UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COMMSCOPE TECHNOLOGIES LLC,
Petitioner,

v.

BELDEN INC.,
Patent Owner.

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Case No. IPR2023-01061
Patent 6,998,537 B2

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PATENT OWNER'S RESPONSE TO PETITIONER'S MOTION TO COMPEL "ROUTINE DISCOVERY" PURSUANT TO 37 C.F.R. § 42.51(b)(1)(iii),

OR ALTERNATIVELY TO OBTAIN "ADDITIONAL DISCOVERY" PURSUANT TO 37 C.F.R. § 42.51(b)(2)(i)

EXHIBIT LIST

EXHIBIT	DESCRIPTION
EX-1001	U.S. Patent No. 6,570,095 (the "'095 patent")
EX-1002	Excerpt of Prosecution History of U.S. Patent No. 6,570,095: Nov. 8, 2002 Notice of Allowance
EX-1003	Excerpt of Inter Partes Reexamination No. 95/000,474 of U.S. Patent No. 6,570,095: Sept. 20, 2011 Action Closing Prosecution
EX-1004	U.S. Patent No. 6,998,537 (the "'537 patent")
EX-1005	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: Nov. 2, 2004 Notice of Allowance
EX-1006	Excerpt of Inter Partes Reexamination No. 95/000,476 of U.S. Patent No. 6,998,537: Sept. 20, 2011 Action Closing Prosecution
EX-1007	Declaration of Kenneth Cornelison
EX-1008	Curriculum Vitae of Kenneth Cornelison
EX-1009	U.S. Patent No. 3,622,683 ("Roberts")
EX-1010	English language translation of German Patent No. 297,19,866 U1 ("GmbH-866"), and attached Declaration of translator Anthea Heyes
EX-1011	German Patent No. 297,19,866 U1 (untranslated original)
EX-1012	English language translation of Japanese Patent Publication S43015470 ("Yanagida"), and attached Declaration of translator Anthea Heyes
EX-1013	U.S. Patent No. 5,670,748 ("Gingue")
EX-1014	U.S. Patent No. 3,894,172 ("Jachimowicz")
EX-1015	U.S. Patent No. 4,755,629 ("Beggs")
EX-1016	Electronic Wire & Cable - A Users' Guide: Performance and Selection, Section 5: Multiconductor Cables, AT&T (1987)
EX-1017	Whitham D. Reeve, Subscriber Loop Signaling and Transmission Handbook – Digital, IEEE Telecommunications Handbook Series (1995)
EX-1018	Whitham D. Reeve, Subscriber Loop Signaling and Transmission Handbook – Analog, IEEE Telecommunications Handbook Series (1992)
EX-1019	U.S. Patent No. 5,380,591
EX-1020	U.S. Patent No. 1,727,972
EX-1021	U.S. Patent No. 1,956,730
EX-1022	U.S. Patent No. 3,803,340 (Jachimowicz-340)
EX-1023	Canadian Patent Application No. 2,058,046

EXHIBIT	DESCRIPTION
EX-1024	U.S. Patent No. 4,262,164
EX-1025	U.S. Patent Pub. No. 2006/0169478
EX-1026	U.S. Patent No. 4,253,890
EX-1027	U.S. Patent No. 5,283,390
EX-1028	U.S. Patent No. 5,969,295
EX-1029	G.F. Moore, Electric Cable Handbook, BICC Cables (3d. ed. 1997)
EX-1030	The New IEEE Standard Dictionary of Electrical and Electronics Terms (5th ed. 1993)
EX-1031	Neil Sclater and John Markus, Electronics Dictionary, McGraw-Hill (6th ed. 1997)
EX-1032	S. Yonechi et al., Application of Spacer Forming Technique to Communication Cables, International Wire & Cable Symposium Proceedings (1980)
EX-1033	U.S. Patent No. 7,179,999 (the "'999 patent")
EX-1034	Excerpt of Inter Partes Reexamination No. 95/000,475 of U.S. Patent No. 7,179,999: Oct. 14, 2011 Action Closing Prosecution
EX-1035	Alcatel Cable Systems Product Catalog
EX-1036	U.S. Patent No. 5,789,711
EX-1037	Excerpt of Prosecution History of U.S. Patent No. 6,570,095: Oct. 22, 2001 Non-Final Office Action
EX-1038	Excerpt of Prosecution History of U.S. Patent No. 6,570,095: April 3, 2002 Final Office Action
EX-1039	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: March 3, 2004 Non-Final Office Action
EX-1040	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: Terminal Disclaimer
EX-1041	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: May 18, 2004 Amendments
EX-1042	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: June 17, 2004 Final Office Action
EX-1043	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: September 20, 2004 Request for Continued Examination
EX-1044	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: Sept. 9, 2005 Amendment
EX-1045	Excerpt of Inter Partes Reexamination No. 95/000,474 of U.S. Patent No. 6,570,095: Feb. 24, 2012 Decision Granting Petition to Terminate Inter Partes Reexamination Proceeding

