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1 4 probably away from you.  
2 A Exhibit 2, page 16?  
3 Q Wait, I'm sorry. One housekeeping  
4 matter before we move on, I apologize. I didn't  
5 mark Exhibit 4 quite yet. Here is Exhibit 4. It  
6 might make a little more sense now.  
7 (Exhibit 4 marked for identification  
8 by the court reporter.)  
9 Q (BY MR. BLUESTONE) And this will be  
10 brief. I just want to make sure that in Exhibit 4,  
11 the interpretations that are in paragraph 35, 74,  
12 81, and 82 of Exhibit 2 are not present anywhere in  
13 Exhibit 4.  
14 A Can you refresh me again roughly,  
15 what are we looking for?  
16 Q Sure. Paragraph 35 was the  
17 definition of distinguish.  
18 A Okay.  
19 Q 74 was arranging impedance within the  
20 at least one path meaning placing an impedance in a  
21 path between contacts. And 81 and 82 were placing  
22 the impedance in the path for the purpose of with  
23 respect to claims 67 and 31 respectively.  
24 A No, I don't see it in here.  
25 MR. KRIEGER: Objection, form.

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1 Q (BY MR. BLUESTONE) And I'm sorry to  
2 belabor this one point because we've been bantering  
3 on it back and forth. I just want to make sure the  
4 record is clear for later.  
5 MR. BLUESTONE: And Tim, I'll give  
6 you your asked and answered objection right now for  
7 you.  
8 Q (BY MR. BLUESTONE) On 35 we talked  
9 about "The plain and ordinary meaning of  
10 'distinguish' is 'to separate into kinds, classes,  
11 or categories.'"  
12 I am just asking again, is that your  
13 understanding of the plain meaning of distinguish  
14 as read in context of the intrinsic evidence?  
15 A That is my -- I'm not sure exactly  
16 what you mean by that. That's my understanding of  
17 the plain and ordinary meaning of distinguish in  
18 ordinary English --  
19 Q Okay.  
20 A -- and the way would I use it in that  
21 claim.  
22 Q In the claim of the '012 patent?  
23 A The way I interpret it in claim 31  
24 and 67.  
25 Q And the asserted dependent claims as

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1 well?  
2 A Yes, they depend on that one, yeah.  
3 But that's sort of the general meaning of it that I  
4 think it has, yes.  
5 Q Okay. All right. Sorry for the  
6 little sidetrack there. Let's go to page 16 of  
7 Exhibit 2, please.  
8 A Okay.  
9 Q Okay. In paragraph 59 you -- oh, I  
10 think you have the wrong one. Exhibit 2. That's  
11 Exhibit 3.  
12 A Page 16, paragraph which?  
13 Q 59. Starts on 59 and goes on to page  
14 16.  
15 A Okay.  
16 Q So in paragraphs 53 through 60, you  
17 are talking about Ethernet Connectors With Multiple  
18 Contacts?  
19 A Right.  
20 Q And you show this picture on page 59  
21 [sic] that represents a front view looking into a  
22 Base-T Ethernet connector at the contacts.  
23 A Right.  
24 Q And you state in paragraph 56 that  
25 "One of ordinary skill in the art knows the scope

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1 of the above phrases," and those are the phrases in  
2 53 and 54, "as they were concepts well known in the  
3 art at the time the '012 patent was filed." This  
4 is a lot of background for my question here.  
5 So what you're showing in figure --  
6 or under paragraph 59, this figure, is an Ethernet  
7 connector comprising a plurality of contacts;  
8 right?  
9 A Correct.  
10 Q And this is simply a two-dimensional  
11 cross-reference of what the IEEE standard would  
12 show for the connector; correct?  
13 A Right. It's looking into the front.  
14 Q Okay. And it would be the same  
15 connector that was adopted at least in 1993;  
16 correct?  
17 A Correct.  
18 Q Okay. So this figure is known, an  
19 Ethernet connector comprising a plurality of  
20 contacts is known; correct?  
21 A Yes.  
22 Q Now we're going to turn to paragraph  
23 61 through 65. And under 64 you have a nice  
24 picture of the same Ethernet connector but with a  
25 line going across from pins 1 to 8; is that

<p style="text-align: right;">Page 114</p> <p>1 correct?</p> <p>2 A It is.</p> <p>3 Q And what is this showing in paragraph</p> <p>4 64, this figure?</p> <p>5 A This is showing a path between pin 1</p> <p>6 and pin 8.</p> <p>7 Q Okay. And when you say in paragraph</p> <p>8 63 that "One of ordinary skill in the art would</p> <p>9 understand this to mean that a path is coupled</p> <p>10 between the specific contacts," does that mean that</p> <p>11 what is shown in paragraph 64 was also known?</p> <p>12 A I am not sure I follow what the</p> <p>13 question is. This is an example of a path between</p> <p>14 contacts.</p> <p>15 Q Okay. So if we're looking at --</p> <p>16 looking at these claims as of the time of the</p> <p>17 invention, right, which is what you said you're</p> <p>18 supposed to do before; correct?</p> <p>19 A Mm-hmm.</p> <p>20 Q And you say a person would understand</p> <p>21 what it means to have a path coupled between</p> <p>22 contacts of an Ethernet connector; correct?</p> <p>23 A Mm-hmm.</p> <p>24 Q When you say that, does that equate</p> <p>25 that someone would -- that basically the schematic</p>	<p style="text-align: right;">Page 116</p> <p>1 Let's go on to paragraph 66 through 78. And now</p> <p>2 we're talking about impedance within the path</p> <p>3 between the contacts of the Ethernet connector.</p> <p>4 A Right.</p> <p>5 Q And I'm going to refer to you</p> <p>6 paragraph 77. Would a person of ordinary skill in</p> <p>7 the art at the date of filing of the earliest</p> <p>8 patent application or the date of invention have</p> <p>9 already seen something similar to the schematic in</p> <p>10 paragraph 77?</p> <p>11 MR. KRIEGER: Objection, form.</p> <p>12 A Whether they would have seen this</p> <p>13 exact schematic or not, I don't know, but certainly</p> <p>14 you would be familiar with what the Ethernet</p> <p>15 connector is, what an impedance is, and what a path</p> <p>16 is.</p> <p>17 So I think those are very familiar</p> <p>18 concepts to anyone of skill in the art at that time</p> <p>19 and since Ethernet, you know, twisted pairing had</p> <p>20 been around for some years, certainly they would</p> <p>21 have seen schematics that had connections across</p> <p>22 the contacts of a modular jack.</p> <p>23 Q (BY MR. BLUESTONE) Okay. I'll show</p> <p>24 you what we'll mark as Exhibit 5.</p> <p>25 (Exhibit 5 marked for identification)</p>
<p style="text-align: right;">Page 115</p> <p>1 in paragraph 64 already existed prior to the date</p> <p>2 of invention; correct?</p> <p>3 MR. KRIEGER: Objection, form.</p> <p>4 A You mean had anyone ever actually</p> <p>5 hooked pin 1 to pin 8 like that? I don't know.</p> <p>6 That's an example of a path between contacts.</p> <p>7 Q (BY MR. BLUESTONE) How did you</p> <p>8 select this schematic to be used?</p> <p>9 A I wanted to show a path between two</p> <p>10 contacts, so I selected 1 and 8 and I made a</p> <p>11 connection with them.</p> <p>12 Q But you're not asserting that the</p> <p>13 inventors invented having a path across the two</p> <p>14 contacts; right?</p> <p>15 A No.</p> <p>16 MR. KRIEGER: Objection, form. You</p> <p>17 got to wait. Give me a second.</p> <p>18 THE WITNESS: Okay. Okay, sorry.</p> <p>19 MR. KRIEGER: Also I noticed before</p> <p>20 there's a couple of mm-hmms, they need to be yes or</p> <p>21 no, so it's clear.</p> <p>22 THE WITNESS: Okay.</p> <p>23 MR. KRIEGER: Thank you.</p> <p>24 Q (BY MR. BLUESTONE) So sitting here</p> <p>25 today you can't tell me whether -- forget that.</p>	<p style="text-align: right;">Page 117</p> <p>1 by the court reporter.)</p> <p>2 Q (BY MR. BLUESTONE) So on the right</p> <p>3 of Exhibit 5 I believe is an accurate copy of the</p> <p>4 figure in paragraph 77.</p> <p>5 A Okay.</p> <p>6 Q Is that correct? Would you say it's</p> <p>7 accurate?</p> <p>8 A Yes.</p> <p>9 Q Okay. And on the left we've just</p> <p>10 taken the independent claim language and</p> <p>11 highlighted certain elements in green. What I'd</p> <p>12 like you to do is, starting with claim 31, tell me</p> <p>13 whether any aspect of what's in green isn't shown</p> <p>14 in your schematic on the right.</p> <p>15 MR. KRIEGER: Are we just talking</p> <p>16 about 31 right now?</p> <p>17 MR. BLUESTONE: Yeah, just 31.</p> <p>18 Thanks, Tim.</p> <p>19 MR. KRIEGER: Okay.</p> <p>20 A Okay. And what is it you want to</p> <p>21 know?</p> <p>22 Q (BY MR. BLUESTONE) Is there anything</p> <p>23 -- you go through in the report how the schematic</p> <p>24 correlates to the claim language.</p> <p>25 A Right.</p>

