

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

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

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

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

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

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

AMX, LLC,)
Defendant.)

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

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

GRANDSTREAM NETWORKS,)
INC.,)
Defendant.)

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

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

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

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

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

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20 President & CEO, CMS Technologies

21

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24

25

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1 IT IS HEREBY STIPULATED AND AGREED by

2 and between Counsel for Plaintiffs and Counsel for

3 Defendants that this deposition may be taken by

4 Tara Schwake, Notary Public and Certified Realtime

5 Reporter, thereafter transcribed into typewriting,

6 with the signature of the witness being expressly

7 reserved.

8 * * * * *

9 (Deposition commenced at 9:01 a.m.)

10 THE VIDEOGRAPHER: My name is John

11 Niehaus of Veritext, the date today is October 22,

12 2014, and the time is approximately 9:01 a.m. This

13 deposition is being held in the office of The Simon

14 Law Firm located at 800 Market Street, St. Louis,

15 Missouri 63101.

16 The caption of this case is Chrimar

17 Systems, Inc., et al., versus AMX, LLC, in the U.S.

18 District Court, Eastern District of Texas, Tyler

19 Division, Case Number 6:13-CV-881-JDL. The name of

20 the witness is Les Baxter.

21 At this time the attorneys will

22 identify themselves and the parties they represent,

23 after which our court reporter, Tara Schwake of

24 Veritext, will swear in the witness and we can

25 proceed.

Page 8

1 MR. BLUESTONE: David Bluestone,

2 McDermott Will & Emery on behalf of Defendant AMX.

3 MR. KRIEGER: Tim Krieger with The

4 Simon Law Firm on behalf of Plaintiffs.

5 MS. PESCHEL: Leisa Peschel with

6 Williams Morgan, P.C., on behalf of the

7 Alcatel-Lucent Defendants in the 880 case.

8 MR. PARK: Jin-Suk Park with the law

9 firm of Akin Gump for Samsung.

10 MR. YUNGWIRTH: This is Matt

11 Yungwirth of the law firm Duane Morris for AMX.

12 MR. AUSTERMANN: John Austermann,

13 CMS.

14 LESLIE ALAN BAXTER,

15 of lawful age, having been produced, sworn, and

16 examined on the part of Defendant AMX, LLC,

17 testified as follows:

18 EXAMINATION

19 QUESTIONS BY MR. BLUESTONE:

20 Q Good morning, Mr. Baxter.

21 A Good morning.

22 Q Could you please state your full name

23 for the record?

24 A My name is Leslie Alan Baxter.

25 Q Is there anything preventing you

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1 today from providing complete testimony, like any

2 medications or anything like that?

3 A No.

4 Q And you got a good night's sleep?

5 A Yes.

6 Q I know you've been deposed before, so

7 I'll skip with a lot of the formalities but one

8 thing I want to make clear. If there's anything

9 that I ask you that's unclear, please ask for

10 clarification.

11 If you don't ask for clarification,

12 the record will assume that you understood the

13 question; is that fair?

14 A Yes.

15 Q Okay. Why don't we --

16 MR. PARK: I apologize for

17 interrupting --

18 MR. BLUESTONE:

19 MR. PARK: -- but I can't really hear

20 the witness's response. If there's any way to push

21 the telephone closer to him, that would be

22 appreciated.

23 THE VIDEOGRAPHER: One moment please,

24 we're going off the record at approximately 9:03

25 a.m.

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1 (Off the record.)
2 THE VIDEOGRAPHER: We're back on the
3 record at approximately 9:05 a.m.
4 Q (BY MR. BLUESTONE) I'm going to mark
5 as Exhibit 1 a copy of US Patent No. 8,155,012.
6 (Exhibit 1 marked for identification
7 by the court reporter.)
8 Q (BY MR. BLUESTONE) I am assuming you
9 have seen Exhibit 1 before, sir?
10 A Yes. Yes, I have.
11 Q If you could turn to claim 31,
12 please? Do you see that claim 31 uses the term
13 "distinguishing information"; correct?
14 A Yes, I do.
15 Q I'd just like to ask you some
16 questions about distinguishing information as you
17 understand it.
18 A Okay.
19 Q Who decides what is distinguishing
20 information under the claims?
21 A Who decides? Well, distinguishing
22 information is information that can allow you to
23 classify or categorize the equipment.
24 Q Okay. Is there -- does the person
25 making the device decide whether they have

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1 categorized or classified the equipment, or is it
2 someone else?
3 A Yes, I believe at the time of
4 manufacture you have done that.
5 Q Okay. But from -- let's start kind
6 of from an expansive thing and funnel it down. I'd
7 like to just get a sense of who all the respective
8 parties could be that would make that
9 determination.
10 So it could be the person making a
11 device; correct?
12 A Yeah.
13 Q Could it be anyone else?
14 MR. KRIEGER: Objection, form.
15 A I think the -- I guess the way I read
16 this, the distinguishing information would be
17 defined and built into the device. So that it
18 would be recognized by another device.
19 Q (BY MR. BLUESTONE) Okay. But let's
20 say you and I have a dispute as to whether it's
21 distinguishing information.
22 A Mm-hmm.
23 Q Whose -- whose -- and I am the
24 manufacturer. Whose determination governs whether
25 it's distinguishing or not?