EXHIBIT	DESCRIPTION
EX-1046	Excerpt of Inter Partes Reexamination No. 95/000,476 of U.S. Patent No. 6,998,537: Feb. 24, 2012 Decision Granting Petition to Terminate Inter Partes Reexamination Proceedings
EX-1047	Excerpt of Inter Partes Reexamination No. 95/000,475 of U.S. Patent No. 7,179,999: Feb. 24, 2012 Decision Granting Petition to Terminate Inter Partes Reexamination Proceedings
EX-1048	U.S. Patent No. 5,814,768
EX-1049	U.S. Patent No. 6,037,546
EX-1050	Excerpt of Inter Partes Reexamination No. 95/000,474 of U.S. Patent No. 6,570,095: Jan. 11, 2010 Third Party Requester's Comments to Patent Owner's Response
EX-1051	Excerpt of Inter Partes Reexamination No. 95/000,476 of U.S. Patent No. 6,998,537: Jan. 22, 2010 Third Party Requester's Comments to Patent Owner's Response
EX-1052	Belden Techs. et al. v. Superior Essex Comm'cns LP et al., No. 08-63-SLR, Dkt. 215 (D. Del. Aug. 8, 2010) – Claim Construction Order
EX-1053	Belden Inc. v. CommScope, Inc. et al., No. 22-783-RGA, Dkt. 292 (D. Del. May 26, 2023) – Scheduling Order
EX-1054	Declaration of Sylvia D. Hall-Ellis, PhD
EX-1055	English Translation of Japanese Patent Publication No. S43-15470 used in prior reexamination of US 6,998,537
EX-1056	Japanese Patent Publication No. S43-15470 (untranslated original)
EX-1057	English language translation of German Patent No. 297,19,866 U1 used in prior reexamination of US 6,998,537
EX-1058	Excerpts from the reexamination of the '537 patent
EX-1059	Excerpts from the reexamination of the '095 patent
EX-1060	Declaration of Peter M. Kohlhepp in Support of Petitioner's Unopposed Motion for *Pro Hac Vice* Admission
EX-1061	Plaintiffs Belden Technologies, Inc.'s and Belden CDT (Canada), Inc's Memorandum in Support of Their Motion for Partial Summary Judgment No. 2: No Patent Invalidity by Anticipation from *Belden Technologies, Inc. v. Superior Essex Inc.*, Case No. 08-0063-SLR, Dkt. 139 (D. Del. Dec. 11, 2009)
EX-1062	Excerpts from Jury Trial Transcript Volume F from *Belden Technologies, Inc. v. Superior Essex Inc.*, Case No. 08-0063-SLR, Dkt. 306 (D. Del. Jun. 27, 2011)
EX-1063	Excerpts from Jury Trial Transcript Volume G from *Belden*