30 (Pages 114 - 117)

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1 Q My question for you is does the  
2 highlighted language in green correlate accurately  
3 to what's shown in the schematic? Or is there  
4 something I need to remove from highlighting in  
5 green that isn't correlated?  
6 A I guess the only thing I would  
7 quibble with is the last -- the last highlight  
8 there because it -- "associated to impedance" is  
9 really sort of one phrase, I mean.  
10 Q Okay. But is there -- well,  
11 "associated" isn't highlighted. Is there impedance  
12 within the at least one path shown on the right?  
13 A There is, but you need to unhighlight  
14 impedance I think is what I'm saying. It's  
15 "associated to impedance" is the phrase. It's not  
16 just "associated."  
17 Q Okay. Okay. So we'll come back to  
18 whether distinguishing information is associated  
19 to, but we do know that, according to your  
20 schematic, this has an impedance within the path  
21 because you have that resistor symbol; right?  
22 A Right.  
23 Q Okay. Can you do the same analysis  
24 on claim 67 below, please?  
25 OUTSIDE INTERRUPTION: I'm sorry, can

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1 I talk to you just for one quick second?  
2 MR. BLUESTONE: Can we just have him  
3 finish this one question and we'll take a break?  
4 OUTSIDE INTERRUPTION: Yeah, go ahead.  
5 MR. BLUESTONE: Okay, yeah.  
6 MR. KRIEGER: Objection, form.  
7 A And what was the question you  
8 objected to?  
9 Q (BY MR. BLUESTONE) Are all the items  
10 shown in green reflected upon the schematic picture  
11 on the right?  
12 A Yeah, I think that's roughly  
13 accurate. Once again, it's the "arranging" and  
14 "distinguishing" sort of go together. So I don't  
15 -- other than that I think, yeah, that...  
16 Q But you have put a impedance within  
17 that path on the right; correct?  
18 A Yeah.  
19 MR. BLUESTONE: You guys wanted to  
20 take a break?  
21 THE VIDEOGRAPHER: We're going off  
22 the record at approximately 12:06 p.m.  
23 (Off the record.)  
24 THE VIDEOGRAPHER: We're back on  
25 record at approximately 1:13 p.m.

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1 Q (BY MR. BLUESTONE) Good afternoon,  
2 Mr. Baxter.  
3 A Good afternoon.  
4 Q I'm going to direct your attention to  
5 Exhibit 2 again, your Declaration, and point you to  
6 paragraph 82, please.  
7 A Paragraph 80 what?  
8 Q 82.  
9 A Okay.  
10 Q Just let me know when you've gotten a  
11 chance to review it.  
12 A Okay.  
13 Q This paragraph discusses defendants'  
14 position that distinguishing information about the  
15 piece of Ethernet data terminal equipment being  
16 associated to impedance is some active step that  
17 needs to happen by an actor. And your position, as  
18 it states in paragraph 82, is the claim "does not  
19 require an active step or action on the part of the  
20 user."  
21 My question to you is, how is it --  
22 how does one place an impedance into the circuit  
23 but not have that be an active step?  
24 MR. KRIEGER: Objection, form.  
25 A Well, the manufacturing a product is

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1 an activity. We're talking about the design of the  
2 product such that when the manufacturing is  
3 completed, that impedance is in there to -- for the  
4 purpose of providing distinguishing information.  
5 Q (BY MR. BLUESTONE) So just  
6 grammatically looking at this in paragraph 82, the  
7 language that you're interpreting is "wherein  
8 distinguishing information is associated to  
9 impedance within the at least one path"?  
10 A Mm-hmm.  
11 Q That statement doesn't apply any  
12 particular time, does it?  
13 MR. KRIEGER: Objection, form.  
14 A The statement "wherein distinguishing  
15 information"?  
16 Q (BY MR. BLUESTONE) Yeah, the act of  
17 associating to impedance, does that, in and of  
18 itself, tell you when that association is supposed  
19 to occur?  
20 A Well, to me, because this is an  
21 apparatus claim, it means that it's done within the  
22 apparatus. It's one of the -- it's part of the  
23 apparatus.  
24 Q So how do you get from associating --  
25 you don't apply any claim construction or any

