

<p style="text-align: right;">Page 166</p> <p>1 which flows through the impedance which is across 2 the selected contacts. That's what -- this is one 3 embodiment, regardless of how you generated that 4 current, the other end would interpret it the same 5 way. And they show several ways of doing it. 6 Q So how does -- if we were to look at 7 Figure 10 that you give an example of, are you 8 saying that -- are you saying that the 9 distinguishing information in Figure 10 is 10 everything connected between those contacts? Where 11 is the distinguishing information in Figure 10 12 coming from? 13 A It comes from the current through 14 this resistor network which is being modified by 15 the processor at the bottom left. 16 Q So the -- what is the distinguishing 17 information there? 18 MR. KRIEGER: Objection, form. 19 A The distinguishing information is the 20 identification number which is transmitted back. 21 Q (BY MR. BLUESTONE) And that 22 identification number comes from the microprocessor 23 122? 24 A And is transmitted through the 25 resistor networks here. I mean, I don't -- the</p>	<p style="text-align: right;">Page 168</p> <p>1 the resistors, the 4.7k resistors labeled 128 and 2 129? 3 A They are controlling -- or limiting 4 the current flow into the two lines that go back to 5 the central module. 6 Q Are either one of these impedance -- 7 sorry. Let's assume that these are impedances 8 under your definition. Is resistor 128 or 129 9 placed to distinguish in Figure 10? 10 A Yes, I think that this impedance 11 network in here is placed to -- to allow the 12 distinguished information to be communicated. 13 Q Specifically, let's say resistor 128. 14 A 128. 15 Q That specific resistor 128. Is it or 16 is it not placed to distinguish? The Ethernet data 17 terminal. 18 A Yes. It's part of the circuit. If 19 it wasn't there, the circuit wouldn't work and it 20 wouldn't distinguish. 21 Q But I am asking specifically just 22 about that one element right there. That one 23 element that has an impedance of 4.7 kilo ohms. 24 A Mm-hmm. 25 Q Does that in and of itself, by</p>
<p style="text-align: right;">Page 167</p> <p>1 claim does not say there can't be anything but 2 impedance in there; right? I mean, it doesn't rule 3 out the fact there could be other elements. Could 4 certainly envision a simpler method than this. 5 Q Let's talk about paragraph 23. 6 A Of? 7 Q Exhibit 2. Now, you've discussed the 8 breadth of the field in paragraph 23. 9 A Yes. 10 Q You said there's "500 patents as 11 references." 12 A Mm-hmm. 13 Q Is it limited to just those 500 or 14 could it be more? 15 A I would think it could be more. 16 Q Okay. Do you have any estimate of 17 how many you think it could be in this field? 18 A No. 19 Q But the '012 patent is just one among 20 these several hundred references; correct? 21 A Correct. 22 Q In Figure 10, sorry, I'm going to go 23 back to this real quick. 24 A Okay. 25 Q In Figure 10, what's the purpose of</p>	<p style="text-align: right;">Page 169</p> <p>1 looking at this schematic, tell whether you it's 2 placed to distinguish? 3 MR. KRIEGER: Objection, form. 4 A You're saying by looking at the 5 schematic does it tell you that that's placed? I 6 mean, if there was nothing else there; is that the 7 question? 8 Q (BY MR. BLUESTONE) Mm-hmm. 9 A Beg pardon? 10 Q Mm-hmm. Correct. 11 A If there was just that one resistor? 12 Q Sure. 13 A Well, one thing, it's not clear what 14 the other end would be hooked to if there was 15 nothing else. But it's part of the circuit that 16 provides the impedance that -- that's associated 17 with the distinguishing information and if it 18 wasn't there, the circuit wouldn't work. 19 Q Okay. So let's do Exhibit 9. 20 (Exhibit 9 marked for identification 21 by the court reporter.) 22 Q (BY MR. BLUESTONE) This is, to be 23 clear, not a figure from the patent. This is a 24 modification of, I believe it was Figure 2. 25 A Yes, I see that.</p>

