

CORRECTED

*M2M SOLUTIONS LLC VS.
SIERRA WIRELESS AMERICA, INC.*

*DR. EVELINE WESBY-VAN SWAAY
August 14, 2012*

Ellen Grauer
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Min-U-Script® with Word Index

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3 -----x
4 M2M SOLUTIONS LLC, a Delaware limited
5 liability company,
6
7 Plaintiff
8
9 v.
10 SIERRA WIRELESS AMERICA, INC., a
11 Delaware corporation, and SIERRA
12 WIRELESS, INC., a Canadian
13 corporation,
14 Defendants
15
16 Civil Action No. 12-030-RGA
17 -----x
18 (CAPTION CONT'D ON NEXT PAGE)
19
20 111 Huntington Avenue
21 Boston, Massachusetts
22 August 14, 2012
23 9:25 a.m.
24
25 VIDEOTAPED DEPOSITION OF DR. EVELINE WESBY-VAN
SWAAY, a witness called by and on behalf of the
Defendants, taken pursuant to Federal Rules of Civil
Procedure, before Nicole E. Viens, a Certified
Shorthand Reporter and Notary Public in and for the
Commonwealth of Massachusetts.

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New York, New York 10022
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1 A P P E A R A N C E S :
2
3 FOLEY & LARDNER LLP
4 Counsel for the Plaintiff
5 111 Huntington Avenue
6 Boston, Massachusetts 02199
7 BY: MARC N. HENSCHKE, ESQUIRE
8 (617) 342-4000
9 mhenschke@foley.com
10
11
12 MAYER BROWN LLP
13 Counsel for Defendants Cinterion Wireless
14 Modules NAFTA and Cinterion Wireless Modules
15 NAFTA
16 1999 K Street, N.W.
17 Washington, D.C. 20006
18 BY: BRYON T. WASSERMAN, ESQUIRE
19 (202) 263-3483
20 bwasserman@mayerbrown.com
21
22
23
24
25

1 (CAPTION CONT'D FROM PREVIOUS PAGE)
2 -----x
3 M2M SOLUTIONS LLC, a Delaware limited
4 liability company,
5 Plaintiff
6
7 v.
8 CINTERION WIRELESS MODULES GMBH, a
9 German limited liability company,
10 CINTERION WIRELESS MODULES NAFTA LLC, a
11 Delaware limited liability company,
12 Defendants
13
14 Civil Action No. 12-031-RGA
15 -----x
16 M2M SOLUTIONS LLC, a Delaware limited
17 liability company,
18 Plaintiff
19
20 v.
21 ENFORA, INC., a Delaware corporation,
22 et al.,
23 Defendants
24
25 Civil Action No. 12-032-RGA
-----x
M2M SOLUTIONS LLC, a Delaware limited
liability company,
Plaintiff
v.
MOTOROLA SOLUTIONS, INC., a Delaware
corporation, TELIT COMMUNICATIONS PLC,
a United Kingdom public limited company,
and TELIT WIRELESS SOLUTIONS INC., a
Delaware corporation,
Defendants
-----x

1 A P P E A R A N C E S (Cont'd):
2
3 PEARL COHEN ZEDEK LATZER LLP
4 Counsel for Defendants Motorola Solutions, Inc.,
5 Telit Communications PLC and Telit Wireless
6 Solutions Inc.
7 1500 Broadway, 12th Floor
8 New York, New York 10036
9 BY: DAVID A. LOEWENSTEIN, ESQUIRE
10 (646) 878-0806
11 davidl@pczlaw.com
12
13 Also Present:
14 Philip B. Wesby
15 Michael Amato, Legal Video Specialist
16
17
18
19
20
21
22
23
24
25

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1 ----- I N D E X -----

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1 STIPULATIONS

2

3 It is hereby stipulated and agreed by and

4 between counsel for the respective parties that the

5 deponent shall have thirty (30) days in which to read

6 and sign the deposition transcript, after which time it

7 shall be deemed to have been signed, and that the

8 filing and sealing of the deposition transcript are

9 waived.

10 It is further stipulated and agreed that all

11 objections, except objections as to the form of the

12 question, and all motions to strike shall be reserved

13 until the time of trial.

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1 **THE VIDEOGRAPHER:** This is the start

2 of tape labeled Number 1 of the videotape

3 deposition of Eveline Wesby-van Swaay in

4 the matter of M2M Solutions LLC versus

5 Sierra Wireless America Incorporated, et

6 al., in the United States District Court

7 for the District of Delaware, Cases

8 Numbered 12-030-RGA, 12-031-RGA,

9 12-032-RGA, and 12-033-RGA.

10 This deposition is being held at

11 Foley & Lardner LLP, 111 Huntington Avenue,

12 Suite 2600, Boston, Massachusetts 02199,

13 on Tuesday, August 14, 2012, at

14 approximately 9:25 a.m. My name is Michael

15 Amato, CCVS, from Ellen Grauer Court

16 Reporting and I'm the legal video

17 specialist. The court reporter is Nicole

18 Viens, also in association with Ellen

19 Grauer Court Reporting.

20 Counsel will please introduce

21 yourselves and then the court reporter will

22 swear in the witness.