<p style="text-align: right;">Page 122</p> <p>1 definition of associate, right, in your report?  2 MR. KRIEGER: Objection, form.  3 A In this one here?  4 Q (BY MR. BLUESTONE) Yeah.  5 A I -- I don't recall if I did in this  6 one or the previous one.  7 Q Well, let me ask, how do you get --  8 what's your understanding of what it means to  9 associate?  10 MR. KRIEGER: Objection, form.  11 A Things are associated, they have some  12 relationship or some linkage or relationship  13 between them.  14 Q (BY MR. BLUESTONE) Okay. And please  15 correct me if I'm wrong, your read in paragraph 82  16 was saying that that association has to occur at  17 the time of manufacture?  18 A Yes, it's built in at the time of  19 manufacture. It's, again, as we have talked about  20 numerous times, the designer of this equipment  21 decides what distinguishing information he wants to  22 associate to impedance and he builds it in.  23 Q Okay. Let's go to paragraph 74.  24 Paragraph 74 you're talking about "arranging  25 impedance within the at least one path."</p>	<p style="text-align: right;">Page 124</p> <p>1 contacts, that that shows that it was known back  2 then.  3 Q (BY MR. BLUESTONE) Is that -- so is  4 it correct to say that the telephone connector uses  5 a twisted pair set of wiring; correct?  6 A Yes.  7 Q And Ethernet connector also uses a  8 twisted pair of wiring; correct?  9 A Yes.  10 Q And the only difference is the number  11 of pairs for that connector; correct?  12 A Well, that's one difference. I mean,  13 there's difference in performance and other things  14 but...  15 Q Well, just the connector.  16 A Right. The connectors, there's a  17 whole range of performance of modular connectors  18 and the telephone jacks were typically lower  19 performing. Was the fact they were generally made  20 before there was a range of performance.  21 Q But they're both twisted pair?  22 A Both twist -- the cable was twisted  23 pair, yes.  24 Q Thank you. And both would have  25 contacts?</p>
<p style="text-align: right;">Page 123</p> <p>1 A Mm-hmm.  2 Q And you discuss a patent, US Patent  3 No. 4,723,267, which I'll mark as our next exhibit,  4 Exhibit 6.  5 (Exhibit 6 marked for identification  6 by the court reporter.)  7 Q (BY MR. BLUESTONE) Here's a copy of  8 that, sir. Why did you select the '267 patent,  9 Exhibit 6?  10 A It's just an example of placing an  11 impedance across the tip and ring conductors.  12 Q And this is cited in the intrinsic  13 evidence; correct? Exhibit 6?  14 A Yes.  15 Q And Exhibit 6 is telephone art, not  16 Ethernet; correct?  17 A Right. It's simply indicating that  18 placing an impedance across contacts was known.  19 Q So is the telephone art analogous to  20 Ethernet art for the purpose of trying to figure  21 out what the claim terms mean?  22 MR. KRIEGER: Objection, form.  23 A I don't think telephone art in  24 general is necessarily analogous, but in this case  25 where it talks about placing an impedance across</p>	<p style="text-align: right;">Page 125</p> <p>1 A Right.  2 Q And both could have a path across the  3 contacts; right?  4 A Yes.  5 Q And just to make sure we close the  6 loop on this, for those reasons, that's why you  7 decided that you could apply Exhibit 6 to provide a  8 meaning of what arranging impedance is?  9 A Right, in particular placing it  10 across the contacts.  11 Q If you could go to paragraph 46?  12 Again, Exhibit 2. In 46 you're talking about your  13 opinion that "distinguishing information to  14 distinguish does not require" -- rather "do not  15 require a physical connection to the network much  16 less the physical presence of a second piece of  17 terminal equipment."  18 Are you saying that the accused -- an  19 accused device doesn't need to be compared with  20 anything else ever?  21 MR. KRIEGER: Objection, form.  22 A I'm not sure how you get that from  23 this.  24 Q (BY MR. BLUESTONE) Well, how do I  25 know whether the device is in fact serving a</p>

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1 distinguishing purpose unless it actually has been  
2 connected to a device with something else?  
3 MR. KRIEGER: Objection, form.  
4 A Well, as I said before, you could  
5 reverse engineer the device, you could analyze the  
6 documentation specifications of the device, and you  
7 could test the device by connecting it to a piece  
8 of test equipment, not another similar piece of  
9 terminal equipment.  
10 Q (BY MR. BLUESTONE) And even if you  
11 did that testing, you would have to go and find  
12 some agreed understanding of what that measurement  
13 value is supposed to mean; correct?  
14 MR. KRIEGER: Objection to form.  
15 A Can you --  
16 Q (BY MR. BLUESTONE) This might be  
17 somewhat -- this might be helpful.  
18 MR. BLUESTONE: Can I get Exhibit 7?  
19 (Exhibit 7 marked for identification  
20 by the court reporter.)  
21 Q (BY MR. BLUESTONE) So here's Exhibit  
22 7. And we took your figure from paragraph 77, that  
23 schematic that we previously discussed, and we made  
24 two other copies and labeled them A, B and C. Do  
25 you see that?

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1 A Yes, I do.  
2 Q And each one of those is an accurate  
3 copy of the picture that's in paragraph 77; right?  
4 A I believe so, yes.  
5 Q All right. If I just give you this  
6 sheet of paper of Exhibit 7 I've labeled A, B, and  
7 C, do I know if any one of these is associated with  
8 distinguishing information?  
9 A No, not just from this.  
10 Q What else do I need to know?  
11 A Well, again, we have talked about  
12 this a number of times.  
13 Q Sure.  
14 A You need to look at the product and  
15 whether it meets each of the claims, and in  
16 particular whether there is an association between  
17 this impedance and some particular distinguishing  
18 feature of the product.  
19 Q So if I told you that A is 25 kilo  
20 ohms, B is 100 kilo ohms, C is 100 ohms, do you  
21 know any other -- enough information now to discern  
22 whether anything is arranged to distinguish?  
23 A No.  
24 Q What if A is 25 kilo ohms and I've  
25 put it in for the purpose of identifying as PoE

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1 compliant? Do you now know enough information to  
2 know whether there's distinguishing information?  
3 A I would say there probably is in that  
4 case, yeah. Once again, I'd want to look at the  
5 product in its entirety, but I think that's -- and  
6 assuming it really does what you say it does and so  
7 on, yeah.  
8 Q Now, what if I take B and I say I've  
9 put in 50 kilo ohms but -- 50 ohms and it's for  
10 impedance matching?  
11 MR. KRIEGER: Objection, form.  
12 Q (BY MR. BLUESTONE) In that  
13 circumstance do I have information associated with  
14 distinguishing information?  
15 A Not just from that, no.  
16 Q And I think I phrased that poorly,  
17 let me ask that again. Do I have distinguishing  
18 information associated with the impedance?  
19 A No, not just from that little bit.  
20 Q And with that example I just gave you  
21 about a 50 ohm resistance for the purpose of  
22 impedance matching, if today IEEE adopted a  
23 standard that says I want you to put in 50 ohms to  
24 comply with 802.3, whatever the latest number is,  
25 at that point in time now has B been associated --

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1 does B have impedances associated with  
2 distinguishing information?  
3 MR. KRIEGER: Objection, form.  
4 A Based on what you just said, I would  
5 say no. You said IEEE wants you to put it in.  
6 Okay. It wants you to put it in.  
7 Q (BY MR. BLUESTONE) Okay. Now take  
8 that same example, now all of a sudden I am doing  
9 this not for the purpose of IEEE wants me to put it  
10 in, but I want to identify that my device has  
11 impedance matching.  
12 MR. KRIEGER: Is there a question?  
13 Q (BY MR. BLUESTONE) At that point do  
14 I have an impedance that's associated with  
15 distinguishing information?  
16 A Are you saying this is the impedance  
17 that's doing the matching?  
18 Q Yeah.  
19 A Well, I don't think one of ordinary  
20 skill in the art would ordinarily use the matching  
21 impedance to distinguish the information because  
22 anything hooking to that kind of cable would no  
23 doubt have that impedance in it to match. So I  
24 don't see that as being a dual purpose use of the  
25 resistor.