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1 Q You are probably aware that this was
2 not a figure exactly, but it might serve a purpose
3 to help where we're going with this questioning
4 here.
5 If that box with the 25 kilo ohm
6 resistor in there is the Ethernet data terminal, do
7 we know whether it's -- that resistor right there
8 has been arranged to distinguish?
9 A I'm sorry, are you saying the box is
10 Ethernet data terminal?
11 Q Yeah, there's two labels on it now,
12 16, 13, 14, they're all touching the same box.
13 A Okay, because the way this picture
14 was drawn, 3a was the Ethernet device and this was
15 a module that was inserted in front of it.
16 Q Okay.
17 A But however you want it to be.
18 Q Whichever way you want it to be,
19 that's fine.
20 A All right. So then the question is?
21 Q Well, do I know, just by the presence
22 of this 25 kilo ohm resistor in this black box,
23 whether that device has been arranged to
24 distinguish?
25 MR. KRIEGER: Objection, form.

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1 A Well, again, I think it's -- as I
2 have said many times, you have to look at all the
3 elements of the claim, in particular was it, is it
4 on the contacts, this, that, and the other, and it
5 was there in order to provide distinguishing
6 information about this thing. If not, then no. If
7 yes, then yes.
8 Q (BY MR. BLUESTONE) So you need to
9 know the intent of the designer in placing that 25
10 kilo ohm resistor; correct?
11 A Yeah. The purpose of it, yes.
12 MR. KRIEGER: Objection to form.
13 MR. BLUESTONE: All right. I don't
14 have any further questions. You guys on the line
15 have anything you want to put in before I turn it
16 over to Tim?
17 MR. PARK: Samsung does not.
18 MR. YUNGWIRTH: No.
19 MR. KRIEGER: Can we take a quick
20 break and then come back on the record?
21 MR. BLUESTONE: Sure.
22 MR. KRIEGER: Great.
23 THE VIDEOGRAPHER: We're going off
24 the record at approximately 2:50 p.m.
25 (Off the record.)

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1 THE VIDEOGRAPHER: We're back on the
2 record at approximately 3:11 p.m.
3 EXAMINATION
4 QUESTIONS BY MR. KRIEGER:
5 Q Mr. Baxter, please pull out Exhibit 2
6 and turn to page 12 and read paragraph 35.
7 A "The plain and ordinary meaning of
8 'distinguish' (from the Merriam Webster Collegiate
9 Dictionary, 1998) is 'to separate into kinds,
10 classes, or categories.' Synonyms (from
11 thesaurus.com) include categorize, classify, and
12 characterize. Thus, contrary to Defendants'
13 proposed construction, 'Distinguish' does not imply
14 that a particular item is necessarily uniquely or
15 individually identified."
16 Q As you sit here today, do you still
17 stand by that testimony?
18 A The testimony of paragraph 35?
19 Q That you just read; correct.
20 A Yes, I do.
21 Q Is it your testimony today that
22 distinguish is limited to or should be defined as
23 "to separate into kinds, classes, or categories"
24 for the purposes of this case?
25 A No, it is not.

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1 Q During the deposition earlier today,
2 I believe you discussed the operation of a blocking
3 circuit. Do you remember that?
4 A Yes, I do.
5 Q Is it your testimony today that the
6 terminal equipment must be operationally powered
7 for the blocking circuit to work?
8 MR. PARK: Objection, form.
9 A No, the terminal equipment does not
10 have to be powered.
11 MR. KRIEGER: I have no further
12 questions.
13 MR. BLUESTONE: Quick redirect.
14 RE-EXAMINATION
15 QUESTIONS BY MR. BLUESTONE:
16 Q During the break, Mr. Baxter, did you
17 have any discussions with counsel?
18 A Yes.
19 Q And what did you discuss with counsel
20 during the break?
21 MR. KRIEGER: Objection.
22 MR. BLUESTONE: He's under oath. You
23 guys are talking in the middle of testimony, I'm
24 entitled to know what you talked about on the break
25 as it relates to his testimony.

