUSNAK 131

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Page 3

1 A P P E A R A N C E S, continued

2

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22 BY: DAVID A. LOEWENSTEIN, ESQ.

23

24 Alena Onis

25 Videographer

 In attendance:

 Philip Wesby

 Corporate representative of M2M Solutions

 Liz Dawson (Afternoon only)

 Partner

 Pearl Cohen Zedek Latzer Baratz UK LLP

 * * *

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1 E X H I B I T I N D E X

2 Exhibits Marked During This Deposition:

3 Exhibit No. Description Page

4 1: Nokia Card Phone 1.0 57

5 2: Mobile phone 64

6 3: U.S. Patent 8,094,010 66

7 4: M2M Solutions LLC's First 89

8 Supplemental Responses and

9 Objections to Defendant's First

10 Set of Collective

11 Interrogatories to Plaintiff

12 regarding ownership and

13 inventorship

14 5: Plaintiff M2M Solutions, LLC's 115

15 Supplemental Responses and

16 Objections to Defendant's First

17 Set of Common Interrogatories

18 (Nos. 6-10)

19 6: Siemens M20/M20 Terminal 208

20 Cellular Engine. Bates Number

21 DEPPRIORART 002494 to 2690

22 7: Bates Number M2M0004918 to 4919 220

23

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1 VIDEOGRAPHER: We are now on the
 2 record in the matter of M2M Solutions, LLC versus
 3 Enfora, Inc. et al.
 4 Today's date is Tuesday,
 5 21st January, 2014 and the time is 9:12.
 6 This is the video recorded deposition
 7 of Mrs. Eveline Wesby-van-Swaay being taken at the
 8 offices of K&L Gates, LLP, One New Change, London,
 9 EC4M 9AF.
 10 I'm the camera operator. My name is
 11 Alena Onis in association with Alderson Reporting.
 12 The court reporter is Thelma Harries also in
 13 association with Alderson Reporting.
 14 Will all the attorneys please
 15 identify themselves and the parties they represent
 16 beginning with the party noticing this proceeding.
 17 MR. HENSCHKE: Good morning. I'm
 18 Marc Henschke here on behalf of the plaintiff,
 19 M2M Solutions, LLC, and I also have with me here in
 20 the deposition this morning the corporate
 21 representative of M2M Solutions, Mr. Philip Wesby.
 22 MS. HAYES: Jennifer Hayes from Nixon
 23 Peabody for Sierra Wireless.
 24 MR. RUSNAK: Eric Rusnak for Enfora,
 25 Inc. and Novatel Wireless, Inc.

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1 MR. LOEWENSTEIN: David Loewenstein
 2 for the Telit parties and Motorola.
 3 MR. WASSERMAN: Bryon Wasserman for
 4 the Cinterion defendants.
 5 MS. WU: Sherry Wu for Kowatec
 6 Corporation.
 7 VIDEOGRAPHER: Will the court reporter
 8 please administer the oath.
 9 (Witness sworn)
 10 VIDEOGRAPHER: Please proceed.
 11 DR. EVELINE WESBY-van-SWAAY
 12 having been duly sworn
 13 was examined and did testify
 14 as follows:
 15 CROSS-EXAMINATION
 16 BY MS. HAYES:
 17 Q Good morning.
 18 A Good morning.
 19 Q Can you please state your name for
 20 the record?
 21 A My name is Eveline Wesby-van-Swaay.
 22 Q And may I call you Dr. Wesby?
 23 A Yes, please.
 24 Q Can you please state your address for
 25 the record?

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1 A The address is Camden House, which is
 2 in School Lane in Tiddington, Stratford-upon-Avon
 3 in the UK.
 4 Q Thank you. So you understand that
 5 you're under oath today?
 6 A I do.
 7 Q And your testimony in this deposition
 8 will have the same legal effect as testimony in a
 9 trial?
 10 A Yes, I do.
 11 Q And you understand that your
 12 testimony in this deposition may be read to the
 13 jury or used in other proceedings in this lawsuit?
 14 A Yes.
 15 Q Thank you.
 16 I will be asking you a series of
 17 questions and, for purposes of the transcript and
 18 the court reporter, we ask that you, please, make
 19 your responses verbal, so, instead of nodding,
 20 actually saying yes or no.
 21 A Yes, I understand.
 22 Q And if you don't hear a question that
 23 I ask you, please ask me to repeat it, and, if you
 24 don't understand a question, please ask me to
 25 rephrase it.

