

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE TECHNOLOGIES LLC,
Petitioner,

v.

BELDEN INC.,
Patent Owner.

Case IPR2023-01061
Patent No. 6,998,537

PETITIONER'S PAPER IDENTIFYING INCONSISTENCIES

Pursuant to Board authorization provided during an October 24, 2023 call, Petitioner submits this paper identifying inconsistent positions Patent Owner has taken before the Patent Office regarding the same patents and same prior art.

A. GmbH-866 (Ex-1010)

Seeking to avoid institution, Patent Owner contends that GmbH-866 does not teach or suggest a plurality of twisted pairs. But during prior *inter partes* reexaminations of the same '537 and '095 patents, Patent Owner argued that GmbH-866 *did* teach a plurality of twisted pairs (underlining in the original; highlighting by Petitioner):

Now	Then
<p>IPR2023-01061 ('537 patent), Paper 6, pp. 32-33:</p> <p>Tellingly, the description of the cable here in GmbH-866 fails to provide any teaching that the pairs, element (1), in and of themselves are stranded. If GmbH-</p> <p>IPR2023-01062 ('095 patent), Paper 6, pp. 46 and 47:</p> <p>GmbH-866 3-4. Here, as Petitioner and its expert admitted, GmbH-866 teaches that the pairs (1) are stranded together into a helical or SZ form, <u>not</u> that the individual conductors (2) of each pair are twisted together to form a twisted pair. Eldering</p> <p>pairs (1) of conductors, for example, 2, 4, 6, 8, and so on. But there is nothing in that text that would indicate or suggest to a POSITA that the individual conductors (2) are twisted together to form "twisted pairs" as claimed. Eldering ¶94.</p>	<p>Ex-1058, p.69 ('537 patent Reexamination); Ex-1059, p.21 ('095 patent Reexamination):</p> <p>2. No Teaching of Cabling</p> <p>Claim 1 further recites that "the plurality of twisted pairs of insulated conductors and the substantially configurable dielectric separator are twisted about a common axis to form the finished communications cable." In the Office Action, it is stated that the '866 patent "discloses stranding the cable, such as SZ stranding." The Patent Owner respectfully disagrees. The '866 patent discloses stranding of the individual conductors to form each twisted pair, and specifically discloses using "SZ" stranding to do so. The '866 patent states that "the stranding of pair 1 can consist of a so-called helix stranding or an SZ stranding." (See page 3, 3rd paragraph of English translation of the '866 patent). However, the '866 patent does not disclose or suggest cabling, i.e. twisting together the entire cable core, the plurality of twisted pairs <u>and</u> the configurable dielectric pair separator about a common axis to form the twisted pair cable. Rather, the '866 patent discloses only twisting of the conductor pairs to form helices, not twisting/cabling of the cable as a whole. Cabling of the cable including the shielding foils disclosed in the '866 patent</p> <p><i>See also Ex-1059, p.33</i></p>

Patent Owner may contend that the prior inconsistent statements were made in the context of arguing that a different claim limitation was not disclosed. That does not make them any less inconsistent. The Examiner found that GmbH-866 taught

the first limitation—a plurality of twisted pairs. Ex-1058, p.55 (“Fig. 3 of GmbH shows four twisted pairs”), p.56; Ex-1059, pp. 7, 14, 16, 28 (same); *see also* Ex-1058, pp. 4, 31. The Patent Owner never disputed this. To the contrary, the Patent Owner ***emphasized*** that GmbH-866 did indeed teach a plurality of twisted pairs, as part of an effort to argue that a second limitation (the pairs and separator twisted about a common axis) was not disclosed. Ex-1058, p.69; Ex-1059, p.21.

B. Yanagida (Ex-1012)

The Patent Owner also now contends that Yanagida does not teach or suggest a plurality of twisted pairs. IPR2023-01061, Paper 6, pp. 21, 25-26; IPR2023-01062, Paper 6, pp. 35, 40. However, during prior reexamination of the same '537 patent, the Examiner found that Yanagida ***did*** disclose a plurality of twisted pairs:

Regarding 1a, JP '470 discloses a cable with a plurality of twisted pairs. See JP '470 Translation, Detailed Explanation of the Invention ("As communications cable, there is a tendency to use a plurality of either insulated element wires or else <u>stranded pairs</u> or stranded quad of such, or otherwise to use so-called [alternately] stranded cable with which units of the wires are stranded in a manner so that the stranding direction is reversed at points in time within a fixed cycle.") (emphasis added).

Ex-1058, pp. 57, 61 (incorporating claim element 1a analysis), 81, 84 (same); *see also id.* pp. 11-12, 14, 42. Patent Owner never disputed this finding that Yanagida ***did*** teach a plurality of twisted pairs, even though it did dispute that Yanagida disclosed other claim elements. *See, e.g.*, Ex-1058, pp. 70-74, 90-95.

Dated: October 31, 2023

Respectfully submitted,

/Dennis C. Bremer/

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CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and the agreement of the parties, the undersigned certifies that on October 31, 2023, a true and correct copy of the foregoing *Petitioner's Paper Identifying Inconsistencies*, along with the accompanying Exhibits 1058 and 1059, was served via electronic mail upon the following:

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