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1 MR. KRIEGER: You're not entitled to
2 know our communications.
3 MR. BLUESTONE: If he is under oath,
4 you can't coach him in his testimony in the course
5 of his deposition.
6 MR. KRIEGER: I didn't coach him.
7 MR. BLUESTONE: Right. So then I'm
8 entitled to know what you guys talked about.
9 Correct?
10 MR. KRIEGER: Let me confer on that
11 if you wouldn't mind. I don't think you are
12 correct on that but I'll check real quick if you
13 want.
14 MR. BLUESTONE: If you can make it,
15 I'm trying to hop on a flight, if you can make it
16 super quick?
17 MR. KRIEGER: I will. I'll do my
18 best real quick.
19 THE VIDEOGRAPHER: We're going off
20 the record at approximately 3:14 p.m.
21 (Off the record.)
22 THE VIDEOGRAPHER: We're back on
23 record at approximately 3:17 p.m.
24 MR. KRIEGER: You know, as previously
25 discussed, I think on another issue the defendants

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1 are not entitled to any communications to the
2 expert that he doesn't rely on. So you may ask him
3 if he relied on any communications on a break, and
4 that's it.
5 MR. BLUESTONE: Well, I'll ask a
6 question and you can object as you see appropriate.
7 MR. KRIEGER: Okay.
8 Q (BY MR. BLUESTONE) You have had two
9 -- since we concluded our questioning you have had
10 two meetings with counsel before this time;
11 correct?
12 A Two? Or --
13 Q There have been two separate
14 discussions since I concluded my questioning; is
15 that right?
16 MR. KRIEGER: You can answer that
17 question.
18 A I mean, you count when I came out,
19 briefly went back in?
20 Q (BY MR. BLUESTONE) Yeah.
21 A Yes.
22 Q Okay. In the first conversation did
23 counsel tell you any questions they were going to
24 ask you before you came back?
25 MR. KRIEGER: Hold on. I don't think

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1 you're entitled to know anything about my
2 communications to my expert unless he relied on
3 them. So if you can narrow your question to that,
4 then he can answer. I think you got to cross that
5 bridge first. And then you can get into subject
6 matter if he says the answer is yes, I relied on
7 something.
8 MR. BLUESTONE: But I think that's a
9 little bit of a loaded framework. I think you're
10 in the middle of testimony, he's under oath and my
11 understanding is you can't give him guidance on how
12 you want him to testify.
13 Now, whether he says he relies on it
14 or not is going to shut down my question. I don't
15 know what he's going to say to that. But you're
16 basically telling him I'm not -- that's privileged
17 and I'm not going to let him go -- and know whether
18 or not you've told him the areas of testimony that
19 you're going to ask him about?
20 MR. KRIEGER: If he relies on
21 anything that I tell him, you guys are entitled to
22 it. So you can ask him if there's anything else
23 that I have told him that hasn't been discussed
24 earlier today that he relied on. And if the answer
25 is yes, then he can discuss it with you. If the

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1 answer is no, then you're not entitled to know the
2 subject matter of those communications.
3 Q (BY MR. BLUESTONE) Mr. Baxter, did
4 you rely on any aspect of any communications with
5 counsel to form an understanding as to what areas
6 of testimony you should modify or alter?
7 A No.
8 Q Okay. Did you have any
9 communications with counsel regarding your
10 testimony prior to the conclusion of this
11 deposition?
12 MR. KRIEGER: And objection, it calls
13 for privileged communications and I instruct the
14 witness not to answer.
15 Q (BY MR. BLUESTONE) Okay. And you're
16 not going to answer that question?
17 A That's correct.
18 MR. KRIEGER: I don't see where you
19 guys are entitled to anything that he didn't rely
20 on, so.
21 MR. BLUESTONE: We obviously have a
22 dispute. I just wanted to make sure --
23 MR. KRIEGER: Yeah --
24 MR. BLUESTONE: -- the record was
25 clear for which -- we can take that up with the

45 (Pages 174 - 177)

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1 judge later.

2 MR. KRIEGER: No, no, if you -- and

3 if you have any like rule or something that you

4 want to give to us, we'll definitely consider it.

5 MR. BLUESTONE: Okay.

6 MR. KRIEGER: I just don't -- you

7 know, my -- I know the rules right now, so if there

8 is something else that I'm missing, let us know.

9 MR. BLUESTONE: Yeah, we'll agree to

10 disagree on here.