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1 A Well, I think -- obviously if it's a
2 dispute we can't resolve, the court will decide for
3 us, correct? That's the way any patent would work.
4 Q Fair enough. But if we're going to
5 go look at just the term "distinguishing
6 information," where do we go to decide what that
7 means? Is it the intent of the person making the
8 device? Is it the intent of the patent owner, for
9 example, either or both?
10 A Well, I would look at the device and
11 the way it operates, the supporting documentation
12 and so on, and if the elements of this claim were
13 met, then I would say it infringes.
14 Q Okay. But -- and you are not -- you
15 are a third party, you are not the manufacturer?
16 A Correct.
17 Q So it could be the person making the
18 device, it could be you in your role as an expert
19 witness, for example?
20 MR. KRIEGER: Objection, form.
21 A I don't quite follow that.
22 Q (BY MR. BLUESTONE) I guess what I'm
23 just trying to figure out is there's obviously
24 disputes in this case as to what is distinguishing
25 information.

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1 In looking at the Exhibit 1, is there
2 anything in Exhibit 1 that defines an objective
3 standard of what is distinguishing information?
4 A They give a number of examples.
5 Q Okay. But is there one objective
6 standard beyond the examples that's provided?
7 MR. KRIEGER: Objection, vague.
8 A Well, in my opinion, plain and
9 ordinary meaning of the term coupled with the
10 examples they give would allow one of skill in the
11 art to determine that.
12 Q (BY MR. BLUESTONE) Okay. Now, with
13 respect to distinguishing information, I'd like to
14 know, from a temporal aspect, at what time does
15 information become distinguishing? And let me
16 rephrase that, that was a little long.
17 When does -- when do you evaluate
18 when the information is distinguishing? At what
19 time frame?
20 A I'm sorry, you lost me there.
21 Q Okay. You had referred previously
22 about the manufacturer of a product.
23 A Correct.
24 Q When you are assessing whether that
25 product has distinguishing information, do you look

4 (Pages 10 - 13)

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0004

<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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1 I need to look at this supporting documentation and
2 that's going to tell me why they put it in; is that
3 right?
4 A Well, yes. Why I interpret the
5 claims, the impedance in the path is there for the
6 purpose of indicating that distinguishing
7 information.
8 Q Okay. And you could have an
9 impedance in the path for a variety of reasons;
10 right?
11 A Sure.
12 Q And one reason you gave, for example,
13 is impedance matching?
14 A Yes.
15 Q Could you just briefly describe what
16 that is at high level?
17 A Yeah, the transmission line is a
18 characteristic impedance if you want to match the
19 impedance of that in your receiver, for instance,
20 for signal transmission reasons.
21 Q Sorry, you might have been doing a
22 little fast for the court reporter.
23 A You need me to repeat it?
24 Q Okay, sorry. So that's one thing you
25 could put -- could you put a filter on the line,

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1 for example?
2 A You could put a filter on the line.
3 Q Okay. Is there anything else you
4 could think of that you would serve the purpose of
5 a ranging impedance for something other than
6 distinguishing?
7 A Quite often put a termination on the
8 line and that's so you're just matching the
9 impedance. You could put something in to limit the
10 current so you don't draw too much current, for
11 instance, in there.
12 Q Okay. Like you could put an
13 isolation transformer on the line, for example?
14 A You could.
15 Q Okay. And all these serve purposes
16 that you would say are separate and apart from
17 providing distinguishing information?
18 A The way we have discussed them here,
19 yes, I would say.
20 Q Okay. Is it possible for a device to
21 put on, to arrange an impedance for multiple
22 reasons?
23 MR. KRIEGER: Objection, form.
24 A I don't know offhand. I can't say
25 that it's impossible.

Page 20

1 Q (BY MR. BLUESTONE) So if you put in
2 a device that -- you put impedance matching -- you
3 put in an impedance for the purpose of impedance
4 matching, pardon me.
5 A Correct.
6 Q At that time, because it's solely for
7 that purpose, it doesn't have distinguishing
8 information; correct?
9 A Correct.
10 MR. KRIEGER: Objection, form.
11 Q (BY MR. BLUESTONE) But let's say,
12 for example -- you're familiar with a Bob Smith
13 termination; correct?
14 A Yes.
15 Q So at some point, if you've put on a
16 Bob Smith termination, it's going to serve the
17 purpose of impedance matching; correct?
18 A Well, it's -- yeah, roughly. I mean,
19 it's terminating common mode noise.
20 Q And could you just give a brief
21 explanation of why the Bob Smith termination is in
22 place?
23 A Yeah, because you can have common
24 mode currents on pairs that will radiate noise and
25 by putting on impedance at the end between them,

Page 21

1 you can terminate those currents and keep them from
2 reflecting back and forth.
3 Q Okay. And is a Bob Smith termination
4 typically used these days?
5 A I believe so.
6 Q So if I put a Bob Smith termination
7 on my device for the additional reason of wanting
8 people to know that it does impedance matching,
9 have I now provided distinguishing information?
10 MR. KRIEGER: Objection, form.
11 A You put it on for what purpose?
12 Q (BY MR. BLUESTONE) So one purpose of
13 putting a Bob Smith termination on a Ethernet
14 connector across a path would be to serve for
15 impedance matching; correct?
16 A Yes.
17 Q And my question to you is take that
18 same exact example and now in my head not only do I
19 want to put it in for impedance matching, I want
20 people to know that I'm smart enough to put on a
21 Bob Smith termination. Specifically, I want people
22 to know that this device is compliant with any
23 requirement that you put on a Bob Smith
24 termination.
25 Does it have distinguishing