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1 A Okay.
 2 Q Please also wait until I finish my
 3 question before answering, and I will also wait for
 4 you to answer before I ask my next question.
 5 From time to time your attorney may
 6 object to a question that I ask. For the record,
 7 you'll be required to answer the question unless
 8 your attorney directs you to not answer the
 9 question.
 10 A Okay.
 11 Q And if, for some reason, you realise
 12 that an answer that you gave earlier in the
 13 deposition is not correct or you feel like there's
 14 additional information that you need to provide,
 15 please let me know so that we can discuss that.
 16 A I will.
 17 Q Is there any reason that you are not
 18 able to participate in the deposition to your
 19 fullest advantage today?
 20 A No, there is no reason.
 21 Q Thank you.
 22 Dr. Wesby, you did not invent GSM,
 23 correct?
 24 A Could you repeat that question?
 25 Q You did not invent GSM, correct?

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1 A That is correct.
 2 Q You did not invent GPRS, correct?
 3 A That is correct.
 4 Q You did not invent SMS, correct?
 5 A That's correct.
 6 Q You did not invent CDMA, correct?
 7 A That's correct.
 8 MR. HENSCHKE: I'm going to object
 9 and instruct the witness not to answer these
 10 questions any further.
 11 These questions, clearly, address the
 12 issue of inventorship, which was already covered at
 13 the previous deposition in August of 2012, and,
 14 according to the Court's scheduling order, the
 15 defendants are not permitted today to return to the
 16 same topics that were previously covered.
 17 Inventorship, obviously, was the main
 18 topic covered at that time. These questions are,
 19 therefore, duplicative of inventorship topics and
 20 the witness will not answer any further questions
 21 of this nature, and I'm instructing her as such.
 22 MS. HAYES: We disagree with that
 23 statement. We believe that these questions are
 24 relevant to what existed in the prior art and are
 25 unrelated to inventorship. We believe that these

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1 questions are appropriate.
 2 MR. HENSCHKE: Your questions are
 3 being directly phrased in terms of what Dr. Wesby
 4 invented. You could not possibly be more clearly
 5 asking questions about inventorship and, if the
 6 questions are going to be anything along those
 7 lines, she's going to be instructed not to answer.
 8 MR. LOEWENSTEIN: I'll just kick in.
 9 I don't know if you can hear me. But these
 10 questions are related to invalidity, which is
 11 different than what we talked about last time which
 12 related to inventorship.
 13 So you can instruct her not to
 14 answer, but she'll be back in Delaware pretty soon.
 15 MR. HENSCHKE: The question is -- is
 16 directly a question as to whether she invented
 17 something and, clearly, is a question on
 18 inventorship. And if it's going to be put in those
 19 terms, she's not going to answer the questions or
 20 any other like those.
 21 MR. LOEWENSTEIN: Well, you can do
 22 what you want. I guess we'll just press ahead.
 23 BY MS. HAYES:
 24 Q Dr. Wesby, you did not invent CDMA,
 25 correct?

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1 MR. HENSCHKE: Instruct the witness
 2 not to answer.
 3 BY MS. HAYES:
 4 Q Dr. Wesby, CDMA was known prior to
 5 the filing date of your Programmable Communicator
 6 patent, correct?
 7 A That's correct.
 8 Q And, for the record, you agree that
 9 the Programmable Communicator patent is US Patent
 10 Number 8,094,010, correct?
 11 MR. HENSCHKE: If you need to see the
 12 document, please ask for it.
 13 THE WITNESS: Can -- can you repeat
 14 the question in full, please?
 15 BY MS. HAYES:
 16 Q You agree that the Programmable
 17 Communicator patent is US Patent Number 8,094,010,
 18 correct?
 19 A Yes.
 20 Q Okay. Dr. Wesby, you did not invent
 21 GPS, correct?
 22 MR. HENSCHKE: Objection. Instruct
 23 the witness not to answer.
 24 BY MS. HAYES:
 25 Q Dr. Wesby, GPS was known prior to the

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1 filing date of your Programmable Communicator
 2 patent, correct?
 3 A Correct.
 4 Q Dr. Wesby, you did not invent the use
 5 of GPS in wireless communications, correct?
 6 MR. HENSCHKE: Objection. Instruct
 7 the witness not to answer.
 8 BY MS. HAYES:
 9 Q Dr. Wesby, the use of GPS in wireless
 10 communications was known prior to the filing of
 11 your Programmable Communicator patent, correct?
 12 MR. HENSCHKE: If you know, you can
 13 answer.
 14 THE WITNESS: Yes, it was.
 15 BY MS. HAYES:
 16 Q Dr. Wesby, you did not invent
 17 packet-switched data networks, correct?
 18 MR. HENSCHKE: Objection. Instruct
 19 the witness not to answer.
 20 BY MS. HAYES:
 21 Q You did not invent packet-switched
 22 data networks?
 23 MR. HENSCHKE: Objection. Instruct
 24 the witness not to answer.
 25