23 **MR. WASSERMAN:** I'm Bryon Wasserman

24 on behalf of defendants Cinterion Wireless

25 NAFTA and Cinterion Wireless GMBH.

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1 WESBY-VAN SWAAY

2 **MR. HENSCHKE:** Go ahead, David.

3 **MR. LOEWENSTEIN:** David Loewenstein

4 for Telit and Motorola.

5 **MR. HENSCHKE:** And Marc Henschke on

6 behalf of the plaintiff M2M Solutions LLC.

7

8 EVELINE WESBY-VAN SWAAY, having been

9 satisfactorily identified and duly sworn by

10 the Notary Public, was examined and

11 testified as follows in answer to direct

12 interrogatories:

13 **MR. WASSERMAN:** Hi. Before we get

14 started, I'd like to note that Mr. Wesby is

15 in the room. Can I ask what capacity he's

16 here?

17 **MR. HENSCHKE:** We provided notice to

18 all of defendants last week that Mr. Wesby

19 would be attending the deposition today as

20 a corporate representative of M2M Solutions

21 LLC under Delaware Local Rule 30.3.

22 **MR. WASSERMAN:** My understanding is

23 that you've also -- you've already

24 designated Ms. Wesby-van -- Dr. Wesby to --

25 as a corporate representative for tomorrow.

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1 WESBY-VAN SWAAY
2 I'm not under any -- I'm not aware that you
3 can have multiple corporate representatives
4 and rotate them depending on the witness.
5 **MR. HENSCHKE:** I don't know where you
6 get that understanding. We haven't
7 designated Eveline Wesby as a corporate
8 representative for tomorrow or for any
9 other purpose.
10 **MR. LOEWENSTEIN:** Well, I'll say on
11 behalf of Telit and Motorola, we think it's
12 improper in part -- especially because
13 Mr. Wesby is supposed to be deposed
14 tomorrow, and as I understand it, there are
15 only two people in the corporation. You
16 can correct me if I'm wrong. And what I
17 think, frankly, is going on is that he's
18 here to get a preview of the questions that
19 are going to be asked tomorrow and to align
20 the testimony.
21 So on behalf of Motorola and Telit, I
22 think it's improper. We're waiting to hear
23 back from our local counsel. I think the
24 compromised situation here, rather than
25 canceling the deposition outright, is to go

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1 WESBY-VAN SWAAY
2 along for an hour or so. I think
3 Mr. Wasserman is going to ask background
4 questions and hopefully by then we'll have
5 some feedback from our local counsel and we
6 may need to call the court.
7 **MR. HENSCHKE:** Well, I think we've
8 explained to you in the notice that we
9 provided that Philip Wesby is the managing
10 member of M2M Solutions, he is a member of
11 the board of directors of M2M Solutions,
12 and also a 50 percent owner of M2M
13 Solutions. So I'm not aware of any reason
14 why he would not be an appropriate person
15 to designate as a corporate representative
16 under Local Rule 30.3(d), and I would
17 suggest that unless you have some authority
18 that you can provide to us why he doesn't
19 qualify as an appropriate corporate
20 representative, that our plan would be to
21 have him here at the deposition today.
22 **MR. LOEWENSTEIN:** Well, as luck would
23 have it, I just got an e-mail from my local
24 counsel. So if you want to take a
25 ten-minute break, we can chat with him and

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1 WESBY-VAN SWAAY
2 see what his advice is, but I think it's
3 improper. I suppose you're entitled to
4 have a corporate representative but doesn't
5 mean you're entitled to have a corporate
6 representative who's going to be deposed
7 the next day on the same issues and where
8 their testimony is potentially inconsistent
9 and it seems to me that it's prejudicial.
10 So if you can give me ten minutes,
11 I'll try to get ahold of our local counsel,
12 who happens to be on vacation right now.
13 **MR. HENSCHKE:** You're welcome to do
14 that, and if you come up with any authority
15 on that point, I'd be happy to consider it.
16 **MR. LOEWENSTEIN:** You'll be the first
17 to know. Thanks.
18 **THE VIDEOGRAPHER:** The time is 9:29
19 a.m. and we're going off the record.
20 (A brief recess was taken.)
21 **THE VIDEOGRAPHER:** The time is 9:36
22 a.m. and we are back on the record.
23 **MR. LOEWENSTEIN:** So what we are
24 going to ask is that according to what I
25 understand the Delaware local rule to be

