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September 2, 2010

VIA HAND DELIVERY AND E-FILING

The Honorable Sue L. Robinson
United States District Court
District of Delaware
844 King Street
Wilmington, DE 19801

Re: *Belden Technologies, Inc., et al. v. Superior Essex Inc., et al.*,
C.A. No. 08-063-SLR

Dear Judge Robinson:

Further to the teleconference with Your Honor this morning in the above-referenced action, enclosed for the Court's consideration are (1) Belden's And Superior Essex's Joint Statement Of Admitted Facts Requiring No Proof (*i.e.*, the statements on which the parties agree) and (2) a chart identifying statements on which the parties disagree. Should Your Honor have any questions or concerns regarding the foregoing or the enclosures, counsel are available at the Court's convenience.

Respectfully,



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/afg

Enclosures

cc: Adam W. Poff, Esquire (via email)
Matthew B. Lowrie, Esquire (via email)
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**BELDEN'S AND SUPERIOR ESSEX'S JOINT STATEMENT
OF ADMITTED FACTS REQUIRING NO PROOF**

1. Belden, Inc. is a Delaware corporation having a principal place of business at 7701 Forsyth Boulevard, Suite 800, St. Louis, Missouri 63105.
2. Belden CDT (Canada) Inc. is organized under the laws of Canada and has a principal place of business at 100 King Street West, Toronto, Ontario, Canada M5X 1G5.
3. Superior Essex Inc. is a Delaware corporation having a principal place of business at 150 Interstate North Parkway, Atlanta, Georgia 30339.
4. Superior Essex Communications LP is an limited partnership organized under the laws of Delaware and has a principal place of business at 150 Interstate North Parkway Atlanta, Georgia 30339.
5. U.S. Patent No. 6,570,095 (the "'095 Patent"), entitled "Multi-Pair Data Cable With Configurable Core Filling And Pair Separation," issued on May 27, 2003. William Clark, Joseph Dellagala, and Kenneth Consalvo are the inventors named on the '095 Patent.
6. U.S. Patent No. 6,998,537 (the "'537 Patent"), entitled "Multi-Pair Data Cable With Configurable Core Filling And Pair Separation," issued on February 14, 2006. William Clark, Joseph Dellagala, and Kenneth Consalvo are the inventors named on the '537 Patent.
7. U.S. Patent No. 7,179,999 (the "'999 Patent"), entitled "Multi-Pair Data Cable With Configurable Core Filling And Pair Separation," issued on February 20, 2007.

William Clark, Joseph Dellagala, and Kenneth Consalvo are the inventors named on the '999 Patent.

8. U.S. Patent No. 6,074,503 (the "'503 Patent'"), entitled "Making Enhanced Data Cable With Cross-Twist Cabled Core Profile," issued on June 13, 2000. William T. Clark, Peter D. MacDonald, and Joseph Dellagala are the inventors named on the '503 Patent.

9. U.S. Patent No. 7,135,641 (the "'641 Patent'"), entitled "Data Cable With Cross-Twist Cabled Core Profile," issued on November 14, 2006. William T. Clark is the inventor named on the '641 Patent.

10. U.S. Patent No. 5,424,491 (the "'491 Patent'"), entitled "Telecommunications Cable," issued on June 13, 1995. Jorg-Hein Walling, Clement Gagnon, Paul P. Kish, and Martin L. Belanger are the inventors named on the '491 Patent.

11. It is not contested that the following references constitute prior art to the '095, '537, and '999 Patents under 35 U.S.C. § 102(b):

- German patent DE 297 19 866 A1 (the '866 Patent)
- U.S. Patent 3,622,683 (the '683 patent)
- U.S. Patent 5,670,748 (the '748 Patent)
- Japanese Patent JP 05-290645.A (the '645 Patent)
- Fiber Optic Cable: A Lightguide, by James I. Refi, dated 1991 (the Refi Reference) (SPSX0004515-18)
- U.S. Patent No. 4,755,629 (the '629 patent)
- JP Patent No. Sho43(1968)-15470 (the '470 Patent)
- U.S. Patent No. 4,385,485 (the '485 Patent)
- Reference WO93/20563 (the '563 Reference)

This is not, however, an admission that any of the references listed in this paragraph are analogous prior art or invalidating prior art within the meaning of 35 U.S.C. §§ 102 and 103. Moreover, to the extent that Superior Essex's expert has not opined upon one or more of the references listed above, Belden disputes that they are admissible and/or useable at trial.