Page 22

1 information?
2 MR. KRIEGER: Objection, form.
3 A Not in my opinion, no.
4 Q (BY MR. BLUESTONE) Why not?
5 A Because you put the Bob Smith
6 termination there to cancel common mode noise and
7 if you -- as your common mode noise you'll see is
8 canceled, okay, fine. I mean, I don't -- you're
9 simply meeting the EMC requirements for rating
10 emissions, which everyone has to meet. So I don't
11 see that as being distinguishing.
12 Q But there was a time before where
13 there was no Bob Smith termination on it, right?
14 Like when Bob Smith invented it, for example;
15 correct?
16 A Right. Correct.
17 Q Okay. So there was a time where Bob
18 Smith terminations didn't exist?
19 A Yes.
20 Q And then after Bob Smith terminations
21 come into play, now there is a different category
22 of devices, isn't there?
23 A I don't know that I recall a
24 different category of devices, but...
25 Q Well, there would be a universe of

Page 23

1 devices that have Bob Smith terminations and a
2 universe that don't; correct?
3 A I suppose that's so.
4 Q Okay. And the impedance arrangement
5 that identifies it as a Bob Smith termination would
6 also serve to categorize it as a Bob Smith
7 termination device, wouldn't it?
8 MR. KRIEGER: Objection, form.
9 A Well, it serves primarily to limit
10 common mode emissions, is the reason why it was put
11 there.
12 Q (BY MR. BLUESTONE) Right. But you
13 said primarily. There also could be an additional
14 reason, and that would be I am putting it in so
15 people know it's got impedance matching. I could
16 do that, couldn't I?
17 A I -- that really doesn't make any
18 sense to me, but...
19 Q Well, let's say I have a document
20 that says, in my spec sheet for my company, you are
21 to put in a Bob Smith termination because we want
22 you to do impedance matching and we want it to
23 satisfy the IEEE standards requirement that you put
24 in a Bob Smith termination.
25 In that instance, have I put in

Page 24

1 distinguishing information on that device?
2 MR. KRIEGER: Objection, form.
3 A It does not seem that way to me, no.
4 Q (BY MR. BLUESTONE) Because?
5 A Because you're simply -- you're
6 putting that in to minimize the emissions. And
7 other than that, there would be no point in doing
8 it.
9 Q So, but if there is a -- but if there
10 is a point in doing it -- so let's give a different
11 example. I don't know Bob Smith personally, I am
12 assuming that he's a humble man, from what I've
13 heard, and he is a nice guy.
14 But let's say that Bob Smith
15 requires, because he has a patent, that people put
16 in his termination so that he can get credit for
17 it. So that people know it's a Bob Smith device.
18 Does the arrangement of a Bob Smith
19 termination now provide distinguishing information?
20 MR. KRIEGER: Objection, form.
21 A Yeah, I'm struggling with that one.
22 I still don't see how it does.
23 Q (BY MR. BLUESTONE) Because you're
24 saying there is a more primary purpose other than
25 that? Is that correct?

Page 25

1 MR. KRIEGER: Objection, form.
2 A I guess what I'm saying is I don't
3 see that as distinguishing information. I see that
4 as one design technique you could use to minimize
5 common mode emission, and to the -- as opposed to
6 something you want to communicate, say, to the
7 device on the other end of the link.
8 Q (BY MR. BLUESTONE) But if it serves
9 two purposes, step away from Bob Smith, for
10 example, and just say you have a simple low-pass
11 filter --
12 A Okay.
13 Q -- across the context of an Ethernet
14 connector. I could arrange that low-pass filter
15 for two purposes; right? I could do it, one, for
16 filtering out high frequencies; correct? I could
17 also do it as some sort of signature for the
18 device, couldn't I?
19 MR. KRIEGER: Objection, form.
20 A Typically, if you describe it as a
21 low-pass filter, you're doing it for filtering.
22 Q (BY MR. BLUESTONE) Mm-hmm. But I
23 could create the filter so that it is different
24 enough from a generic low-pass filter that people
25 would know it was my device, couldn't I?

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1 A I don't know that I've ever seen
2 anything like that.
3 Q Could it be done?
4 A I don't know offhand.
5 Q Okay. So let's take a company that's
6 selling a product with an Ethernet connector. Does
7 that Ethernet connector have an impedance across a
8 path?
9 A Yes, in general there will be some
10 paths that have some impedance across.
11 Q Okay. Is there ever going to be --
12 and we can use either definition of impedance,
13 plaintiffs' or defendants', it doesn't matter to
14 me, just please specify which one you want to use.
15 Is there ever going to be an instance in which an
16 Ethernet device with an Ethernet connector is not
17 going to have an impedance across a path?
18 A No, I think there's always going to
19 be some path with some impedance.
20 Q Okay. And just to clarify for the
21 record, is that under your proposed construction,
22 or defendants'?

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1 MR. KRIEGER: Objection, form.
2 A It might be. I haven't really
3 thought that through.
4 Q (BY MR. BLUESTONE) Okay. That's
5 fair. Okay. So how does a company -- okay. So
6 taking your construction of impedance, company
7 selling a product with an Ethernet connector. We
8 know it has an impedance across a path. Across the
9 contacts; correct?
10 Given all of that, how does the
11 company look at the device and say it has or it
12 doesn't have distinguishing information?
13 MR. KRIEGER: Objection, form.
14 A Well, again, I think if you look at
15 the claims, if you do the elements in the claims,
16 where I think distinguishing information is fairly
17 clear from the context of this, that one of skill
18 in the art could determine that.
19 Q (BY MR. BLUESTONE) How? How would
20 they do that?
21 A Well, as I said before, you look at
22 the product, the documentation and so on, see how
23 it works and whether it is providing an impedance
24 for the purpose of indicating distinguishing
25 information about the product.