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1 Q What if I tell you this is why I did  
2 it? I put it in my documentation, I give you sworn  
3 testimony and I say I am putting in this 50 ohm  
4 resistor because I want to identify this as having  
5 an impedance matching characteristic?  
6 A Well, again, I would say I would have  
7 to look at the product in its entirety and see what  
8 it's doing and why that resistor is really there  
9 and what is being done with it.  
10 Q Okay. Let's go to paragraph 39.  
11 Okay. So in paragraph 39 I believe you were  
12 discussing -- well, why don't you tell me what's  
13 going on in paragraph 39. I don't want to put  
14 words in your mouth.  
15 A Okay. Paragraph 39 is discussing the  
16 blocking circuit which is described in the '012  
17 specification.  
18 Q And your conclusion is that this  
19 blocking circuit is an example of distinguishing by  
20 simply classifying or categorizing; correct?  
21 A Right. Either it gets the right  
22 response, it says it's authorized, or it says  
23 you're unauthorized. It's one of the two.  
24 Q And you would say that this is  
25 analogous to Power over Ethernet operation;

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1 correct?  
2 A I think this is analogous to the  
3 detection operation in Power over Ethernet, yes.  
4 Q Okay. Now, in Power over -- now, in  
5 this example, when you're talking about the  
6 blocking circuit, the -- the station, the station  
7 in question already is powered up; right?  
8 MR. KRIEGER: Objection to form.  
9 A Presumably the station is powered up,  
10 yes.  
11 Q (BY MR. BLUESTONE) Okay. And in  
12 Power over Ethernet there is -- the assessment  
13 that's going on -- I believe you referred to it as  
14 the detection stage?  
15 A Right. Yes.  
16 Q At that instance, the device is  
17 either not powered up or it's not using PoE power,  
18 it's not going to use PoE power at all; correct?  
19 A Correct.  
20 Q So in that circumstance it's  
21 different because the PoE operation has no power?  
22 From the, sorry, from the PSE?  
23 MR. KRIEGER: Objection, form.  
24 A Well, it's analogous to me in the  
25 sense that you put a voltage out, analyze the

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1 current, and decide, you know, is it one of us or  
2 is it not one of us?  
3 Q (BY MR. BLUESTONE) And by "one of us  
4 or one of us," you mean compliant or non-compliant?  
5 A Well, in the one case I mean is it  
6 authorized to be on the network and in the other  
7 case I mean is it a PD or is it not PD.  
8 Q Are you aware of any IEEE standards  
9 that would look at return loss or anything like  
10 that?  
11 A That would look at return loss in  
12 what respect?  
13 Q So in 802.3, are there any tests that  
14 are done to test the impedance to see what return  
15 loss is going on?  
16 A 802.3 back in 1998?  
17 Q Let's say 1993.  
18 A '93? I don't recall any.  
19 Q There could be a test that you would  
20 apply that would go and say we're going to see if  
21 this setup is compatible by measuring the return  
22 loss; right?  
23 A You could, yeah.  
24 Q I mean, there would be tests of, for  
25 example, is the cable sufficient to work right, for

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1 example?  
2 A Right.  
3 Q Sorry?  
4 A Yes. I'm not -- nevermind. I've  
5 forgotten where I was.  
6 Q Well, let's say we have a test that's  
7 measuring the return loss and seeing if it's within  
8 acceptable ranges. That's my hypothetical.  
9 A Okay.  
10 Q And you're testing it across an  
11 Ethernet connected -- a device with an Ethernet  
12 connector.  
13 A Okay.  
14 Q Isn't that also going to be a  
15 circumstance in which you're testing to see if it's  
16 compliant or not?  
17 MR. KRIEGER: Objection, form.  
18 A Yes, assuming that's what you're  
19 doing, you'd be testing for -- to measure the  
20 return loss.  
21 Q (BY MR. BLUESTONE) Okay. And if the  
22 device in question does not have the return loss in  
23 the appropriate ranges, it would be deemed  
24 non-compliant; correct?  
25 A Well, that, I mean, that's the design

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1 decision you make. Do you want to shift down a  
2 speed, do you want to try to do the best you can at  
3 that speed, do you want, you know. It's -- it's a  
4 design choice.  
5 Q (BY MR. BLUESTONE) But the result of  
6 the test would be that particular device is in a  
7 classification of compliant or non-compliant;  
8 correct?  
9 A Well, the device and the associated  
10 cabling, all, the whole deal either complies or  
11 not, yes.  
12 THE VIDEOGRAPHER: One moment,  
13 please.  
14 Q (BY MR. BLUESTONE) So can you, and  
15 you can use the patent if that's helpful, Exhibit  
16 1, can you explain how the blocking circuit  
17 determines whether the device is authorized?  
18 A Let me just refresh real quick. My  
19 copy I have highlighted so I can find things  
20 easier.  
21 MR. KRIEGER: You can take your time.  
22 MR. BLUESTONE: You're more than  
23 welcome to put that highlighted copy into the  
24 record if you want.  
25 MR. KRIEGER: If I had one.

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1 A Okay. Now, what was the question?  
2 Q (BY MR. BLUESTONE) How does the  
3 blocking circuit work such that it classifies or  
4 categorizes a device?  
5 A Well, if you don't -- well, when you  
6 apply current to the device, like we envision here,  
7 if you don't get a proper authorization code back,  
8 then the central module will trigger a blocking  
9 circuit which either opens or shorts the data lines  
10 together.  
11 Q Where is the distinguishing  
12 information there?  
13 A Distinguishing information is in the  
14 identity that the -- the identification number that  
15 the module sends back.  
16 Q Now, what it's sending back isn't  
17 saying I am not authorized, is it? The code you're  
18 talking about doesn't say I am not authorized?  
19 A That would be a foolish thing to send  
20 back, wouldn't it?  
21 Q Right. So where in this circuitry do  
22 we see something that says I have classified this  
23 as authorized? Is there a database that's saying  
24 that?  
25 A Well, there's a little onboard

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1 processor which is analyzing the data is gets back,  
2 and it can assert a lead which causes the blocking  
3 circuit to trigger.  
4 Q And that circuit you're talking about  
5 would be on the PSE side? Or actually, wrong  
6 terminology, sorry. The central module side?  
7 A Yes.  
8 Q Okay. So in 39, if the device is  
9 unauthorized, does that mean there's distinguishing  
10 information associated with unauthorized?  
11 A No, it means there's lack of  
12 distinguishing information.  
13 Q But if it's authorized, then it has  
14 distinguishing information?  
15 A Right.  
16 Q Logically speaking, why does it make  
17 any difference whether you put the label on  
18 authorized or unauthorized?  
19 A Well, because authorizing is what  
20 you're trying to do and you build equipment that  
21 specifically does something to make it authorized.  
22 And so you put that distinguishing feature into the  
23 equipment.  
24 Q Couldn't I just as easily say that  
25 the purpose of a blocking circuit is to stop

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1 unauthorized and say I'm looking for unauthorized  
2 and get the same result?  
3 A Except the unauthorized people did  
4 not arrange themselves to be blocked. All right?  
5 They didn't go out of their way to put stuff in  
6 that would cause them to be blocked. All right?  
7 The circuit is designed so that if  
8 you've done the proper things, you can get through.  
9 It doesn't attempt to distinguish why it got an  
10 improper signal or to identify in any way what the  
11 problem is. It just says this wasn't right and  
12 boom.  
13 Q But the patent is concerned with the  
14 theft of information is one of the purposes; right?  
15 A This particular implementation is,  
16 yes.  
17 Q And for the purpose of avoiding  
18 theft, you would want to be much more concerned  
19 about unauthorized people than authorized people;  
20 correct?  
21 MR. KRIEGER: Objection, form.  
22 A I mean, I don't see it that way. I  
23 would think I would be concerned that I only let  
24 authorized people through.  
25 Q (BY MR. BLUESTONE) But is a view of