EXHIBIT	DESCRIPTION
	Technologies, Inc. v. Superior Essex Inc., Case No. 08-0063-SLR, Dkt. 306 (D. Del. Jun. 27, 2011)
EX-1064	Summary Judgment Memorandum Opinion from *Belden Technologies, Inc. v. Superior Essex Inc.*, Case No. 08-0063-SLR, Dkt. 216 (D. Del. Aug. 24, 2010)
EX-1065	Petitioner's Requests for Production
EX-2001	Declaration of Dr. Charles A. Eldering in Support of Patent Owner Preliminary Response ("Eldering")
EX-2002	Definition of "twisted pair" from Webster's New World Telecom Dictionary, 2008
EX-2003	U.S. Patent No. 10,170,220
EX-2004	Deposition Transcript of Kenneth Cornelison, March 6, 2024
EX-2005	U.S. Patent No. 4,800,236
EX-2006	U.S. Patent No. 4,340,771
EX-2007	Supplemental Declaration of Dr. Charles A. Eldering in Support of Patent Owner Response ("Eldering")
EX-2008	Email Correspondence Between Counsel Regarding *Superior Essex* Discovery
EX-2009	English language translation of German Patent No. 297,19,866 U1 used in the *Superior Essex* litigation, *Belden Technologies, Inc. v. Superior Essex Inc.*, Case No. 08-0063-SLR
EX-2010	*Superior Essex* Claim Construction Memorandum Order, *Belden Technologies, Inc. v. Superior Essex Inc.*, Case No. 08-0063-SLR, Dkt. 215 (D. Del. Aug. 24, 2010)
EX-2011	*Superior Essex* JMOL Memorandum Opinion, *Belden Technologies, Inc. v. Superior Essex Inc.*, Case No. 08-0063-SLR, Dkt. 310 (D. Del. Aug. 12, 2011)

Petitioner's motion to compel alleged that in the *Superior Essex* litigation Patent Owner took the position that GmbH-866 discloses "twisted pairs," but in this IPR, allegedly takes the position that the "***same*** reference" does not disclose twisted pairs. Paper 22 at 1. But Patent Owner's positions in the *Superior Essex* litigation, in which it successfully defended the validity of U.S. Patent No. 6,998,537 ("'537 Patent") relying upon elements other than "twisted pairs," were not directed to the "same reference." Instead, Patent Owner's positions concerned an ***uncertified and substantially different*** translation of GmbH-866 ***that was not the basis for this IPR***. If this all sounds familiar, it is because Petitioner's motion rehashes the same arguments it made pre-institution six months ago concerning Patent Owner's similar statements in the reexamination concerning the same translation of GmbH-866 presented in the *Superior Essex* litigation. Paper 7 at 1-2. Based on the substantive and clarifying changes in the certified translation presented as the basis for this IPR, Patent Owner now disputes that GmbH-866 discloses twisted pairs. This is not inconsistent because there are new facts.

Motion practice also could have been avoided. Rather than conduct a meaningful meet and confer and identify the documents now sought as additional discovery in the motion as Patent Owner requested multiple times prior to the Board call to try to avoid unnecessary motion practice, Petitioner sandbagged Patent Owner by waiting until ***less than an hour before the call with the Board*** to finally identify

the documents. EX-2008. The requested documents—which were subject to a protective order in the *Superior Essex* litigation and not accessible to or reviewed by Patent Owner's IPR counsel prior to finally being identified by Petitioner—do not contain any inconsistent statements. But Patent Owner agrees to produce the requested documents that can be located[1] and redacted to remove irrelevant or confidential information by May 16, 2024 to moot the present motion.

A. Patent Owner's Statements In The *Superior Essex* Litigation Concerning An Uncertified And Substantially Different Translation Of GmbH-866 Were Not Inconsistent For The Same Reasons Its Statements In The Reexamination About The Same Translation Were Not Inconsistent As Already Explained Pre-Institution.

Petitioner based its motion on the unsubstantiated allegation that Patent Owner has taken an "inconsistent position" in this IPR from that taken in the prior *Superior Essex* litigation regarding the asserted GmbH-866 prior art reference. This is the ***same argument*** Petitioner raised to the Board regarding alleged inconsistent statements by Patent Owner regarding GmbH-866 in prior reexaminations related to the *Superior Essex* litigation. *See* Papers 7 and 9. But, just as Patent Owner already

[1] Working with the *Superior Essex* trial counsel, who can review the confidential documents sought, Patent Owner will be able to produce at least a redacted version of all requested documents except JTX-397 (Request No. 6). Trial counsel was unable to locate that document and it is not listed on the Trial Exhibit List.

demonstrated pre-institution with regard to its statements in those reexaminations, Patent Owner's statements in the *Superior Essex* litigation were based on an ***uncertified and substantively different translation*** of GmbH-866. In fact, the translation from the reexaminations (filed by Petitioner as EX-1057) is the ***same*** as that used in the *Superior Essex* litigation. *Compare* EX-1057 with EX-2009 (the GmbH-866 translation used in the *Superior Essex* litigation):