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1 Q How do I know if it's for the purpose
2 of?
3 A Again, I would look to the
4 documentation specifications of the product that
5 would typically say that because if you're trying
6 to indicate that information, there's really, I
7 mean, in an Ethernet system you're talking to
8 another terminal at the other end of the link;
9 right?
10 So if you're putting impedances in to
11 indicate things, they have to know about it or
12 you're not really indicating, right? So there
13 would have to be some type of documentation that
14 says when do I this, it means that.
15 Q And is there any particular language
16 you'd be looking for it to say?
17 A I would be looking for descriptions
18 sort of like that, that when I put this impedance
19 in under these conditions, it means that.
20 Q And what's "that" in that phrase?
21 A Some distinguishing information that
22 you want convey.
23 Q Okay. So in the absence of a
24 document that says we put in the impedance to
25 convey distinguishing information, would the device

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1 lack distinguishing information?
2 MR. KRIEGER: Objection, form.
3 A Are you asking is that the -- is that
4 the only way to prove it? Is that what you're
5 asking?
6 Q (BY MR. BLUESTONE) We can go that
7 way. Go ahead and answer that question that you've
8 raised, that's fine.
9 A No, I don't think that's the only
10 way. You could talk to the people who designed it.
11 You could test it and analyze how it performs.
12 Q Okay. So if there was no document
13 and no person saying we put it in for this reason,
14 would you lack distinguishing information?
15 MR. KRIEGER: Objection, form.
16 A Well, I think if it, if it's -- I
17 would imagine in many cases, by testing and
18 analyzing the product, you could -- you could
19 discover, sort of reverse engineering the product,
20 you could discover that.
21 Q (BY MR. BLUESTONE) Okay. What would
22 you look for in reverse engineering the product
23 that would tell you what the purpose was for that
24 impedance?
25 A If the impedance in the product

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1 correlated with a distinguishing characteristic.
2 Q Where do you go to look for the
3 distinguishing characteristic that's relevant?
4 A I'm not sure I follow the question.
5 Q Well, I think you said you were
6 looking to see if the impedance of the product
7 correlated with the distinguishing characteristic;
8 is that correct?
9 A Whether it was associated with or
10 whatever you want to say, yes.
11 Q Sure. But the key phrase that I am
12 focusing on is distinguishing characteristic. How
13 does a person know what the range of distinguishing
14 characteristics are?
15 A Well, presumably you're talking about
16 some particular product. I mean --
17 Q Okay.
18 A And for that particular product there
19 are things that might be relevant, and if you're
20 using impedance to signal one of those, then I
21 think you -- there's a good chance you meet these
22 claims. This claim.
23 Q So you would say that the processor
24 type could be distinguishing characteristic?
25 A That's one of the examples given in

Page 31

1 here, yes.
2 Q How would you look at the impedance
3 across an Ethernet connector and correlate that to
4 a processor type?
5 MR. KRIEGER: Objection, form.
6 A Well, obviously that depends on --
7 sorry.
8 MR. KRIEGER: Go ahead.
9 A That would depend on how the product
10 is designed, obviously.
11 Q (BY MR. BLUESTONE) What would you
12 need to know?
13 A What? Sorry.
14 Q What would you need to know?
15 A If you saw different impedances for
16 different processor types, for instance. If you
17 said, hey, when I apply this voltage, I want you to
18 give me a resistance that indicates what your
19 processor type is, or if you're using a technique
20 more like outlined in specification where you're
21 sending the processor type, the model number,
22 whatever. There's various ways could you do it.
23 Q What if I'm just using a single
24 resistor across the path? Can I use that to note
25 the processor type is?

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1 MR. KRIEGER: Objection, form.
2 A I mean, I suppose it would be
3 possible. That might not be the best way to do it,
4 but...
5 Q (BY MR. BLUESTONE) How would it be
6 possible?
7 A If there's -- if there's two
8 different types of processors you might use in this
9 thing and you put one value for one and another
10 value for the other.
11 Q And how do I know what values would
12 correlate to a processor type? By value, you mean
13 something in ohms or --
14 A Value impedance, yeah.
15 Q Okay. How would I know what value
16 would have meaning for a processor type?
17 A Well, again, typically there would be
18 some documentation that would tell you how the
19 thing operates and what the various impedances
20 would mean. Failing that, you could test some of
21 them with different processor types and notice that
22 this impedance always correlates with that and this
23 with that.
24 Q Now, an Ethernet device would
25 typically have some sort of isolation transformer

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1 at the end, wouldn't it?
2 A Yes.
3 Q And the purpose of the isolation
4 trans -- let me rephrase that, I'm sorry.
5 One purpose of an isolation
6 transformer would be to block current flow from the
7 internal circuitry of let's say that Ethernet
8 device to the outside world; is that correct?
9 A Well, that's the isolation function,
10 yes.
11 Q Yeah, right, but you -- in that
12 circumstance you wouldn't be able to go and know
13 any differences in the processor, right? Because
14 it would be blocked off; correct?
15 A Unless you put the impedance where it
16 can be read from outside.
17 Q You would have to deliberately wire
18 it to put in an impedance that would go and signify
19 a particular processor type; correct?
20 A That -- that's one way you could do
21 it, yes.
22 Q You'd have to say I am putting in a
23 100 kilo ohm resistor here and that means something
24 to me?
25 A Again, I'm not sure what you mean by