12. It is not contested that the following references constitute prior art to the '503 Patent under 35 U.S.C. § 102(b):

- U.S. Patent No. 4,385,485 (the '485 Patent)
- Japanese Patent No. Sho56(1981)-7307 (the '307 Patent)
- JP Sho57(1982)-19910 (the '910 Patent)
- JP Patent No. Hei8(1996)-96635 (the '635 Patent)
- U.S. Patent No. 4,600,268 (the '268 Patent)

This is not, however, an admission that any of the references listed in this paragraph are analogous prior art or invalidating prior art within the meaning of 35 U.S.C. §§ 102 and 103. Moreover, to the extent that Superior Essex's expert has not opined upon one or more of the references listed above, Belden disputes that they are admissible and/or useable at trial.

13. It is not contested that the following references constitute prior art to the '641 Patent under 35 U.S.C. § 102(b):

- U.S. Patent No. 5,796,046 (the '046 Patent)
- U.S. Patent No. 6,150,612 (the '612 Patent)
- JP Reference S29-15973 (the '973 Reference)

This is not, however, an admission that any of the references listed in this paragraph are analogous prior art or invalidating prior art within the meaning of 35 U.S.C. §§

102 and 103. Moreover, to the extent that Superior Essex's expert has not opined upon one or more of the references listed above, Belden disputes that they are admissible and/or useable at trial.

14. It is not contested that the following references constitute prior art to the '491 Patent under 35 U.S.C. § 102(b):

- U.S. Patent No. 2,792,442 (the '442 Patent)
- U.S. Patent No. 5,010,210 (the '210 Patent)
- U.S. Patent No. 4,697,051 (the '051 Patent)
- U.S. Patent No. 4,712,368 (the '368 Patent)
- U.S. Patent No. 4,873,393 (the '393 Patent)
- U.S. Patent No. 4,058,669 (the '669 Patent)

This is not, however, an admission that any of the references listed in this paragraph are analogous prior art or invalidating prior art within the meaning of 35 U.S.C. §§ 102 and 103. Moreover, to the extent that Superior Essex's expert has not opined upon one or more of the references listed above, Belden disputes that they are admissible and/or useable at trial.

15. It is not contested that U.S. Patent No. 4,385,485 (the '485 Patent) discloses the following limitations of Claim 1 of the '503 Patent:

- a. "A method for producing a cable"
- b. "bunching the aligned plurality of transmission media and core using a second die which forces each of the plurality of transmission media into contact with the surface features of the core which maintain a spatial relationship between each of the plurality of transmission media"
- c. "jacketing the closed cable."

16. It is not contested that German Patent DE 297 19 866 (the '866 Patent) discloses the following limitations of Claim 27 of the '095 Patent:

- a. "a data communications cable"
- b. "a first twisted pair of insulated conductors"
- c. "a second twisted pair of insulated conductors"
- d. "a configurable dielectric pair separator that separates the first and second twisted pairs of insulated conductors"
- e. "the configurable dielectric pair separator being substantially flat"
- f. "a jacket enclosing the first and second twisted pairs of insulated conductors and the dielectric pair separator"
- g. "wherein the configurable dielectric pair separator is arranged within the jacket to form at least two grooves"

17. It is not contested that Japanese Patent JP 05-290645A (the '645 Patent) discloses the following limitations of Claim 27 of the '095 Patent:

- a. "a data communications cable"
- b. "a first twisted pair of insulated conductors"
- c. "a second twisted pair of insulated conductors"
- d. "a configurable dielectric pair separator that separates the first and second twisted pairs of insulated conductors"
- e. "the configurable dielectric pair separator being substantially flat"

- f. “a jacket enclosing the first and second twisted pairs of insulated conductors and the dielectric pair separator”