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1 the unauthorized information being the  
2 distinguishing information, is there something  
3 logically incorrect about that interpretation?  
4 A I'm sorry, if you have what?  
5 MR. KRIEGER: Objection to form.  
6 Q (BY MR. BLUESTONE) Is there  
7 something logically incorrect about saying I'm  
8 going to look at this and say I'm more interested  
9 in tagging it as being unauthorized?  
10 MR. KRIEGER: Objection to form.  
11 A Well, again, what -- the design here  
12 is a system, it has two pieces and shows you how  
13 you can be authorized. There's a million ways you  
14 can be unauthorized. You don't really need to do  
15 anything.  
16 Q (BY MR. BLUESTONE) I get that. And  
17 I understand that would you have your design  
18 preference in the way that you would define it. My  
19 question is more of trying to understand if there's  
20 any reason why authorized or unauthorized  
21 information -- let me start over. That was very  
22 long.  
23 Is there any reason why both  
24 unauthorized and authorized information can serve  
25 as distinguishing information?

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1 MR. KRIEGER: Objection, form.  
2 A Well, again, I think if we look at  
3 the entire set of claim elements, is the  
4 unauthorized circuit arranging impedance across the  
5 path for the specific purpose of being  
6 unauthorized, and I don't see that.  
7 I think the -- the circuitry is put  
8 in the authorized end points to provide the current  
9 back that they know the other end is looking for.  
10 And so I see them as fundamentally different than  
11 everyone who didn't do anything.  
12 Q (BY MR. BLUESTONE) Where is this  
13 blocking circuit located? Is it in the central  
14 module or is it in the remote module?  
15 A It's in the central module.  
16 Q And you said earlier that the '012  
17 patent is all about the remote module; right?  
18 MR. KRIEGER: Objection to form.  
19 A The '012 patent is concerning the  
20 remote module, yes.  
21 Q (BY MR. BLUESTONE) Okay. Let's  
22 switch gears a little bit and go back to, we're  
23 still on Exhibit 2, paragraphs 18 through 21.  
24 A Okay, that's several pages.  
25 Q Is it correct that the information in

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1 paragraphs 18 through 21 was all provided to you by  
2 counsel?  
3 A Yes. Counsel instructed me on the  
4 applicable legal principles, yes.  
5 Q Okay. Did you apply any other  
6 standards other than what's listed here, with  
7 respect to indefiniteness?  
8 MR. KRIEGER: Objection, form.  
9 A No.  
10 Q (BY MR. BLUESTONE) Did you factor in  
11 whether there was more than a single meaning of  
12 each term?  
13 A I --  
14 MR. KRIEGER: Objection, form.  
15 A I factored in the meaning that they  
16 would have to one of skill in the art at the time  
17 the patent was filed.  
18 Q (BY MR. BLUESTONE) But in concluding  
19 that the claims were not indefinite, did you  
20 incorporate into your analysis whether more than  
21 one meaning of a claim term could be ascribed?  
22 MR. KRIEGER: Objection, form.  
23 A Well, I think what I was looking for  
24 was did it describe with reasonable clarity the  
25 bounds of the claim. My conclusion was that they

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1 did.  
2 Q (BY MR. BLUESTONE) Okay. But did  
3 you specifically consider the question of whether  
4 the claim terms could have more than one meaning?  
5 MR. KRIEGER: Objection, form.  
6 A Now, are you asking did I consider  
7 defendants' claim constructions?  
8 Q (BY MR. BLUESTONE) No, I am  
9 asking --  
10 A I'm sorry. Yeah.  
11 Q No, I'm asking just in looking at  
12 these claim terms, as applying what a person of  
13 ordinary skill in the art, did you factor in your  
14 analysis whether multiple meanings could be  
15 ascribed to any term?  
16 MR. KRIEGER: Objection, form.  
17 A Well, I analyzed the terms with  
18 respect to the claims and specification and plain  
19 and ordinary meaning, and those are the conclusions  
20 that I came to.  
21 Q (BY MR. BLUESTONE) I'm sorry, I  
22 still don't think I've gotten an answer to my  
23 question. Would you agree that if a claim term has  
24 multiple applicable meanings, that that suggests  
25 that it's more likely indefinite than not?

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1 MR. KRIEGER: Objection, form.  
2 A I -- that's a hypothetical that I  
3 don't have an opinion one way or the other on in  
4 this case. I think when you read the claims, they  
5 describe the invention with reasonable certainty.  
6 So I don't, you know, I don't see  
7 other interpretations that would be made by one of  
8 ordinary skill in the art at the time of the  
9 invention that would cause me to view it  
10 differently.  
11 Q (BY MR. BLUESTONE) Would you agree,  
12 as a matter of applying a legal standard on  
13 definiteness, that a term would be interpreted in  
14 multiple ways and you could not with reasonable  
15 clarity determine which interpretation was meant by  
16 the inventor, the term is indefinite?  
17 A It could be interpreted in multiple  
18 ways and -- what was the rest of it?  
19 Q And you can't determine with  
20 reasonable clarity which interpretation was meant  
21 by the inventor.  
22 A "You" meaning who?  
23 Q "You" meaning Mr. Baxter.  
24 A "You" meaning me?  
25 MR. KRIEGER: Objection, form.

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1 A Then it would probably be my opinion  
2 that it was indefinite, yes. But I think the key  
3 is, based on the evidence that's in the claims,  
4 specification, plain and ordinary meaning, one of  
5 ordinary skill in the art at the time it was filed  
6 does it describe with reasonable certainty? In my  
7 opinion, it does.  
8 Q (BY MR. BLUESTONE) What about the  
9 fact that the word distinguish is not used in the  
10 specification? Other than in the claims  
11 themselves? Did you factor that into your analysis  
12 of whether the claims are indefinite?  
13 MR. KRIEGER: Objection, form.  
14 A Yes, and it doesn't -- I don't think  
15 that's an issue. Distinguish is a perfectly good  
16 English word used with its plain and ordinary  
17 meaning, and so I don't think you have to have used  
18 every English word in the spec that you're going to  
19 use in the claims.  
20 Q (BY MR. BLUESTONE) Would you agree  
21 that the addition of new terminology in the claims  
22 of a patent is not a common practice?  
23 MR. KRIEGER: Objection, form.  
24 A That -- that I don't know. I don't  
25 think of this as new terminology. It's a perfectly

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1 ordinary word.  
2 Q (BY MR. BLUESTONE) Okay.  
3 (Exhibit 8 marked for identification  
4 by the court reporter.)  
5 Q (BY MR. BLUESTONE) Hand you what's  
6 been marked as Exhibit 8. It's a document Case No.  
7 12-cv-623, Document 94, filed on July 25, 2014, and  
8 it's entitled Declaration of Les Baxter.  
9 Are you familiar with this document,  
10 sir?  
11 A Yes, I am.  
12 Q What is Exhibit 8?  
13 MR. KRIEGER: How is this relevant to  
14 the current Declaration that he has in this case?  
15 MR. BLUESTONE: This is an opinion of  
16 Mr. Baxter addressing indefiniteness from July of  
17 this year.  
18 MR. KRIEGER: Mm-hmm. Not in this  
19 case. So how -- we agree that it would be limited  
20 to this case. The Declaration he filed in this  
21 case. How is this --  
22 MR. BLUESTONE: This is impeaching  
23 evidence on his analysis that he conducted in this  
24 case. Whether he provided a consistent analysis or  
25 whether it's biased in one way or the other.