<p style="text-align: right;">Page 34</p> <p>1 you would have to, but that's certainly one way you 2 could do it, yes. 3 Q Okay. Where, in claim 31 where we're 4 talking about distinguishing information, where is 5 that distinguishing information located on a 6 Ethernet data terminal device? 7 A I'm sorry, can you -- 8 Q Sure. Where is the distinguishing 9 information located in a Ethernet data terminal 10 device? 11 A Well, first off, it depends whether 12 it has one or not. If it doesn't have one, it's 13 not located anywhere. If it does, that would be a 14 design option. When you're designing the 15 equipment, you could decide where you want to put 16 it. 17 Back in, for instance, the time frame 18 of when the specification was written, there were 19 still Ethernets that only used two pairs and you'd 20 have two spare pairs you could do whatever you 21 wanted to with. 22 Q If we look at claim 31, the language 23 talks about the distinguishing information being 24 associated to an impedance; correct? 25 A Correct.</p>	<p style="text-align: right;">Page 36</p> <p>1 In that simple example, where is the 2 distinguishing information? 3 A The distinguishing information is the 4 meaning attached to having that resistor there as 5 opposed to something else. 6 Q Okay. When you say -- 7 A It indicates that distinguishing 8 information. 9 Q When you're saying "the meaning," it 10 could be in someone's mind; correct? 11 A Well, presumably it's a meaning that 12 the terminal at the far end is going to notice or 13 you've kinda wasted your time. 14 Q Okay. But the distinguishing 15 information doesn't need to be anything tangible, 16 you're saying? 17 MR. KRIEGER: Objection, form. 18 A Well, the distinguishing feature of 19 the equipment would be something tangible, as you 20 say, serial number, processor type, electrical 21 characteristic, physical characteristic, and so on. 22 So there's something about that equipment that's a 23 distinguishing feature that you want to indicate. 24 Q (BY MR. BLUESTONE) Okay. And that 25 something about the equipment that's the</p>
<p style="text-align: right;">Page 35</p> <p>1 Q And that would -- that language makes 2 it clear that the distinguishing information is not 3 the impedance, it's something else; correct? 4 A Correct. 5 Q So -- 6 A That's the associated part. 7 Q Okay. Who decides when the 8 distinguishing information has become associated 9 with the impedance? 10 A Who decides? 11 MR. KRIEGER: Objection, form. 12 Q (BY MR. BLUESTONE) Yeah. 13 A I mean, if it's -- if it's designed 14 that way, then it is. If it isn't, then it isn't. 15 So I would say the product designer makes that 16 decision. 17 Q So let's take a device that simply 18 has a resistor across the path. 19 A Okay. 20 Q So it's an Ethernet connector and -- 21 or, sorry. It's an Ethernet data terminal device 22 with an Ethernet connector and I've put a resistor 23 across the path. I think you have a figure in your 24 report, we'll get to that, but I just want to get a 25 sense of this.</p>	<p style="text-align: right;">Page 37</p> <p>1 distinguishing information that you want to 2 indicate is not in the resistor, is it? 3 A Well, no. The -- it's associated. 4 There's association between impedance and the 5 feature, so that when you see the impedance, you 6 know what the feature is. 7 Q Okay. 8 A Distinguishing feature. 9 Q How does the active association 10 occur? 11 A The active -- 12 MR. KRIEGER: Objection, form. 13 A Well, in my view, the active 14 association occurs when you put -- when you make 15 the product with that resistor in there to indicate 16 that characteristic. 17 Q (BY MR. BLUESTONE) Okay. So let's 18 say I take your Ethernet connector, I have a 19 resistor across it, and it has -- let's use the 20 example that you guys have used before, 25 kilo ohm 21 resistor across it. 22 A Okay. 23 Q But I put in the 25 kilo ohm resistor 24 for solely the purpose of filtering, let's say, for 25 example. And now I have another device. Same</p>

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1 exact thing. Ethernet connector, there's a
2 resistor across the path, 25 kilo ohms, but this
3 time I did it specifically because I want to
4 announce that I'm Power over Ethernet, PoE,
5 compliant.
6 Does the first device not have
7 distinguishing information but the second device
8 does? Even though physically they're identical?
9 MR. KRIEGER: Objection, form.
10 A Well, first of all, typically, you
11 wouldn't use a 25K resistor for no purpose like
12 that because you know it's used for something else.
13 Q (BY MR. BLUESTONE) Okay.
14 A So, beyond that, what's the question?
15 Q Well, I am using it for the purpose
16 of filtering in this example.
17 A Okay.
18 Q And in the second device I am using
19 it for the purpose of announcing PoE compliance.
20 Does the first device have distinguishing
21 information associated?
22 MR. KRIEGER: Objection to form.
23 A Again, you know, you would have to
24 look at the entire device, the specifications and
25 so on, but I am inclined to say no, because it's

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1 there for some other reason. But I would have to
2 reserve judgment to look at the entire situation.
3 Q (BY MR. BLUESTONE) Okay. So it
4 could be, though, that the very same device
5 physically could have distinguishing information in
6 one circumstance but not in another circumstance?
7 MR. KRIEGER: Objection to form.
8 A What do you mean by the "same
9 device"?
10 Q (BY MR. BLUESTONE) Same exact
11 physical characteristics.
12 MR. KRIEGER: Objection, form.
13 A But same characteristics of what?
14 What device are we talking about?
15 Q (BY MR. BLUESTONE) Ethernet
16 connector with resistor across -- sorry, an
17 impedance across the path.
18 MR. KRIEGER: Objection, form.
19 A Well, yeah, because that's only part
20 of the claim. The rest is that it's associated
21 with distinguishing characteristic.
22 Q (BY MR. BLUESTONE) And that
23 associating with distinguishing characteristic is
24 not dependent on the physical structure of the
25 device; correct?

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1 MR. KRIEGER: Objection, form.
2 A "The physical structure of the
3 device" meaning?
4 Q (BY MR. BLUESTONE) The physical
5 structure of the device, for example, an Ethernet
6 terminal device with an Ethernet connector with an
7 impedance across the path, path being the
8 connection between two contacts on the Ethernet
9 connector. That, in and of itself, is not
10 determinative of whether there is distinguishing
11 information associated; correct?
12 A The fact that there is impedance
13 there.
14 Q Right.
15 A Correct.
16 Q So you can't look at that device
17 based on just those physical aspects that I just
18 mentioned? It's a connector, it's got a path, it's
19 got contacts, it's got impedance across it, that
20 alone is not sufficient; correct?
21 MR. KRIEGER: Objection, form.
22 A No, there are other claim elements.
23 Q (BY MR. BLUESTONE) That specifically
24 you need to know whether it's associated with
25 distinguishing information; correct?