18. It is not contested that German Patent DE 297 19 866 (the ‘866 Patent) discloses the following limitations of Claim 31 of the ‘095 Patent:

- a. “a data communications cable”
- b. “a plurality of twisted pairs of insulated conductors”
- c. “a configurable dielectric pair separator disposed between at least two of the plurality of twisted pairs of insulated conductors”
- d. “the configurable dielectric pair separator including a substantially flat dielectric tape”
- e. “a jacket enclosing the plurality of twisted pairs of insulated conductors and the configurable dielectric pair separator”

19. It is not contested that U.S. Patent No. 4,755,629 (the ‘629 Patent) discloses the following limitations of Claim 19 of the ‘537 Patent:

- a. “a plurality of twisted pairs of insulated conductors comprising a first twisted pair of insulated conductors and a second twisted pair of insulated conductors”
- b. “a jacket enclosing the plurality of twisted pairs of insulated conductors and the configurable¹ dielectric separator”

20. It is not contested that German Patent DE 297 19 866 (the ‘866 Patent) discloses the following limitations of Claim 19 of the ‘537 Patent:

- a. “a plurality of twisted pairs of insulated conductors comprising a first twisted pair of insulated conductors and a second twisted pair of insulated conductors”
- b. “a substantially flat configurable dielectric separator that consists of non-conductive, dielectric materials disposed between the plurality of twisted pairs of conductors that separates the first twisted pair of insulated conductors from the second twisted pair of insulated conductors”
- c. “a jacket enclosing the plurality of twisted pairs of insulated conductors and the configurable dielectric separator”

21. It is not contested that German Patent DE 297 19 866 (the ‘866 Patent) discloses the following limitations of Claim 1 of the ‘999 Patent:

- a. “a plurality of twisted pairs of insulated conductors including a first twisted pair of insulated conductors and a second twisted pair of insulated conductors”
- b. “a configurable tape separator disposed between the plurality of twisted pairs of conductors”
- c. “arranged so as to separate the first twisted pair of insulated conductors from the second twisted pair of insulated conductors”
- d. “a jacket enclosing the plurality of twisted pairs of insulated conductors and the configurable tape separator”

22. It is not contested that German Patent DE 297 19 866 (the ‘866 Patent) discloses the following limitations of Claim 2 of the ‘999 Patent:

- a. the elements of Claim 1 of the '999 Patent identified in paragraph 24
- b. "wherein the configurable pair separator is arranged so as to define at least two channels and wherein the first twisted pair of insulated conductors is disposed at least partially within a first channel and the second twisted pair of insulated conductors is disposed at least partially within a second channel"

23. It is not contested that U.S. Patent No. 5,746,046 (the '046 Patent) discloses the following limitations of Claim 13 of the '641 Patent:

- a. "a cable comprising a plurality of twisted pairs of insulated conductors including a first twisted pair and a second twisted pair, each twisted pair comprising two insulated conductors twisted together in a helical manner"
- b. "a jacket surrounding the plurality of twisted pairs of insulated conductors"

24. It is not contested that U.S. Patent No. 6,150,612 (the '612 Patent) discloses the following limitations of Claim 13 of the '641 Patent:

- a. "a cable comprising a plurality of twisted pairs of insulated conductors including a first twisted pair and a second twisted pair, each twisted pair comprising two insulated conductors twisted together in a helical manner"
- b. "a separator disposed among the plurality of twisted pairs of insulated conductors so as to physically separate the first twisted pair from the second twisted pair"

- c. “a jacket surrounding the plurality of twisted pairs of insulated conductors”

25. It is not contested that German Patent DE 297 19 866 (the ‘866 Patent) does not disclose an unshielded cable; the cable disclosed by the ‘866 Patent is shielded.