Page 14

1 BY MS. HAYES:
 2 Q Dr. Wesby, packet-switched data
 3 networks were known prior to the filing of your
 4 Programmable Communicator patent, correct?
 5 A That's correct.
 6 Q Dr. Wesby, you did not invent coded
 7 numbers, correct?
 8 MR. HENSCHKE: Objection. Instruct
 9 the witness not to answer.
 10 BY MS. HAYES:
 11 Q Dr. Wesby, coded numbers were known
 12 prior to the filing of your Programmable
 13 Communicator patent, correct?
 14 A That's correct.
 15 Q Dr. Wesby, you did not invent the use
 16 of coded numbers in wireless communications,
 17 correct?
 18 MR. HENSCHKE: Objection. Instruct
 19 the witness not to answer.
 20 BY MS. HAYES:
 21 Q Dr. Wesby, the use of coded numbers
 22 in wireless communications was known prior to the
 23 filing of your Programmable Communicator patent --
 24 MR. HENSCHKE: Objection.
 25 BY MS. HAYES:

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1 Q -- correct?
 2 MR. HENSCHKE: Instruct the witness
 3 not to answer.
 4 That question was -- exact question
 5 was asked in the prior day's deposition. That's
 6 a duplicative topic. I instruct the witness not to
 7 answer.
 8 MS. HAYES: I disagree. Can you
 9 please point out where in the deposition transcript
 10 that exact question was asked?
 11 MR. HENSCHKE: If you want to go off
 12 the record, I can find the reference for you. And
 13 it's not relevant whether the exact question was
 14 asked. The issue that's relevant is whether that
 15 topic was covered, and Dr. Wesby has already been
 16 asked whether she was aware of the use of coded
 17 number authentication with wireless devices in the
 18 previous day's deposition.
 19 MS. HAYES: I disagree with that.
 20 I believe we're entitled to ask this question. It
 21 was not asked before, and we have the right to get
 22 a clear answer on the record to this question.
 23 MR. HENSCHKE: Again, the issue is
 24 not whether the exact question was asked before.
 25 The issue is whether the topic was covered before,

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1 and the topic of whether Dr. Wesby knew whether or
 2 not coded numbers and authentication were used
 3 with wireless devices was directly covered at the
 4 August 2012 deposition, as that written record will
 5 reflect. And, accordingly, Dr. Wesby's being
 6 instructed not to answer that question, which is
 7 clearly duplicative.
 8 MS. HAYES: We disagree with your
 9 instruction. We reserve the right to go to the
 10 Court and seek our travel costs and fees in
 11 reimbursement.
 12 MR. HENSCHKE: You're welcome to do
 13 that.
 14 BY MS. HAYES:
 15 Q Dr. Wesby, you did not invent the use
 16 of passwords in wireless communications, correct?
 17 MR. HENSCHKE: Objection. Instruct
 18 the witness not to answer.
 19 BY MS. HAYES:
 20 Q Dr. Wesby, passwords in wireless
 21 communications were known prior to the filing of
 22 your Programmable Communicator patent, correct?
 23 MR. HENSCHKE: Objection.
 24 (To the witness) Only if you know.
 25 THE WITNESS: That's correct.

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1 BY MS. HAYES:
 2 Q Dr. Wesby, you did not invent the use
 3 of PIN codes in wireless communications, correct?
 4 MR. HENSCHKE: Objection. Instruct
 5 the witness not to answer.
 6 BY MS. HAYES:
 7 Q Dr. Wesby, the use of PIN codes in
 8 wireless communications was known prior to the
 9 filing of your Programmable Communicator, correct?
 10 A That's correct.
 11 Q Dr. Wesby, you did not invent PUK
 12 codes, correct?
 13 MR. HENSCHKE: Objection. Instruct
 14 the witness not to answer.
 15 BY MS. HAYES:
 16 Q Dr. Wesby, PUK codes were known prior
 17 to the filing of your Programmable Communicator --
 18 MR. HENSCHKE: Objection. Instruct
 19 the witness not to answer. The questions about PUK
 20 codes and her knowledge of it in the prior art were
 21 asked at the previous August deposition.
 22 Therefore, this a duplicative topic.
 23 MS. HAYES: We disagree. And I also
 24 ask that you please wait for me to finish my
 25 question before objecting.

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