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
U.S. Patent No. 6,998,537

PETITIONER'S REPLY REGARDING MOTION TO COMPEL "ROUTINE DISCOVERY" AND ALTERNATIVE REQUEST FOR "ADDITIONAL DISCOVERY"

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Petitioner's Exhibit List

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

1020	U.S. Patent No. 1,727,972
1021	U.S. Patent No. 1,956,730
1022	U.S. Patent No. 3,803,340 (Jachimowicz-340)
1023	Canadian Patent Application No. 2,058,046
1024	U.S. Patent No. 4,262,164
1025	U.S. Patent Pub. No. 2006/0169478
1026	U.S. Patent No. 4,253,890
1027	U.S. Patent No. 5,283,390
1028	U.S. Patent No. 5,969,295
1029	G.F. Moore, *Electric Cable Handbook*, BICC Cables (3d. ed. 1997)
1030	*The New IEEE Standard Dictionary of Electrical and Electronics Terms* (5th ed. 1993)
1031	Neil Sclater and John Markus, *Electronics Dictionary*, McGraw-Hill (6th ed. 1997)
1032	S. Yonechi et al., *Application of Spacer Forming Technique to Communication Cables*, International Wire & Cable Symposium Proceedings (1980)
1033	U.S. Patent No. 7,179,999 (the "'999 patent")
1034	Excerpt of *Inter Partes* Reexamination No. 95/000,475 of U.S. Patent No. 7,179,999: Oct. 14, 2011 Action Closing Prosecution
1035	Alcatel Cable Systems Product Catalog
1036	U.S. Patent No. 5,789,711
1037	Excerpt of Prosecution History of U.S. Patent No. 6,570,095: Oct. 22, 2001 Non-Final Office Action
1038	Excerpt of Prosecution History of U.S. Patent No. 6,570,095: April 3, 2002 Final Office Action
1039	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: March 3, 2004 Non-Final Office Action
1040	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: Terminal Disclaimer
1041	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: May 18, 2004 Amendments
1042	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: June 17, 2004 Final Office Action

1043	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: September 20, 2004 Request for Continued Examination
1044	Excerpt of Prosecution History of U.S. Patent No. 6,998,537: Sept. 9, 2005 Amendment
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
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
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
1048	U.S. Patent No. 5,814,768
1049	U.S. Patent No. 6,037,546
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
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
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
1053	*Belden Inc. v. CommScope, Inc. et al.,* No. 22-783-RGA, Dkt. 292 (D. Del. May 26, 2023) – Scheduling Order
1054	Declaration of Sylvia D. Hall-Ellis, PhD
1055	English Translation of Japanese Patent Publication No. S43-15470 used in prior reexamination of US 6,998,537
1056	Japanese Patent Publication No. S43-15470 (untranslated original)
1057	English language translation of German Patent No. 297,19,866 U1 used in prior reexamination of US 6,998,537
1058	Excerpts from the reexamination of the '537 patent
1059	Excerpts from the reexamination of the '095 patent
1060	Declaration of Peter M. Kohlhepp in Support of Petitioner's Unopposed Motion for *Pro Hac Vice* Admission

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)
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)
1063	Excerpts from Jury Trial Transcript Volume G from *Belden Technologies, Inc. v. Superior Essex Inc.*, Case No. 08-0063-SLR, Dkt. 306 (D. Del. Jun. 27, 2011)
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)
1065	Petitioner's Requests for Production
1066	Additional 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)

I. Petitioner's Reply to Belden's Promise to Produce Documents

In response to Petitioner's Motion to Compel, Patent Owner ("Belden") promises to produce all the documents Petitioner requested "that can be located." Paper 23, 1-2. In separate correspondence, Belden has stated it will produce the documents by May 16. Petitioner appreciates Belden's promises to produce documents, but it cannot (yet) withdraw its Motion for three reasons.

First, Belden still has not actually produced the documents. Thus Belden has not yet complied with its obligations under the "routine discovery" rule. Under that rule, Belden should have served the documents over a month ago, concurrently with its service of its Patent Owner Response on April 1, 2024.

Second, Belden's Response indicates Belden intends to "redact" not only confidential information, but also information that Belden deems to be "irrelevant." Paper 23, 2. While Petitioner does not object to Belden redacting confidential information of third parties, redacting nonconfidential portions of a produced document merely because Belden unilaterally deems those nonconfidential portions "irrelevant" is improper. Belden should produce the complete documents, with only the confidential information of third parties redacted.

Third, Petitioner is concerned by Belden's representation that it is unable to locate JTX-397. Paper 23, p.2 n.1. Belden's purported inability to find this

document is concerning because JTX-397 includes Belden's formal stipulation that GmbH-866 discloses twisted pairs. *See* Ex-1063, 1331:18-1332:23 (explaining that the only remaining issue regarding what GmbH-866 discloses, after the stipulation, was the "twisted about a common axis" element). Belden contends that JTX-397 is not on the Trial Exhibit list. Paper 23, p.2 n.1. But the trial transcript confirms JX-397 was introduced into evidence, and it was *Belden itself* that introduced it. Ex-1066, 1268:24-1269:2; *see also id.* 1142:1-12 (identifying counsel for Plaintiff Belden). Belden should be able to locate and produce its own stipulation regarding what the same reference at issue in this IPR disclosed, that Belden itself introduced into evidence in a prior trial.