**BELDEN’S AND SUPERIOR ESSEX’S JOINT STATEMENT
OF ADMITTED FACTS REQUIRING NO PROOF**

[STATEMENTS IN DISPUTE]

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<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
STATEMENTS ON VALIDITY PROPOSED BY SUPERIOR ESSEX			
<u>11. - 14.</u>	It is not contested that the following references constitute prior art to [the '095, '537, and '999 Patents; the '503 Patent; the '641 Patent; the '491 Patent; <i>i.e.</i> , each of the patents in suit] under 35 U.S.C. § 102(b): ... U.S. Patent No. 244,426 (the '426 Patent).	Belden objects to the inclusion of the '426 Patent as prior art. Superior Essex's expert witness has never opined as to whether or how the '426 Patent is invalidating prior art for any of the Patents-in-Suit under §§ 102 or 103. Therefore, it is of no legal or factual relevance to the case whether the '426 Patent qualifies as prior art. Superior Essex tacitly admits this fact by arguing that the '426 Patent is "background."	The parties already have stipulated that this patent is prior art to each of the patents-in-suit. (<i>See</i> D.I. 208, Tab 1.A. at 4). The '426 Patent issued more than one year before the filing date of each of the patents-in-suit. Superior Essex's expert, Les Baxter, relied on the '442 Patent regarding the background technology in his expert report. Belden has provided no basis for retracting the stipulation that it has already entered into with Superior Essex.

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
<u>15.</u>	It is not contested that U.S. Patent No. 4,385,485 (the '485 Patent) discloses the following limitations of Claim 1 of the '503 Patent: ...“passing a plurality of transmission media and a core through a first die which aligns the plurality of transmission media with surface features of the core”	Superior Essex's proposed language inappropriately divides claim element [1a] into multiple parts, which could needlessly confuse and mislead the jury. The complete language of claim element [1a] - <i>passing a plurality of transmission media and a core through a first die which aligns the plurality of transmission media with surface features of the core</i> - includes the term “prevents twisting motion of the core” , which is still disputed in this litigation. In order to determine if this claim term is disclosed in the prior art, the jury must consider the term in the context of the entire claim 1, particularly in the context of the complete claim element [1a]. Thus, claim element [1a] in its entirety should not be included in this stipulation.	The Court's summary judgment order resolved any dispute regarding this claim element. (<i>See</i> D.I. 216 at 39 (“Consistent with the court's construction of a ‘core,’ the circular configuration of V-shaped tapes forms ‘a longitudinally-extending element that separates the transmission media.’ A reasonable jury would further conclude that the V-shaped grooves are ‘surface features’ of the core disclosed by the ‘485 patent because each V-shaped groove describes a recess on the surface of the core.”)). Belden does not dispute that these claim elements are met by the '485 Patent. As the Court correctly indicated in its summary judgment order, the only element still in dispute is “prevents twisting motion of the core.” This stipulation is necessary to avoid juror confusion over which elements are not in dispute in Claim 1.

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
<u>15.</u>	It is not contested that U.S. Patent No. 4,385,485 (the '485 Patent) discloses the following limitations of Claim 1 of the '503 Patent: ... "twisting the bunched plurality of transmission media and core to close the cable"	Belden objects to any stipulation that this claim limitation is satisfied. Belden and its experts have repeatedly asserted throughout the course of this litigation that the '485 Patent discloses a method of manufacturing a cable that is similar to planetary systems and distinct from the claimed invention, including but not limited to manner in which the cable is twisted in the '485 Patent.	Belden did not dispute this element in its final interrogatory responses, and Belden's expert did not dispute this element in his expert report. (<i>See</i> Plaintiffs' Further Supplemental Responses And Objections To Defendant Superior Essex Communications LPs First, Second, And Third Sets Of Interrogatories, Appendix II, p. 7-8 ("Rebuttal" cell for this element is blank); Belden Technologies, Inc. and Belden CDT (Canada) Inc.'s Rebuttal Expert Report Of Thomas Blackburn Regarding Validity at p. 13-17). Belden's planetary cabling argument has been rejected by the Court (<i>see</i> D.I. 216 at 42) and is only likely to confuse the jury.