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1 A Correct.
2 Q Okay. And that determination must be
3 made by looking at something outside the device
4 itself; correct?
5 A No, I don't think it would have to.
6 I think it could -- you could make that
7 determination by testing device or a bunch of
8 devices or by reverse engineering a device, if you
9 were so inclined.
10 Q Okay. So using my 25 kilo ohm
11 example, I put that in for the purpose of
12 filtering, let's say I'm just a bad designer but I
13 did it for the reason of filtering. Sincere,
14 honest reason, that's why I did it.
15 Would you look at that and say, well,
16 it still has distinguishing information because, as
17 it turns out, the PoE standard finds that
18 significant?
19 MR. KRIEGER: Objection, form.
20 A Well, I guess speaking as an
21 engineer, my reaction would be that let's not give
22 you a problem because you're not going to sell any
23 of those once people find -- I mean, it, you know
24 -- that's kind of a, you know, hypothetical example
25 that in the real world, you know, you'd make one of

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1 them, find out there were problems, and that would
2 be that.
3 Q (BY MR. BLUESTONE) I appreciate the
4 diminimous infringement concern there, but
5 nonetheless, if you were to look at that product
6 and you have to make that assessment, is that
7 product in which I put in 25 kilo ohms for a
8 different purpose associated with distinguishing
9 information?
10 MR. KRIEGER: Objection, form.
11 A Well, if I really looked at the
12 product and the supporting documentation and so on,
13 the testing and whatnot included, that it wasn't
14 associated, then I would say that product doesn't
15 infringe in my opinion.
16 Q (BY MR. BLUESTONE) Even though it
17 might have the same requirements as what might
18 infringe if I said it was for PoE compliance?
19 MR. KRIEGER: Objection, form.
20 A It's not just -- I mean, it's not
21 just saying, it has to actually be designed that
22 way.
23 Q (BY MR. BLUESTONE) Okay. So let's
24 -- so what led us down this path a little bit was
25 the question about who decides what distinguishing

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1 information has become associated with impedance.
2 Is it -- is my understanding correct
3 then that the person who decides is the person who
4 is designing the product?
5 A As opposed to what?
6 Q As opposed to you as a third party
7 looking at that same product.
8 A Well, I guess my opinion would be
9 that the association would be built into the
10 product during the design and manufacture, and that
11 it could be detected by a third party who looked at
12 the product later.
13 Q But if my intent in designing the
14 product is not to provide distinguishing
15 information, then I don't have distinguishing
16 information under claim 31. Correct?
17 MR. KRIEGER: Objection, form.
18 A Again, if, analyzing the product, the
19 documentation, the operation and so on, if the
20 impedance is not linked to -- or associated with a
21 distinguishing feature, then I would say no, you
22 don't infringe that claim.
23 Q (BY MR. BLUESTONE) And would that
24 also apply to claim 67 for whether the impedance is
25 arranged to distinguish?

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1 A I guess I'll refresh myself.
2 Q Please. Feel free. Take your time.
3 A Yeah, the way I interpret that claim
4 is that the impedance is arranged for the purpose
5 of distinguishing that equipment.
6 Q And for the purpose of is reflecting
7 the intent of the designer or manufacturer;
8 correct?
9 A The intent of the designer,
10 manufacturer, and really the capability of the
11 product.
12 Q What if it is, back to our example
13 before, 25 kilo ohms across the contacts, that
14 would be capable of signifying PoE compliance;
15 correct?
16 A Across the right contacts for the
17 right voltage levels, yes.
18 Q Okay. So if I take that
19 circumstance, but I didn't intend to use it for
20 compliance with the PoE standard, then I don't have
21 a device that's arranged to distinguish; correct?
22 A Well, if you put in the 25K but you
23 didn't have the PD circuitry behind it, then I
24 think everyone would agree with that, that you put
25 it in for whatever reason. If it's -- if it's part

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1 of a PD circuit to respond to a detection voltage,
2 then I think it would be difficult to claim it
3 wasn't put there for that purpose.
4 Q Okay. But what is important is the
5 purpose behind the placement of the impedance;
6 correct?
7 A Well, I --
8 MR. KRIEGER: Objection, form.
9 A Well, I think all the claim elements
10 are important. And, yes, at one of those claim
11 elements is that you arrange -- for claim 67 now
12 we're talking?
13 Q (BY MR. BLUESTONE) Mm-hmm.
14 A -- that you arrange the impedance to
15 distinguish the piece of terminal equipment.
16 Q And the claim language doesn't say
17 for the purpose of, but your read of that is that
18 that means you're arranging the impedance for the
19 purpose of making it distinguishable; correct?
20 A Yes. To me, that's what the plain
21 meaning of those terms is.
22 Q And by distinguishable, I believe you
23 said that that could also mean it can be
24 categorized; is that correct?
25 A Yeah, that's the common meaning of

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1 distinguish is to classify, categorize, and so on.
2 Q Okay. Now, anyone building a non-PoE
3 device after the introduction of the 802.3af
4 standard, would know to stay away from 25 -- a 25
5 kilo ohm resistor across the path; correct?
6 A Correct.
7 Q Because otherwise the PSE might send
8 some power down the line that it shouldn't be
9 having; correct?
10 A Right.
11 Q So if I am designing that product
12 now, is it correct that I am arranging the
13 impedance to distinguish the device from -- pardon
14 me. If I am doing that now, am I arranging the
15 device to distinguish it as non-PoE compliant if I
16 use anything other than a 25 kilo ohm impedance?
17 MR. KRIEGER: Objection, form.
18 A Well, no, typically you don't put a
19 specific impedance in there for the purpose of
20 distinguishing that you're not PoE. It...
21 Q (BY MR. BLUESTONE) But if I -- but
22 make sure I understand. To you, arranging
23 impedance would be to put the impedance in place;
24 correct?
25 A Couple it however you put it in, yes.