Reexam's Uncertified Translation (EX-1057)	**Litigation's Uncertified Translation (EX-2009)**	**Petitioner's Certified Translation (EX-1010)**	**Substantive Difference Between Translations**
"An invention-specific data transmission cable . . . has four pairs 1 of ***insulated***, stranded copper conductors 2 or cants." (marked p. 4)	"An invention-specific data transmission cable . . . has four pairs 1 of ***insulated***, stranded copper conductors 2 or cants." (p. 3)	"A data transfer cable . . . comprises four pairs 1, each consisting of two ***isolated***, stranded copper conductors 2 or wires."[2] (marked p. 3)	"***isolated***" in the certified translation teaches that the conductors are not twisted together
"***The stranding of pair 1*** can consist of a so-called helix stranding or an SZ stranding	"***The stranding of pair 1*** can consist of a so-called helix stranding or an SZ stranding	"***The stranding of the pairs 1*** can consist in what is known as a helix stranding or in an	"stranding of ***the pairs 1***" (plural) in the certified translation teaches collective

[2] All emphasis herein has been added unless otherwise noted.

Reexam's Uncertified Translation (EX-1057)	Litigation's Uncertified Translation (EX-2009)	Petitioner's Certified Translation (EX-1010)	Substantive Difference Between Translations
(alternating right-left stranding) .[sic]" (marked p. 4)	(alternating right-left stranding) .[sic]" (p. 3)	SZ stranding (alternating, right-left stranding)." (marked p. 3)	stranding of the pairs together rather than stranding a single pair

As Patent Owner previously explained (Paper 9 at 2), while the certified translation of GmbH-866 in this IPR clearly demonstrates that the reference does ***not*** teach twisted pairs, as the reexamination Examiner noted, "the teachings in GmbH '866 [in the uncertified translation (EX-1057) which is the same uncertified translation in the *Superior Essex* litigation (EX-2009)] . . . are ***unclear and confusing***." EX-1006 at 11. The new certified translation (EX-1010) resolved the ambiguity in the prior translation—GmbH-866 does not disclose twisted pairs.

B. In The *Superior Essex* Litigation, Patent Owner Focused Its Arguments On Elements Other Than "Twisted Pairs" To Successfully Distinguish GmbH-866.

In addition to the substantively different translations of GmbH-866 utilized in this IPR and the *Superior Essex* litigation, the underlying disputes between the parties are different as well. Unlike the present IPRs, the parties in the *Superior Essex* litigation never even sought construction of the term "twisted pairs." *Superior Essex* Claim Construction Order (EX-2010). Moreover, Belden chose a successful

trial strategy in the *Superior Essex* litigation that was focused on ***other*** claim limitations, resulting in: i) a jury verdict that claim 19 of the '537 Patent was not rendered obvious by GmbH-866 in combination with other art, and ii) a jury verdict that claim 27 of related U.S. Patent No. 6,570,095 ("'095 Patent") was not anticipated by GmbH-866. *Superior Essex* JMOL Memorandum Opinion (EX-2011) at 9-14, 19-20. The Court further overturned the jury's finding that claim 31 of the '095 Patent was obvious over GmbH-866 in combination with other art, and ordered retrial on the issue before the case eventually settled. *Id*. at 9-14. Accordingly, Patent Owner was able to distinguish the uncertified translation of GmbH-866 without the need to contest whether it disclosed "twisted pairs." But that does not mean Patent Owner is somehow inconsistent now that it chooses to contest that limitation in this IPR under a new and substantively different (and correct) translation of GmbH-866.

Accordingly, Patent Owner respectfully submits that the motion to compel routine discovery be denied. As referenced in the introduction, Patent Owner agrees to produce the documents sought as additional discovery, thereby mooting this motion.

Date: May 2, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **PATENT OWNER'S RESPONSE TO PETITIONER'S MOTION TO COMPEL "ROUTINE DISCOVERY" PURSUANT TO 37 C.F.R. § 42.51(b)(1)(iii), OR ALTERNATIVELY TO OBTAIN "ADDITIONAL DISCOVERY" PURSUANT TO 37 C.F.R. § 42.51(b)(2)(i)** was served pursuant to 37 C.F.R. § 42.6(e) via electronic mail on May 2, 2024, on the following:

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