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
<u>Insert After 15.</u>	It is not contested that the '485 Patent is not cumulative of the planetary prior art systems considered by the PTO during the prosecution of the '503 Patent.	Belden objects to this statement. Contrary to Superior Essex's proposal, the Court found that the '485 Patent was not cumulative of just one example of planetary cabling referenced in the prosecution history, namely U.S. Patent 2,501,457, which teaches the use of a "pre-twisted core." Absent from Superior Essex's quotation is the preceding sentence that limits the Court's finding to planetary cabling employing the use of "pre-twisted cores". (See D.I. 216 at 42 ("The method disclosed by the '485 patent does not teach the use of a pre-twisted core; instead, it discloses, consistent with the patentee's characterization of the '503 patent, a method in which the transmission media enter parallel, non-helixed channels. No reasonable jury would find that the '485 patent is cumulative of the planetary prior art systems considered during the prosecution of the '503 patent."))). Furthermore, the portion of the Court's decision regarding cumulativeness of the '485 Patent is dicta.	The Court's summary judgment order (D.I. 216) resolved any dispute regarding this issue. (See D.I. 216 at 42 ("No reasonable jury would find that the '485 patent is cumulative of the planetary prior art systems considered during the prosecution of the '503 patent."))). Belden's planetary cabling argument has been rejected by the Court (see D.I. 216 at 42) and is only likely to confuse the jury.

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
<u>17.</u>	It is not contested that Japanese Patent JP 05-290645A (the '645 Patent) discloses the following limitations of Claim 27 of the '095 Patent: ... "wherein the configurable dielectric pair separator is arranged within the jacket to form at least two grooves"	Belden objects to any stipulation that this claim limitation is satisfied. Belden's expert witness, Dr. Mark Horenstein, specifically disputed that this claim limitation was met by the '645 Patent. (See D.I. 125, Ex. 34 at ¶ 353.) Indeed, Dr. Horenstein opined that this limitation was not met even when the '645 Patent was combined with the '563 Patent. (<i>Id.</i>)	Contrary to Belden's current position on this element, Belden's expert stated in his expert report that "the dielectric pair separator (<i>i.e.</i> , sheet 3) [in the '645 Patent] is coiled or folded to provide a plurality of grooves for the twisted pairs." (See Belden Technologies, Inc. and Belden CDT (Canada) Inc.'s Rebuttal Expert Report Of Mark Horenstein, PH.D. Regarding Validity at p. 119).
<u>19.</u>	It is not contested that U.S. Patent No. 4,755,629 (the '629 Patent) discloses the following limitations of Claim 19 of the '537 Patent: ... "an unshielded communications cable"	Superior Essex's suggestion that this claim limitation has not previously been contested or preserved for trial is demonstrably incorrect. In fact, this issue was fully presented and extensively briefed in the parties' summary judgment briefs. (See, e.g., D.I. 116, pp. 31-32; D.I. 176, pp. 11-12.) Moreover, it was not until the summary judgment briefs that Superior Essex, for the first time, clarified that it was relying on the Figure 9 embodiment from the '629 Patent to satisfy this "unshielded" claim limitation. At all times previously, including in its expert reports, Superior Essex had only been relying on the Figure 7 embodiment from the '629 Patent as the basis for its invalidity position. In fact, the reason that this issue had not arisen more clearly in the parties' expert	Belden did not dispute this element in its final interrogatory responses, and Belden's expert did not dispute this element in his expert report. (See Plaintiffs' Further Supplemental Responses And Objections To Defendant Superior Essex Communications LPs First, Second, And Third Sets Of Interrogatories, Appendix II, p. 307 ("Rebuttal" cell for this element is blank); Belden Technologies, Inc. and Belden CDT (Canada) Inc.'s Rebuttal Expert Report Of Mark Horenstein, PH.D. Regarding Validity at p. 137 (disclosing only "substantially flat configurable dielectric pair separator" and "foamed polymer" as the disputed elements).

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
		reports was that Superior Essex's expert, Les Baxter, misstated the language of Claim 19 of the '537 Patent that he was purporting to quote verbatim so as to omit the "unshielded" claim limitation. (See D.I. 125, Ex. 28 at ¶ 268.) Thus, a dispute regarding this limitation could not have more clearly materialized at the time of Baxter's report. Moreover, contrary to what Superior Essex is implying, in its Summary Judgment Order this Court did not hold as a matter of law that the '629 prior art reference satisfies the "unshielded" limitation of Claim 19. Rather, the Court merely held that Belden was not entitled to a summary judgment of non-anticipation relating to this claim element, meaning that it remains an open question for the jury. (See D.I. 216, p. 48.) Finally, Superior Essex misstates the law by suggesting that as a general matter a prior art reference can be found anticipatory based upon merely mixing and mingling different elements borrowed from different embodiments contained within that reference. Indeed, the Federal Circuit later found, on appeal, that proposition that Superior Essex cites from the district court's decision to be legally incorrect, holding as follows: "Unless a	