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1 Do you want to take a break off and  
2 talk about it or do you want me to go ahead? Or --  
3 MR. KRIEGER: Yeah, if you wouldn't  
4 mind, can you give me five?  
5 MR. BLUESTONE: Yes, absolutely.  
6 MR. KRIEGER: Appreciate it.  
7 MR. BLUESTONE: Of course.  
8 THE VIDEOGRAPHER: We're going off  
9 the record at approximately 1:54 p.m.  
10 (Off the record.)  
11 THE VIDEOGRAPHER: We're back on  
12 record at approximately 2:09 p.m.  
13 Q (BY MR. BLUESTONE) All right. Going  
14 back to Exhibit 8, we were talking before the break  
15 about some legal standards and whether you applied  
16 them in this case and Exhibit 8 is a Declaration --  
17 well, why don't you tell again what Exhibit 8 is  
18 and then we can go from there, it will be easier.  
19 A Exhibit 8 is a Declaration from  
20 another case, PerfectVision versus PPC Broadband  
21 that was filed in July, I believe. It's about  
22 obviously completely different patents and  
23 different situations regarding those patents.  
24 This case is still ongoing, so I  
25 can't really comment about any of the details of

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1 the things I discussed there.

2 Q Okay. But I am going to ask you

3 about some of the legal standards that are being

4 applied.

5 A Okay.

6 Q I am not going to go into what the

7 inward lip referred to means because, frankly, we

8 don't care either, but I would like to know just

9 kind how some of the analysis may or may not have

10 differed here. I'll direct your attention to

11 paragraph 50. And I think this is where we left

12 off before we took the break.

13 There's the first sentence here that

14 says, "In my experience, the addition of new

15 terminology in the claims of a patent is not a

16 common practice."

17 Do you agree with that statement?

18 A New fundamental terminology, yes.

19 Every single word in the claim, no.

20 Q What do you mean by "fundamental"

21 there?

22 A For instance, the way you're

23 referring to elements of the -- well, in this case,

24 was a connector, if you refer to a particular part

25 of it's one thing here and something else there,

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1 then that's getting confusing.

2 When you use a word like, in my

3 opinion, in the '012, distinguishing, which is a

4 common word that has a well-known meaning, I don't

5 think it's an issue.

6 Q Okay. The last sentence in this

7 paragraph, you state, "When previously undefined

8 terminology is introduced in the claims, the effect

9 is not to make the scope of the claimed invention

10 clearer, but to blur the boundaries of the claim

11 and thus extend the scope of the claims in an

12 unspecified way."

13 Do you agree with that statement that

14 you made in July sitting here today?

15 A I agree with that statement relative

16 to this case and the issues there.

17 Q But as a general principle, as a

18 legal standard that you seem to be applying here.

19 The undefined terminology has an effect. Would you

20 agree with that?

21 A It -- it can. When it's a perfectly

22 ordinary word like distinguish, I have a little

23 more trouble.

24 Q Okay. So -- because you're modifying

25 this a little bit now in 50. That's not what you

Page 148

1 said in paragraph 50. 50 was a general statement.

2 Correct?

3 A Which was applicable to that case.

4 Q Okay. So 50 doesn't -- the bottom --

5 well, sorry. The last sentence that I read in

6 paragraph 50 doesn't apply here? As a principle?

7 A I don't think it necessarily applies

8 in this case, no. I was referring specifically to

9 the terminology I introduced there.

10 Q Distinguish was previously undefined

11 terminology before it was introduced in the claims;

12 correct?

13 MR. KRIEGER: Objection, form.

14 A It was a word which I don't think had

15 been used before. I don't know that it's -- I

16 mean, every word that's used in the specification

17 is not defined either. I mean, common words are

18 just used.

19 Q (BY MR. BLUESTONE) But you would

20 agree that it's new terminology that wasn't in the

21 patent; correct?

22 A It's a new word that wasn't in the

23 patent, yes.

24 Q And did that factor into your

25 analysis at all for this case in Exhibit 2?

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1 A "For this case" meaning?

2 Q The present case that you're

3 testifying on behalf today.

4 A Yeah, sorry, I'm only used to dealing

5 with one case at a time. My apologies. Yes, it

6 did, and I looked at the specification and I saw

7 that the way it was used in light of the

8 specification, I did not think was an issue.

9 Q Okay. But that's not in your report;

10 correct? In Exhibit 2?

11 MR. KRIEGER: Objection, form.

12 A What is not in my report?

13 Q (BY MR. BLUESTONE) There's no

14 discussion of this legal principle, paragraph 50 in

15 your report, and refuting as it not being

16 applicable here?

17 MR. KRIEGER: Objection, form.

18 A No, I didn't list every reason why I

19 didn't think it was not indefinite.

20 Q (BY MR. BLUESTONE) Okay.

21 THE VIDEOGRAPHER: One moment,

22 please. Can I go off the record for a second?

23 We're going off the record at approximately 2:15

24 p.m.

25 (Off the record.)

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1 THE VIDEOGRAPHER: We're back on the  
2 record at approximately 2:17 p.m.  
3 Q (BY MR. BLUESTONE) Is there anything  
4 else in Exhibit -- is there anything else in  
5 Exhibit 2 -- sorry, one more time.  
6 Is there anything missing in Exhibit  
7 2 that you factored into your indefiniteness  
8 analysis that you want to disclose to us today?  
9 A Is there anything missing that I  
10 factored in?  
11 Q Well, at the beginning of the  
12 deposition I asked you whether Exhibit 2 was a  
13 complete representation of your opinions on  
14 indefiniteness.  
15 A Exhibit 2.  
16 Q Exhibit 2.  
17 A Right.  
18 Q And I believe the answer was it was  
19 complete; is that correct?  
20 A I believe that's true.  
21 Q And as I understand, we were just  
22 discussing what I introduced, paragraph 50, and  
23 talked about undefined terminology, you expressed  
24 to me that that is something you factored in but it  
25 wasn't in your report? The fact that distinguish

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1 wasn't used in the term; is that right?  
2 A Yes.  
3 Q Now, my question for you is, seeing  
4 this other Declaration, looking back at your  
5 Declaration, is there anything missing in your  
6 Declaration, Exhibit 2, that contributed to your  
7 analysis that you want to raise to make sure it's  
8 now complete?  
9 A Well, I have not reread this, so I  
10 don't know. Nothing that I can think of offhand.  
11 Q All right. If we were at trial,  
12 would there be something else that could come up  
13 that you would say I looked at this as well, that  
14 you can think of?  
15 MR. KRIEGER: Objection to form.  
16 A Not that I can think of, no.  
17 Q (BY MR. BLUESTONE) Now, in Exhibit  
18 2, I think we have established that this is the  
19 first time that there was a meaning ascribed to a  
20 range and that that meaning was to put in place;  
21 correct?  
22 MR. KRIEGER: Objection, form.  
23 A I believe so, based on my  
24 recollection of what we've talked about.  
25 Q (BY MR. BLUESTONE) I mean, I'll just