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1 Q Okay. Does that mean you have to
2 specifically put in a particular element with a
3 designated impedance?
4 A It means you have to present an
5 impedance across the selected contacts.
6 Q Okay. So when I am designing a
7 non-PoE compliant device now, I am going to be very
8 careful to put in place an impedance that is not 25
9 kilo ohms; correct?
10 MR. KRIEGER: Objection, form.
11 A Well, yes and no. I mean, you're not
12 going to put 25 kilo ohms in place, but you don't
13 have to be careful because the normal impedance to
14 the transformer is always nowhere near that.
15 That's why 25K was selected.
16 Q (BY MR. BLUESTONE) But I'm not going
17 to put in 25 kilo ohms. That is going to be -- my
18 arrangement is going to exclude that; correct?
19 MR. KRIEGER: Objection, form.
20 A Well, again, the way I would
21 interpret is you're not putting in anything
22 specifically, you're just not putting in the thing
23 you would have to put in to indicate distinguishing
24 information.
25 Q (BY MR. BLUESTONE) But I am putting

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1 in an impedance across the path, right? By the
2 mere design of all the other aspects of the
3 circuitry; correct?
4 A It's the impedance that would
5 traditionally be there in the Ethernet system.
6 It's not anything that you specifically put in
7 there if you indicate.
8 Now, you could, I suppose, design
9 non-PoE equipment so that when it sees a detection
10 voltage, it deliberately applies an impedance other
11 than 25K to indicate that it's not, and then in
12 that case maybe you do infringe.
13 Now, why you would want to go out of
14 your way to infringe when you don't have to, I
15 don't know. But the act of not putting an
16 impedance there I don't see as an infringing act.
17 Q I'm not saying you're not putting in
18 an impedance. I'm just saying your circuit device
19 -- sorry your circuit specification is using a
20 different impedance. For example, it just has an
21 isolation transformer would have a different
22 impedance; correct?
23 A Right.
24 Q And you would have arranged the
25 impedance in that circuit; correct?

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1 A Well, typically, you would -- look
2 like something close to short or something close to
3 an open, would be the main things that you would
4 see, and you haven't specifically arranged those
5 for that purpose, that's just the way the thing is.
6 Q But that isolation transformer would
7 have an impedance; right?
8 A There would be an impedance through
9 the path, yes.
10 Q It would be something you could
11 measure?
12 A It would be something you could
13 measure, yes.
14 Q And an impedance in general is going
15 to be a measurable characteristic across any path;
16 correct?
17 A Correct.
18 Q And someone designing after the
19 802.3af standard is going to know not to put in a
20 25 kilo ohm resistor; right?
21 MR. KRIEGER: Objection, form.
22 A They would know to put in the 25K if
23 they are PD and they would have no reason to put it
24 in if they're not.
25 Q (BY MR. BLUESTONE) Well, they would

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1 have a reason to explicitly not put it in, right?
2 The 25 kilo ohm resistor? It would be a bad design
3 choice; right?
4 A Well, when you're designing circuits,
5 you don't -- you don't put in everything that
6 there's not a reason not to put in. I mean, the
7 circuit would get pretty big in a hurry. Typically
8 you put in what you need.
9 Q But if I'm designing a device that's
10 not -- if I'm designing the circuitry for a device
11 that's not supposed to receive power, and I'm a
12 good engineer, I better make sure I'm not putting
13 in something that's going to send power over that
14 line; right?
15 A Right, if you don't want it, yes.
16 Q Right. So in the circumstance, this
17 device has been arranged to be signifying that it's
18 not PoE compliant. It doesn't want the PSE to send
19 power; right?
20 MR. KRIEGER: Objection, form.
21 A It may not even be aware that there
22 are PSEs. I mean, it's not -- you can't infer from
23 that, I don't think, that it was deliberately
24 arranged to avoid PoE. They might have been
25 oblivious to PoE. I mean, who knows?

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1 Q (BY MR. BLUESTONE) But what if I go
2 and I have a design spec that says don't put in 25
3 kilo ohms, just make sure you don't do that. In
4 that circumstance, has it been associated with
5 distinguishing information because the impedance is
6 arranged in a particular way to signify non-PoE
7 compliance?
8 MR. KRIEGER: Objection, form.
9 A I guess I don't see that arranging
10 impedance in a particular way. It could be
11 virtually anything. I mean, I...
12 Q (BY MR. BLUESTONE) Well, what in the
13 claim, as you read it, restricts it from being in
14 any way, and I am talking about arranging
15 impedance?
16 A Well, again, to me, arranging
17 impedance implies that you have put impedance there
18 for a particular purpose, not that you -- and when
19 you put any impedance there, by definition, you
20 have not put every other impedance in the world
21 there. And so I don't -- you know, I think there
22 needs to be a purpose behind what you did put
23 there, not what you didn't put there.
24 Q Okay. Been going for almost an hour.
25 Do you want to take a quick break? Or we can go on

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1 if you want.
2 A Yeah, a break that wouldn't be bad.
3 Q Sure.
4 THE VIDEOGRAPHER: We're going off
5 the record at approximately 9:57 a.m.
6 (Off the record.)
7 (Exhibit 2 marked for identification
8 by the court reporter.)
9 THE VIDEOGRAPHER: We're back on the
10 record at approximately 10:08 a.m.
11 Q (BY MR. BLUESTONE) Mr. Baxter, I
12 have handed you what I've marked as Exhibit 2.
13 It's a copy of your October 20, 2014, Declaration
14 in support of plaintiffs' opposition to summary
15 judgment on indefiniteness. Do you see that?
16 A Yes.
17 Q Is that a complete copy of your
18 report?
19 A Yeah, appears to be.
20 Q And is this a complete set of your
21 opinions on indefiniteness?
22 A Yes.
23 Q Okay. Is there anything in this
24 report that you believe you need to add or change?
25 A No.