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
		reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations <i>arranged or combined in the same way as recited in the claim</i> , it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.” <i>Therasense, Inc. v. Becton, Dickinson & Co.</i> , 593 F.3d 1325, 1333 (Fed. Cir. 2010) (quoting <i>Net MoneyIN, Inc. v. VeriSign, Inc.</i> , 545 F.3d 1359, 1371 (Fed. Cir. 2008)).	
<u>19.</u>	It is not contested that U.S.	Superior Essex suggestion that this claim limitation has not been previously	Belden did not dispute this element in

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
	Patent No. 4,755,629 (the '629 Patent) discloses the following limitations of Claim 19 of the '537 Patent: ... "wherein the substantially flat configurable dielectric separator includes a foamed polymer"	contested or preserved trial is demonstrably incorrect. In Fact, this issue was expressly raised in Belden's expert report on validity. (<i>See</i> D.I. 125, Ex. 34 at ¶¶ 318-319.) Moreover, it was fully briefed in the parties summary judgment motions. (<i>See, e.g.</i>, D.I. 116, pp. 33-34; D.I. 176, pp. 12-13.) Moreover, contrary to what Superior Essex may be implying, in its Summary Judgment Order this Court did not hold as a matter of law that the '629 prior art reference disclose a "<u>configurable</u> dielectric separator" that "includes a foamed polymer" as claim element 19(d) requires. Rather the Court merely found that the '629 Patent discloses that a <u>non-configurable</u> preform separator may be constructed from "expanded polyvinyl chloride plastic material." (D.I. 216, p. 49.) On this basis, the Court held that Belden was not entitled to summary judgment of non-anticipation relative to this claim element meaning that it remains an open question for the jury. (<i>Id.</i>).	its interrogatory responses. (<i>See</i> Plaintiffs' Further Supplemental Responses And Objections To Defendant Superior Essex Communications LPs First, Second, And Third Sets Of Interrogatories, Appendix II, p. 308 ("Rebuttal" cell for this element is blank). The only mention of it in Belden's expert's report is one conclusory sentence. Belden Technologies, Inc. and Belden CDT (Canada) Inc.'s Rebuttal Expert Report Of Mark Horenstein, PH.D. Regarding Validity at p. 137). The Court correctly noted in its summary judgment Opinion that Superior Essex's expert's opinion on this element was "unrebutted" by Belden. (<i>See</i> D.I. 216 at 49 ("Baxter's expert report, unrebutted in this regard, states that expanded polyvinyl chloride is a foamed polymer.")).

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
STATEMENTS ON VALIDITY PROPOSED BY BELDEN			
<u>26.</u>	It is not contested that U.S. Patent No. 2,792, 442 (the '422 Patent) is directed to transmission of analog (low) voice frequencies, and that Superior Essex does not argue that the cable disclosed by the '442 Patent is capable of transmitting high frequency data.	Contrary to Superior Essex's position, in its Summary Judgment Order the Court clearly and expressly held as a matter of law that "[t]he cable of the '442 patent is directed to the transmission of analog (low) voice frequencies," and that "Superior Essex does not argue that the cable disclosed by the '442 patent is capable of transmitting high frequency data and, instead, briefly notes that it is a telecommunications cable." (D.I. 216, p. 53.) Accordingly, as a matter of law the '442 prior art reference cannot satisfy the "telecommunications cable" claim limitation of the '491 patent-in-suit, which the Court has expressly construed to mean a "[c]able capable of transmitting high frequency data." (D.I. 215, p. 4.)	Superior Essex objects to this statement. Mr. Baxter opined in his expert report that this limitation is disclosed in the '442 Patent (e.g., the "'442 Patent discloses a high frequency telecommunications cable"). The Court did not resolve this issue on summary judgment, but rather specifically left it for the jury to decide.