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1 break it down. Prior to your October 20th  
2 Declaration, you didn't previously provide any  
3 testimony in this case, either through Declaration  
4 or any other format, in which you explained a  
5 meaning for the term arrange; correct?  
6 A Correct, and that's sort of its  
7 ordinary meaning. It's not some earth-shaking  
8 revelation.  
9 Q Okay. So to put in place its  
10 ordinary meaning is the meaning would you apply in  
11 view of the intrinsic evidence; correct?  
12 A Yes.  
13 Q How did you confirm that this was the  
14 only reason -- that with reasonable clarity this is  
15 the only meaning it could have, is to put in place?  
16 A Well, because in my opinion, when you  
17 say arrange an impedance between these two points,  
18 that's what it would mean. And I would ask myself,  
19 if I go to an engineer and say can you arrange 10k  
20 impedance between these two terminals, I would not  
21 expect them to sit there in a quandary all day not  
22 knowing what to do. I would expect them to put a  
23 10k resistor on there.  
24 Q Did you look at the intrinsic  
25 evidence and see if there's any other applications

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1 in which an impedance was used for the purpose of  
2 providing distinguishing information?  
3 A I'm sorry, did I look --  
4 Q Did you look into the intrinsic  
5 evidence and see if there were any other matters in  
6 which the impedance was used to provide  
7 distinguishing information? Other than your  
8 definition of putting it into place?  
9 A I don't recall any, no.  
10 Q Okay. Do you recall -- do you recall  
11 that there were multiple embodiments in the patent;  
12 correct?  
13 A Right.  
14 Q And you would agree with me that --  
15 I'll use the language from the patent, that the --  
16 if you want, I'll direct your attention to Exhibit  
17 1, column 4, line 40, through line 44.  
18 A Okay.  
19 Q It says "Four embodiments of the  
20 invention are illustrated within this  
21 specification. The first embodiment illustrates  
22 the general teachings of the invention, whereas the  
23 second, third, and fourth embodiments depict  
24 specific implementations of those teachings -- of  
25 the teachings."

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1 You see that?  
2 A Yes, I do.  
3 Q And you've reviewed all four  
4 embodiments; correct?  
5 A Yes.  
6 Q And do you recall what the second  
7 embodiment -- of the second embodiment transmits  
8 encoded signals? And just to get you somewhere,  
9 I'm generally looking at column 8. Actually starts  
10 at the bottom of column 7, line 66.  
11 A Starts at the bottom of 7 you said?  
12 Q Yeah.  
13 A Okay.  
14 Q Did -- does the second embodiment  
15 provide any guidance on how arranging impedance  
16 should be interpreted?  
17 A Are you referring to something in  
18 particular?  
19 Q Well, I'm asking you does this --  
20 does this discussion of the second embodiment  
21 affect your analysis? So, for example, as I  
22 understand this, this is dealing with column 8,  
23 line 45, "The encoded signal flows through  
24 resistors," and column 8, line 56 and 57 is talking  
25 about "reflecting an impedance change across an

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1 isolation transformer."  
2 A Correct.  
3 Q Is that in any way inconsistent with  
4 the interpretation of saying that arranging  
5 impedance means just putting it in place?  
6 A Um, which figure are we talking about  
7 here. Again, I'm still not sure exactly what  
8 you're getting at but, in general, the remote  
9 modules, they have resistors which they used to  
10 alter the flow of current back through here and so  
11 that change impedance alters the current and  
12 conveys the information.  
13 Q So in this embodiment it's talking  
14 about a change in impedance; correct?  
15 A It's -- yeah. Well, it's talking  
16 about Manchester encoding, so you'll have one set  
17 of impedances now and then a second later you'll  
18 have a different set and then you go back, yeah.  
19 Q And does that -- is that disclosing a  
20 form of arranging impedance to distinguish?  
21 A Yeah, I believe it is, yes. Because  
22 it's the current that distinguishes and you set the  
23 current by this series of DC currents that you send  
24 back which repeats one way or the other.  
25 Q And does your definition of put in

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1 place apply to this technique?  
2 A Yes. These impedances are installed  
3 on the circuit board. They're in there -- put  
4 there for the purpose of doing that.  
5 Q But they're also changing; correct?  
6 The impedances are varying; right?  
7 A Well, the resistors themselves are  
8 not varying, they're switching some in, some out.  
9 So you have -- in one instant in time you have a DC  
10 circuit that looks like this with a certain current  
11 and then an instant later you have a slightly  
12 different arrangement and a different set of  
13 currents.  
14 Q But the impedance across the contacts  
15 is varying; right?  
16 MR. KRIEGER: Objection, form.  
17 A From time to time, yes.  
18 Q (BY MR. BLUESTONE) Right. And that,  
19 to me, seems like it's inconsistent with the  
20 definition of put in place. If that's wrong,  
21 please clarify.  
22 A No, when you put these in place, I  
23 don't think that restricts you from operating a  
24 circuit that rearranges them from time to time. If  
25 you never changed them, that would be a simpler

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1 arrangement.  
2 Q But I thought we previously discussed  
3 that putting into place was the measured value that  
4 occurred, not necessarily the element that you put  
5 in place to achieve that measured value; correct?  
6 MR. KRIEGER: Objection, form.  
7 A Correct. The impedance across there,  
8 yeah. And I don't see anything that says I can't  
9 change with time.  
10 Q (BY MR. BLUESTONE) So you're then  
11 putting it into place multiple times over the  
12 course of the operation of the circuit?  
13 A Well, when you manufacture it, you're  
14 putting this thing in place. And when it runs, it  
15 can vary.  
16 MR. KRIEGER: Let me make sure the  
17 record is clear. The hand gestures aren't -- you  
18 got to say what you mean.  
19 A Okay. I was pointing to the resistor  
20 network in Figure 10, the 4.7k resistors in 128 and  
21 129, 112.  
22 Q (BY MR. BLUESTONE) But if we're  
23 talking about the measured value, not the circuit  
24 elements, that is varying and that variation is  
25 what is associated with the Manchester encoding;

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1 right?

2 MR. KRIEGER: Objection, form.

3 A Which is one of the implementations I

4 described, yes.

5 Q (BY MR. BLUESTONE) So isn't it fair

6 to say there could be more than one interpretation

7 of arranging impedance, it could mean to put in

8 place or it could be varying the impedance because

9 that's what's going on in the second embodiment?

10 A Right, but you can't vary it if you

11 didn't put it there in the first place.

12 Q But I think we're passing each other

13 now. What's put in place is the circuit elements.

14 What we discussed previously was that the impedance

15 is the measured value; correct?

16 MR. KRIEGER: Objection, form.

17 A Right. It could be a combination of

18 individual impedances.

19 Q (BY MR. BLUESTONE) That seems to be

20 opening up a whole other question. How do I know

21 then what the impedance is that I'm measuring

22 across the two paths? What's the relevant

23 measurement that I'm supposed to take?

24 MR. KRIEGER: Objection, form.

25 A I don't follow that.

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1 Q (BY MR. BLUESTONE) Well, the claim

2 talks about an Ethernet connector with a path

3 across the contacts; right?

4 A Mm-hmm.

5 Q And before we entered this line of

6 questioning, I had thought that the way you would

7 assess that is you take a measurement across those

8 two pins and that's your value in ohms. I'm just

9 speaking what my understanding was. I'll give you

10 your question in a second.

11 Is that understanding inaccurate? Is

12 there a different way you need to measure it?