11 MR. KRIEGER: That's fine.

12 MR. BLUESTONE: We don't need to, you

13 know, be uncivil about it --

14 MR. KRIEGER: Right. I agree.

15 MR. BLUESTONE: -- notwithstanding

16 our obvious disagreement.

17 MR. KRIEGER: Agreed. No.

18 Q (BY MR. BLUESTONE) Okay. So in

19 paragraph 35 --

20 A Mm-hmm.

21 Q -- you previously had said to me

22 during the course of the deposition that you

23 understood that the plain and ordinary meaning of

24 distinguish, in view of the intrinsic evidence, was

25 accurately described in paragraph 35.

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1 A And I also --

2 MR. KRIEGER: Hold on. I didn't know

3 that was the end of the question.

4 THE WITNESS: Okay.

5 MR. KRIEGER: You got to wait -- you

6 know, if that's the end of the question, object to

7 form.

8 Q (BY MR. BLUESTONE) Is what you -- is

9 my understanding correct of what your prior

10 testimony was, that paragraph 35 was an accurate

11 representation of the plain and ordinary meaning of

12 distinguish as applied to the asserted claims in

13 view of the intrinsic evidence?

14 MR. KRIEGER: Objection to form.

15 A As I stated seems like several times,

16 I like the word distinguish, I am not suggesting

17 that we replace that word in the claims. That

18 claim -- or paragraph 35 was in there specifically

19 to rebut the unique identifier construction which

20 the defendants had presented. And I used the

21 dictionary definitions for that purpose and it's

22 not my intent to replace the word distinguish in

23 that claim. I think the claim is clear and speaks

24 for itself.

25 Q (BY MR. BLUESTONE) Okay. But if

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1 you're making an explanation of what the plain and

2 ordinary meaning of distinguish is, in view of the

3 intrinsic evidence, are your statements in claim 35

4 accurate? Are you -- let me rephrase this. Are

5 you recanting what you stated in claim 35? I'm

6 sorry, paragraph 35?

7 MR. KRIEGER: Objection to form.

8 A Am I recanting paragraph 35?

9 Q (BY MR. BLUESTONE) Yes.

10 A No.

11 Q Do you stand by paragraph 35 in

12 everything that it says?

13 A Yes, but only what it says.

14 Q Okay. And do you stand by the fact

15 that the plain and ordinary meaning of distinguish,

16 as reviewed -- after review of the intrinsic

17 evidence as it applied to these claims, is what you

18 said in paragraph 35?

19 MR. KRIEGER: Objection, form.

20 A I stand by what I said in paragraph

21 right.

22 Q (BY MR. BLUESTONE) Right. And

23 paragraph 35 applies in view of the intrinsic

24 evidence as you've reviewed it; correct?

25 MR. KRIEGER: Objection, form. This

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1 question has been asked like 15 times in little

2 slightly different ways, so we're -- if we're not

3 at the harassing point, we're getting close to it

4 here.

5 I mean, if you tricked him before,

6 are you trying to trick him again? Or I don't get

7 the, you know --

8 MR. BLUESTONE: I would definitely

9 not say there's any trick. My concern is we had

10 what I thought was clear testimony and I still

11 think it stands on what it is and we'll object to

12 any changes that you have made and our inability to

13 figure out why he said it was not his definition,

14 apparently. I just want to make sure what his

15 position is on 35.

16 Q (BY MR. BLUESTONE) You stand by the

17 statement on 35; correct? Just to be clear.

18 A The statement in 35, which gives I

19 dictionary definition and uses it to refute the

20 defendants' claim construction, yes.

21 Q And this is the plain and ordinary

22 meaning of distinguish in view of the intrinsic

23 evidence; correct?

24 MR. KRIEGER: Objection to form.

25 A In view of the definitions there,

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1 yes.

2 Q (BY MR. BLUESTONE) But what I'm

3 asking you is not only just a definition. Does

4 this definition that you have put under paragraph

5 35 apply to the claims in view of the intrinsic

6 evidence?

7 A Well, let me say again I think

8 distinguish is the best word to use there. I think

9 the claim is clear as it is.

10 Q Okay. And that's fine. But my

11 question is not whether or not you prefer

12 distinguish. My question is, in paragraph 35, does

13 this plain and ordinary meaning of distinguish

14 apply in view of the intrinsic evidence to these

15 patent claims?