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1 WESBY-VAN SWAAY
2 that lawyers are not permitted to talk to
3 witnesses during the break and we ask,
4 then, that Mr. Wesby also not talk to
5 Dr. Wesby during the break. And we'll --
6 we're going to maintain our objection, but
7 we would like to know -- we would like to
8 have your agreement at least on that issue.
9 **MR. HENSCHKE:** I would be willing to
10 agree to that, that during the course of
11 the deposition today of Dr. Wesby that Phil
12 Wesby will not substantively discuss her
13 testimony or potential testimony with her
14 in the same way that I won't as her
15 attorney.
16 **MR. LOEWENSTEIN:** Okay.
17 **MR. WASSERMAN:** That's good for us.
18 **EXAMINATION BY MR. WASSERMAN:**
19 Q. We're back on the record. Sorry about the delay
20 there.
21 A. It's okay.
22 Q. Before we get started, is English your native
23 language?
24 A. No, it isn't.
25 Q. Do you feel that you can answer my questions

1 WESBY-VAN SWAAY
2 accurately in English even though it's not your native
3 language?
4 **A. I think in general, yes.**
5 Q. Okay. If I ask a question that's not clear to
6 you either because you don't recognize the words or
7 just because I'm a lawyer and we talk in words that
8 people don't understand most of the time, I'd ask that
9 you please let me know and ask me for clarification.
10 **A. Will do. Thank you.**
11 Q. Can I have your full name, please.
12 **A. My name is Eveline Wesby-van Swaay.**
13 Q. And what's your current address?
14 **A. I live at Camden House in School Lane in**
15 **Tiddington, Stratford-upon-Avon, which is in the United**
16 **Kingdom.**
17 Q. And where were you born?
18 **A. I was in born in The Hague in the Netherlands.**
19 Q. And how long did you live in The Hague?
20 **A. That's a good question. It's probably around a**
21 **few months only as a small baby, and I relocated there**
22 **after I finished my medical degree for my first job.**
23 Q. And after you left The Hague, where did you go?
24 **A. To Delft, which is just ten kilometers south**
25 **from The Hague.**

1 WESBY-VAN SWAAY
2 Q. And how long did you live there?
3 **A. I lived there about '87 to '97, ten years.**
4 Q. Did you attend an undergraduate institution,
5 college or university?
6 **A. "Undergraduate" you mean the medical school?**
7 Q. Before medical school, did you --
8 **A. Before medical school?**
9 Q. Yes.
10 **A. The Dutch system is that after primary school,**
11 **you can choose to attend a grammar school which takes**
12 **you all the way up to be ready to go to university if**
13 **you have the grades.**
14 Q. And did you attend university after grammar
15 school?
16 **A. I did.**
17 Q. Where did you attend university?
18 **A. I attended this in Ghent, which is in Belgium.**
19 Q. And did you receive a degree from that -- what
20 was it? I'm sorry, what was the name of the university
21 in Ghent that you attended?
22 **A. The name in Flemish is Rijksuniversiteit Gent,**
23 **which translates to State University Ghent, Belgium.**
24 Q. And did you receive a degree from that
25 university?

1 WESBY-VAN SWAAY
2 **A. I did.**
3 Q. What was that degree in?
4 **A. That's the general degree in medicine, surgery**
5 **and obstetrics as it's called there.**
6 Q. And did you -- did you have additional training
7 after you completed that university degree?
8 **A. I did.**
9 Q. Where did you conduct that training?
10 **A. So my first post for training was done back in**
11 **Hague in a specialized children's hospital which is**
12 **called the Juliana Kinderziekenhuis, which is the**
13 **Juliana, Queen Juliana, Children's Hospital based in**
14 **Hague.**
15 Q. And after you completed your training at that
16 university -- at that hospital, where did you go?
17 **A. Actually, as part of that training, I spent some**
18 **time in Leiden University and some time in Rotterdam,**
19 **the kind of sister children's hospital. And after**
20 **completion of the pediatrics training, I joined the**
21 **clinical genetics training in Rotterdam.**
22 Q. And what year did you finish your pediatrics
23 training?
24 **A. I finished that in 1985.**
25 Q. And I believe you mentioned that you then went

1 WESBY-VAN SWAAY
2 on to additional training in genetics; is that correct?
3 **A. Correct.**
4 Q. At Rotterdam. How long were you in -- how long
5 were you -- how long did this training take at
6 Rotterdam?
7 **A. That training took four years, which is the**
8 **standard for that.**
9 Q. And after you completed the training in
10 Rotterdam, did you take a job?
11 **A. Yeah. I took a job at same institute in**
12 **clinical genetics and I stayed from then on as a**
13 **consultant.**
14 Q. And how long were you employed by that -- at
15 Rotterdam?
16 **A. I was there employed until the end of 1996.**
17 Q. And in 1996 did you take another job?
18 **A. At first I didn't. This was the time that we**
19 **relocated with family to Finland. So the next job was**
20 **a few months later in Finland.**
21 Q. And where was your next job you mentioned in
22 Finland?
23 **A. It was at the Helsinki University Hospital,**
24 **department of genetics.**
25 Q. And how long were you at the Helsinki hos --

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