1 - VOLUME G -

2 IN THE UNITED STATES DISTRICT COURT

3 IN AND FOR THE DISTRICT OF DELAWARE

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BELDEN TECHNOLOGIES, INC. and BELDEN CDT (CANADA) INC.,	:	CIVIL ACTION
Plaintiffs,	:	
vs.	:	
SUPERIOR ESSEX INC. and SUPERIOR ESSEX COMMUNICATIONS LP,	:	
Defendants.	:	NO. 08-063 (SLR)

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14 Wilmington, Delaware
Wednesday, September 15, 2010
15 9:30 o'clock, a.m.

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BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J., and a jury

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24 Valerie J. Gunning
Official Court Reporter

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CommScope v. Belden
IPR2023-01061, -01062
CommScope Ex. 1063

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1 heard a lot of questions in terms of German references and
2 Japanese references and things, and I just want to make sure
3 you understand that none of that is relevant for what you're
4 trying to decide. In fact, in an effort to clarify that, we
5 actually have a stipulation.
6 You've heard a lot of references to a
7 stipulation in the case. We've moved that into evidence in
8 the case. It is, when you get the evidence, JTX-397, Joint
9 Trial Exhibit 397, which you'll see is a copy of a
10 stipulation the parties have entered into in an effort to
11 try and minimize the amount of issues you have to decide.
12 As part of that, you will see that for all of the prior art
13 that you are going to be asked to review and consider, every
14 one of those has been admitted to be prior art under the
15 relevant legal statute. Okay?
16 So it's in here. And, again, I don't want you
17 to get hung up in, well, this is a German patent. Do I need
18 to give that less weight for some reason? That's not the
19 law. The law is, you treat them all equal. Okay?
20 Another related point is that, and this will
21 be part of her instructions, is that a person of ordinary
22 skill in the art is presumed to be aware of all the prior
23 art. The issue is not whether a person said, well, how
24 would he have found that? You know, that's not relevant.
25 You are presumed to be aware of all the art. In fact, some

For the '095 patent, this is the one that simply claims a data communications table with two twisted pairs, a tape separator that's twisted, and that's it. It's simply a cable, twisted pairs, a tape separator, and it's twisted. Okay? And I don't think there's any dispute that none of those elements were new at the time this patent was filed. They simply say, well, I don't like the way that a particular reference that you are relying on describes it or shows it, and so, therefore, our patent is valid.

Well, let's look at it. This is claim 27, the one that's at issue in the '095 patent. And, again, just to review, the figure 5 on the left is from the '095 patent itself. All it shows is two twisted pairs, separator in the middle and you've got the jacket on the bottom there, which is known, obviously. And then you're going to twist the cable the way you normally would. That is the essence of this claim.

The only issue with respect to the anticipation defense is this twisting part. Again, we've already talked about twisting a lot. I won't spend a lot of time on it. But we know that twisting has been known, and that's the only issue. There's a reference here to the stipulation. Again, I know there has been a lot of jumping back and forth about references.

In the stipulation that you have in evidence, in

1 addition to establishing sort of what is or is not prior
2 art, we have included in there the limitations of the
3 various claims where the parties have agreed it's in there.
4 So you'll find that in the stipulation on the right-hand
5 side.
6 So if you get yourself confused or anything,
7 when you have a claim out, you can look at the stipulation
8 and figure out, okay. I don't need to spend any time on
9 this element. Okay? That's why we did it in there. So the
10 only issue you have to decide is this twisting element in
11 the red box.
12 Mr. Clark, who is the named inventor on this
13 case, in cross-examination, I asked him about sort of what
14 does it mean in his own patent to mean twisting, and
15 basically, he acknowledged that twisting was -- it's
16 inherent when you strand the cable that you are going to
17 create a helix twist. It's inherent.
18 And he described that as stranding in the
19 industry, or sometimes bunching, or cabling. Those terms
20 all can be used somewhat interchangeably. He acknowledged
21 that that is something that is inherent in a bunching
22 operation. And he acknowledged that he didn't invent a new
23 way to perform that at all, which is true.
24 Now, so the issue simply is, is whether or not
25 in the '866 patent, it discloses a cable that is twisted.

I'm not the only one that calls it German -- the German patent '866 anticipates? And, similarly, the same question for the Japanese patent, JTX-304, which is the '645. So we have JTX-301 and JTX-304.

Here, this is the question about whether something is cabled or twisted. Okay? And for the '866 patent, we can go right to that. Let's start with the majorly disputed paragraph on page 6. An invention -- and the question is, again, not do you think this shows twisting the whole cable, but do you think, do you have an abiding conviction that it's highly probable that it shows that? And, frankly, it does not show that. How do you know? Plain language. Let's start with that. Apply your common sense. I agree with Mr. Hawkins on at least that point. Please apply your common sense.

An invention-specific data transmission cable, as described above. The defendants' expert agreed that there is nothing above that that describes a cable that's twisted; right? The only twisting that's described or stranding that's described is of the individual pairs. So if the author of this meant what they said, that it is the data transmission cable as described above, they're not talking about manufacturing something that has the whole thing twisted, because that was never described above.

stepping away from our phones.

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You must decide the case yourselves based on the evidence presented.

And let me say, I always read these quickly. If I read something differently than what is written here, you should go by what is written here unless I specifically corrected it.

All right. Let us get our jury officer and swear him in.

(Jury officer sworn.)

THE COURT: All right. Members of the jury, you're now excused to start your deliberations. Thank you very much.

(The jury was excused at 12:35 p.m. to begin deliberations.)

THE COURT: We need one number from each party so that we can alert you when we get questions or a verdict.

Thank you very much, counsel.

MR. LOWRIE: Thank you, your Honor.

(Court recessed at 12:35 p.m. while jury deliberates.)

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(The following portion of the transcript is under seal, transcribed under separate cover.)

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[redacted]