16 MR. KRIEGER: Objection to form.

17 This is the same question, it's been asked like 20

18 times now.

19 MR. BLUESTONE: I know. I need an

20 answer to it and once I get an answer, we can be

21 done.

22 MR. KRIEGER: He gave you an answer

23 and he gave an answer before.

24 A I don't know what I can say that I

25 haven't said already. I mean, this is a...

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1 Q (BY MR. BLUESTONE) I think it's a

2 yes or no question. Paragraph 35 --

3 MR. KRIEGER: You keep on sneaking

4 in --

5 MR. BLUESTONE: I'm not sneaking in

6 anything, sir. This is very simple. And this is

7 not a -- this is not what I understand to be a

8 complicated question. This is very simple.

9 Q (BY MR. BLUESTONE) Does the plain

10 and ordinary meaning, as you put forth in paragraph

11 35, apply to the claims in view of the intrinsic

12 evidence?

13 MR. KRIEGER: Objection to form.

14 A I think it helps to inform about the

15 meanings of distinguish in case someone didn't know

16 but I think the claim is perfectly clear as it is.

17 I don't propose that we replace distinguish with

18 any other word for that claim.

19 Q (BY MR. BLUESTONE) So you can't

20 answer my question? You can't tell me whether --

21 MR. KRIEGER: Objection --

22 A I think I've answered it several

23 times. That's the problem.

24 MR. KRIEGER: Everybody's got to take

25 time so I can object.

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1 Q (BY MR. BLUESTONE) -- whether or not

2 this -- you -- I just want to know whether or not

3 you've said the plain and ordinary meaning of

4 distinguish is to separate into kinds, classes, or

5 categories; right?

6 A In ordinary English, yes.

7 Q Yes. And does that ordinary English

8 definition apply to the claims after you reviewed

9 the intrinsic evidence?

10 MR. KRIEGER: Objection, form.

11 A I think it helps illuminate the

12 meaning of distinguish in that claim, yes.

13 Q (BY MR. BLUESTONE) But that's not

14 answering my question. Does it or does it not

15 apply?

16 A But that's what I think about. I

17 mean, I get the feeling you're asking me for some

18 kind of legal conclusion that I'm not prepared to

19 give. I've told you what I think numerous times.

20 Q Okay. So --

21 MR. KRIEGER: It sounds to me like

22 you have your testimony --

23 Q (BY MR. BLUESTONE) Okay. So --

24 MR. KRIEGER: -- which you believe

25 conflicts with what he might have said at other

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1 times. So it seems like we're going in circles

2 here, we keep on getting the same answer. Do you

3 want to just cut it off and go with what's on the

4 record?

5 MR. BLUESTONE: Let me ask one last

6 question.

7 Q (BY MR. BLUESTONE) During the course

8 of my original line of questioning, was there

9 anything that you said with respect to paragraph 35

10 that you thought was inaccurate?

11 A You know, we've been through this so

12 many times.

13 MR. KRIEGER: Objection to form. You

14 need a copy of the transcript in order to make that

15 statement. I don't know how he's going to answer

16 that question. He's going to have to think about

17 exactly what he said and remember it? I mean, come

18 on.

19 A We went through that about six times

20 and...

21 Q (BY MR. BLUESTONE) But this is --

22 this is my last question. Sitting here right now,

23 we have gone through the whole deposition, you have

24 had time to reflect.

25 Is there anything in your

1 DEPOSITION REVIEW
2 CERTIFICATION OF WITNESS

3 ASSIGNMENT NO: 1947492
4 CASE NAME: Chrimar Systems, Inc., et al. v. Alcatel-Lucent
5 DATE OF DEPOSITION: 10/22/2014
6 WITNESS' NAME: Leslie Alan Baxter
7 In accordance with the Rules of Civil
8 Procedure, I have read the entire transcript of
9 my testimony or it has been read to me.
10 I have listed my changes on the attached
11 Errata Sheet, listing page and line numbers as
12 well as the reason(s) for the change(s).
13 I request that these changes be entered
14 as part of the record of my testimony.

15 I have executed the Errata Sheet, as well
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