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1 Q Okay. And for the judge or trial
2 you'd be presenting testimony that's consistent
3 with this report?
4 A Yes.
5 Q I'd like you to turn to paragraph 82
6 of your report, please. Now, I believe that
7 Exhibit 2 contains some claim interpretations that
8 were not previously presented; is that accurate?
9 MR. KRIEGER: Objection, form.
10 A I don't know, to be honest with you.
11 Q (BY MR. BLUESTONE) Okay. Well, we
12 can go through them one by one. So in paragraph
13 82, with respect to claim 31, you say "I as one of
14 ordinary skill in the art understand that 'wherein
15 distinguishing information...is associated to
16 impedance within the at least one path' means that
17 impedance is placed in the path for the purpose of
18 providing distinguishing information about the
19 piece of terminal equipment." Is that right?
20 A Yes.
21 Q And that's your opinion?
22 A Yes.
23 Q And that was a statement that wasn't
24 in any of your prior reports; correct?
25 A I don't believe so. I think this is

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1 more detail than the prior reports.
2 Q Okay. And can you explain what
3 necessitated the inclusion of "for the purpose of"
4 in paragraph 82?
5 MR. KRIEGER: Objection, form. I
6 also will caution the witness not to reveal any
7 attorney-client privileged communications. But
8 otherwise, the witness can answer.
9 A What was the question?
10 Q (BY MR. BLUESTONE) In that language
11 that I just read in paragraph 82 there is "for the
12 purpose of."
13 A Right.
14 Q Can you explain why in this report
15 you introduced the concept of "for the purpose of"?
16 MR. KRIEGER: Same objections and the
17 same instruction.
18 MR. BLUESTONE: Okay.
19 A Yes. To me, looking at the plain
20 language of the claim, that's what it -- that's the
21 way I interpret it. That the...
22 Q (BY MR. BLUESTONE) Okay. Let's go
23 to paragraph 81. As I understand paragraph 81, we
24 are referring to language that's in claim 67; is
25 that correct?

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1 A Yes.
2 Q And I'll just read this language into
3 the record. You say, "I as one of ordinary skill
4 in the art understand that 'arranging impedance
5 within the at least one path to distinguish the
6 piece of terminal equipment' means that impedance
7 is placed in the path for the purpose of making the
8 piece of terminal equipment distinguishable."
9 Is that an accurate representation of
10 your opinion?
11 A Yes.
12 Q Now, in both paragraph 81 and 82 you
13 introduce the concept of "for the purpose of."
14 A Mm-hmm.
15 Q And this wasn't in any of your prior
16 Declarations, in fact, you had a prior Declaration
17 on claim construction; correct?
18 A Yes.
19 Q And at that time you were aware that
20 it was defendants' position that arranging
21 impedance to distinguish and distinguishing
22 information associated with impedance was
23 indefinite; correct?
24 MR. KRIEGER: Objection to form and I
25 will also instruct the witness not to answer to the

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1 extent that counsel is requesting communications
2 between an attorney and a client or work product.
3 If you have an independent basis for knowing or
4 responding to the question, you may answer.
5 Q (BY MR. BLUESTONE) And if you have
6 an independent basis, you can answer that. Go
7 ahead.
8 A Can you give me the gist of the
9 question again?
10 Q Well, before October 20, in none of
11 your Declarations was "for the purpose of"
12 introduced in, and to the extent you can answer
13 this question without divulging communications with
14 your counsel, I would like to know why "for the
15 purpose of" was introduced at this time frame.
16 A Well, obviously I did have
17 conversations with counsel, and let me just say
18 that --
19 MR. KRIEGER: Yeah, and if you can't
20 answer it without referencing communications with
21 me, then you can't answer.
22 A Right. I would just repeat that in
23 my opinion this is what the language of the claim
24 means.
25 MR. PARK: Sorry, this is Jin Park

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1 for Samsung. Just sorry to interject, but are you,
2 meaning CMS, claiming privilege with your expert
3 that has provided an opinion in this case?
4 MR. KRIEGER: So, as you know, you
5 guys are not entitled to any communications between
6 me and my expert with certain exceptions according
7 to the rules; right? One being compensation, I
8 believe, and I don't have the exact wording in
9 front of me, and the other one is something he
10 relies on.
11 So I have explained to him the law
12 and all that is in the report. But beyond that you
13 guys are not entitled to anything else.
14 MR. PARK: We are entitled to the
15 basis of his opinions and if the basis of his
16 opinion is that you told him to add that language,
17 we're entitled to know that.
18 MR. KRIEGER: I didn't tell him to
19 add anything. I don't even think, you know, we're
20 -- I don't understand what you're trying to get at
21 here. The basis for his opinion, of course, you're
22 entitled to. You're not entitled to any
23 communication between my expert and me unless he
24 relied on them.
25 I am telling you that he relied on my

15 (Pages 54 - 57)