Petitioner reiterates its request for the relief identified in its Motion, Paper 22 at 1. In view of Belden's response brief, Petitioner more specifically requests that the Board order Belden to (i) serve the requested documents by May 16, 2024, redacted only insofar as to remove third party confidential information; (ii) locate and produce JTX-397; and (iii) confirm, also by May 16, whether it has complied with the requirements of routine discovery under 37 C.F.R. § 42.51(b)(1).

II. Petitioner's Reply to Belden's Inaccurate Contentions in its Response Brief

Despite agreeing to produce the requested documents, Belden continued on to provide a series of inaccurate contentions. Petitioner briefly responds below.

First, Belden's contention that Petitioner did not meaningfully meet and

confer and that "[m]otion practice [] could have been avoided" (Paper 23, 1-2) is simply not true. As Belden's Ex-2008 shows, Petitioner repeatedly attempted to meet and confer, and in response Belden's counsel repeatedly maintained that it was "not aware" of any inconsistent information and "therefore will not be producing any documents." Ex-2008, at, *e.g.*, 4-5, 3-4. On the subsequent call with the Board, Belden *continued* to refuse to produce the requested documents. On that call, Belden attempted to justify its refusal with a baffling head-in-the-sand position: Belden's counsel was "not aware" of any inconsistent information in (Belden's own) documents and unable to produce them because he had purportedly been told by Belden's litigation counsel in the *Superior Essex* case that (Belden's own) documents were somehow protected from disclosure by Belden to Belden's own IPR counsel. It was only *after* Petitioner was forced to file this Motion to Compel that Belden finally dropped this baseless position.

Second, the contention that Petitioner "sandbagged" Belden (Paper 23, 1-2) is also incorrect. One, the documents containing the inconsistent information are *Belden's own documents,* and Belden had an independent, affirmative obligation to identify and produce such documents *without any request from Petitioner*, much less a motion to compel. Plainly, Belden knows (or should know) what positions it took in a prior lawsuit better than Petitioner. Two, Petitioner *did* identify publicly-available Belden documents to Belden well before the call. *E.g.,* Ex-2008, 1

(identifying documents on April 16). In the course of preparing for the April 18 call with the Board, Petitioner identified *additional* publicly available documents and then also promptly notified Belden's counsel of those additional documents. Ex-2008, 1. Belden's complaint that Petitioner did not timely tell Belden what was in Belden's own publicly-available documents is head-scratching.

Third, the certified translation of GmbH-866 that Petitioner filed in this IPR (Ex-1010) does not create "new facts," as Belden contends. Ex-1010 is consistent with Ex-1057, the translation Belden used (without objection) in both the *Superior Essex* trial and the *inter partes* reexamination. And the two differences Belden seizes upon certainly do not warrant Belden's about-face. In any event, Belden's effort to justify its inconsistent position is certainly no basis to avoid *discovery* on the issue at this (early) stage of the trial.

Fourth, Belden tries to highlight the Examiner's statement from the prior *inter partes* reexamination of the '537 patent that "the teachings in GmbH '866 . . . are unclear and confusing." But the Examiner's statement was not about the specification phrases in GmbH-866 that Belden now focuses on. Nor was it even about the "twisted pairs" limitation. *See* Paper 23, 4 (citing Ex-1006, 11). Rather, the Examiner was discussing a different phrase and different issue: whether the reference to "longitude reshaping of the conductor pairs" in GmbH-866 disclosed the claim limitation requiring that the twisted pairs and the separator be "twisted

about a common axis." Ex-1006, 11. And Belden now *does not even dispute* that GmbH-866 discloses that "twisted about a common axis" limitation. To be clear, no one ever found GmbH-866 "confusing" with respect to "twisted pairs." Rather, it appears that all participants in both previous proceedings (the *inter partes* reexamination and the *Superior Essex* trial) agreed that GmbH-866 certainly disclosed twisted pairs—the parties, the parties' opposing experts, and the Examiner.

Fifth, Belden's touting of a "successful" trial strategy with respect to the validity of claim 27 of the '095 patent is misleading. In *Superior Essex*, the only element of claim 27 Belden disputed was "twisted about a common axis". As the District Court Judge noted, the jury actually found this element obvious (in the context of claim 31, which also contains the same limitation): the jury "found that modifying the '866 patent to include such a twist would have been obvious to one of ordinary skill in the art." Ex-2011, 12. However, because Superior Essex had not included an obviousness ground in its pretrial disclosures, the Judge had barred Superior Essex from arguing obviousness at trial (and therefore ordered a new trial as to claim 31). Ex-2011, 13-14, nn.6-7. The upshot is that the *Superior Essex* jury found the only disputed element of claim 27 obvious in view of GmbH-866. And now in this IPR, Belden does not even contest that GmbH-866 *discloses* that element, much less whether GmbH-866 makes it obvious.

Respectfully submitted,

Dated: May 9, 2024

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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 May 9, 2024, a true and correct copy of the foregoing Reply was served via electronic mail upon the following:

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