13 MR. KRIEGER: Objection, form.

14 A No. I would think you would measure

15 the impedance presented at the contacts, the

16 connector, subject to the way you've determined to

17 do the association.

18 Now, if you decide to associate the

19 distinguishing feature with the Manchester coded

20 signal, then you can set your impedance to do that.

21 If you decide to associate it with a single value,

22 you could do that. If you decide to make it one

23 value and then another value, you could do that.

24 Q (BY MR. BLUESTONE) And to be clear,

25 I am talking about arranging as used in 67, not 31.

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1 So does that affect your answer?

2 MR. KRIEGER: Objection, form.

3 A Well, again, 67 I view as the methods

4 that were sort of making the product. And you're

5 doing this and you're doing that and that. And so,

6 yes, you're arranging these things in there so that

7 they can function when it operates.

8 Q (BY MR. BLUESTONE) And you say in

9 paragraph 81 of Exhibit 2, "arranging impedance

10 within the at least one path to distinguish the

11 piece of terminal equipment' means that impedance

12 is placed in the path for the purpose of making the

13 piece of Ethernet" -- sorry -- "the piece of

14 terminal equipment distinguishable."

15 That's what it says in paragraph 81.

16 Correct?

17 A Correct.

18 Q How would the embodiment -- the

19 second embodiment where it's doing the Manchester

20 encoding impedance, be applicable to your

21 definition under 81?

22 A Because -- which -- I'm sorry, what

23 paragraph are you talking about? I want to make

24 sure --

25 Q Just anything under column 8 where

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1 it's talking about the Manchester encoding you were

2 discussing.

3 MR. KRIEGER: Paragraph 81.

4 A Which claim are we talking about?

5 Q (BY MR. BLUESTONE) Sorry. We're

6 talking about claim 67.

7 A Claim 67.

8 Q I am referring to paragraph 81 in

9 Exhibit 2, and I am asking whether the second

10 embodiment in the '012 patent, Exhibit 1, in

11 particular a discussion on column 8, can apply to

12 your definition as you have proposed in paragraph

13 81.

14 A Yes, I believe it can because -- I

15 believe it does because you arrange these things in

16 here so that they will work in that way, which is

17 the way you had previously decided to -- to

18 indicate the distinguishing information.

19 Q What are "these things in here"?

20 A I'm sorry. The resistors and

21 components in that figure there, you put that

22 circuit in there, you place that circuit in there,

23 the point of contacts, to -- to perform that -- to

24 indicate the distinguishing information.

25 Q So now it's the circuit that's there,

<p style="text-align: right;">Page 162</p> <p>1 not the measured value?</p> <p>2 A Well, at any point in time it will</p> <p>3 have a measured value.</p> <p>4 Q And that measured value may change</p> <p>5 under the second embodiment of Exhibit 1; right?</p> <p>6 The patent?</p> <p>7 A It could. It could change in other</p> <p>8 systems too.</p> <p>9 Q So if we were to apply what's going</p> <p>10 on in the second embodiment, it wouldn't be</p> <p>11 unreasonable for me to say that arranging impedance</p> <p>12 means varying the impedance; right?</p> <p>13 A It doesn't require varying impedance.</p> <p>14 Q But it wouldn't be -- it would be a</p> <p>15 plausible alternative, wouldn't it?</p> <p>16 A But this particular embodiment, in</p> <p>17 fact, varies the impedance.</p> <p>18 Q So my question is it wouldn't be an</p> <p>19 implausible construction; right?</p> <p>20 MR. KRIEGER: Objection, form.</p> <p>21 A I think it would be implausible to</p> <p>22 limit it to just that because this is only one</p> <p>23 embodiment.</p> <p>24 Q (BY MR. BLUESTONE) Well, how do we</p> <p>25 know that claim 67 doesn't just apply to the second</p>	<p style="text-align: right;">Page 164</p> <p>1 time, Les. If you need to read the spec and look</p> <p>2 at all the drawings, you can. You don't need to</p> <p>3 rush.</p> <p>4 A Okay. Figures 8, 10 and 18 all show</p> <p>5 diagrams of remote module which uses resistors to</p> <p>6 modify the current, and it flows.</p> <p>7 Q (BY MR. BLUESTONE) Okay. Now, in 8,</p> <p>8 there is a microprocessor; correct?</p> <p>9 A Correct.</p> <p>10 Q That's element 102?</p> <p>11 A Yes.</p> <p>12 Q And that's the source of a unique</p> <p>13 identifier; correct?</p> <p>14 A That is -- it controls the resistor</p> <p>15 network that caused the current to convey that,</p> <p>16 yes.</p> <p>17 Q But that's where the distinguishing</p> <p>18 information comes from; right? That</p> <p>19 microprocessor, in this embodiment?</p> <p>20 A The distinguishing information is</p> <p>21 transmitted by changes in current which are caused</p> <p>22 by directing the return current through this</p> <p>23 network of resistors.</p> <p>24 Q That's the encoding and transmission</p> <p>25 of the signal; correct?</p>
<p style="text-align: right;">Page 163</p> <p>1 embodiment?</p> <p>2 A Well, because I don't think it's</p> <p>3 proper to read the limitations from this embodiment</p> <p>4 into that claim.</p> <p>5 Q Claims can't be directed towards just</p> <p>6 one embodiment?</p> <p>7 A This claim 67 does not indicate that</p> <p>8 it is.</p> <p>9 Q So claim -- so the second embodiment</p> <p>10 we agree is talking about impedance doing something</p> <p>11 with respect to signal transmission; right?</p> <p>12 A I'm sorry, the --</p> <p>13 Q The second embodiment of the '012</p> <p>14 patent is discussing an impedance that's doing</p> <p>15 something to communicate a signal out of the remote</p> <p>16 module. We agree with that; correct?</p> <p>17 A Okay.</p> <p>18 Q But you agree, yes?</p> <p>19 A I believe so, yeah.</p> <p>20 Q Is there any other embodiment in</p> <p>21 which impedance, in and of itself, is the mode of</p> <p>22 transmitting distinguishing information? And to be</p> <p>23 clear, I'm not saying that happens in embodiment 2,</p> <p>24 but I want you to look at the other embodiments.</p> <p>25 MR. KRIEGER: And you can take your</p>	<p style="text-align: right;">Page 165</p> <p>1 A Right.</p> <p>2 Q But the actual determination of a --</p> <p>3 of a number, the identifier, comes from the</p> <p>4 microprocessor; correct?</p> <p>5 A The identifier presumably is in the</p> <p>6 microprocessor, yeah. In the current that is</p> <p>7 controlled by these resistors.</p> <p>8 Q But to be clear, when we're looking</p> <p>9 at where the distinguishing information is coming</p> <p>10 from, that information that's used by the central</p> <p>11 module is sourced from element 102; correct?</p> <p>12 A The information is the current is</p> <p>13 not.</p> <p>14 Q Right. But everything out of that</p> <p>15 now becomes a matter of packaging up and sending it</p> <p>16 over the wire; correct?</p> <p>17 A Well, which is -- is the point of the</p> <p>18 associated impedance with the distinguishing</p> <p>19 feature, it's the current over the wire, it's</p> <p>20 determined by the impedance. At each point in</p> <p>21 time.</p> <p>22 Q I didn't quite get that answer. Can</p> <p>23 you explain that again?</p> <p>24 A Yes. The distinguishing information</p> <p>25 is provided by -- is communicated by the current</p>