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
<u>27.</u>	It is not contested that, with respect to German Patent DE 297 19 866 (the '866 Patent), the fact that helical or S-Z stranding was a known process fails to demonstrate a suggestion or motivation to modify the teaching of that reference to the claimed invention in order to support an obviousness conclusion based on one prior art reference.	Regarding Superior Essex's conclusory assertion that helical twisting of a cable was a known process, the court stated: "The court does not believe that this scintilla of evidence comports with Superior Essex's burden of alleging obviousness based on one prior art reference to demonstrate 'a suggestion or motivation to modify the teaching of that reference to the claimed invention in order to support the obviousness conclusion'" (D.I. 216, pp. 44-45)(citing <i>SIBIA Neurosciences, Inc. v. Cadus Pharm. Corp.</i> , 225 F.3d 1349, 1356 (Fed. Cir. 2000)).	Superior Essex objects to this statement. Mr. Baxter opined in his expert report that "telecommunications cables are virtually always stranded (i.e., twisted about their common central axis)." The Court did not resolve this issue on summary judgment and it is disputed in the expert reports. This issue is for the jury to decide based on the presentations at trial.

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
<u>Insert after 27.</u>	It is not contested that in the <i>ex parte</i> reexamination of U.S. Patent No. 6,074,503 (the '503 Patent) the United States Patent and Trademark Office considered the following references, among others, and confirmed all claims of the '503 Patent. a. U.S. Patent No. 4,385,485 (the '485 Patent); b. U.S. Patent No. 4,600,268 (the '268 Patent); c. Japanese Patent Sho56(1981)-7307 (the '307 Patent); d. Japanese Patent Sho57(1982)-19910 (the '910 Patent); e. Japanese Patent Hei8(1996)-96635 (the '635 Patent).	This stipulation is appropriate as it reflects the references that the Patent Office <i>actually</i> considered during the <i>ex parte</i> reexamination of the '503 Patent. (See D.I. 204.) It would therefore be incorrect for Superior Essex to assert that any of the listed references have not been considered by the Patent Office or that they are somehow non-cumulative of art the Patent Office has considered.	The Court has ruled that evidence related to the ongoing <i>ex parte</i> reexamination of U.S. Patent No. 6,074,503 (the '503 Patent) is not admissible at trial. As the Court has correctly noted, the reexamination of the '503 Patent is not complete. <i>See In re Bass</i>, 314 F.3d 575, 577 (Fed. Cir. 2002) ("Until a matter has been completed, however, the PTO may reconsider an earlier action. A reexamination is complete upon the statutorily mandated issuance of a reexamination certificate, 35 U.S.C. § 307(a); the [Notice of Intent to Issue Reexamination Certificate ("NIRC")] merely notifies the applicant of the PTO's intent to issue a certificate. A NIRC does not wrest jurisdiction from the PTO precluding further review of the matter.") (internal citations omitted)). Belden's proposed statement is merely another attempt to bring in this evidence. Moreover the Court also has ruled that "[n]o reasonable jury would find that the '485 patent is cumulative of the planetary prior art systems considered during the prosecution of the '503 patent." (See D.I. 216 at 42).

<u>Statement No.</u>	<u>Proposed Stipulation</u>	<u>Belden's Position</u>	<u>Superior Essex's Position</u>
STATEMENTS ON INFRINGEMENT PROPOSED BY BELDEN			
<u>28.</u>	It is not contested that the following Superior Essex data cable products infringe Claim 1 of U.S. Patent No. 6,074,503 (the '503 Patent): a. 10Gain Category 6A CMR/CMP; b. 10Gain XP Category 6A CMR/CMP; c. Category 6A ScTP CMR/CMP; d. Bundled Category 6 cables with cross-web separators; e. Bundled Composite Category 6 CMR cables with cross-web separators; f. NextGain Category 6eX CMR/CMP; g. OSP Broadband Category 6BBD6/BBDN6/ BBDG6.	The proposed stipulation on infringement accurately reflects the Court's August 24, 2010 summary judgment decision. Furthermore, Superior Essex's infringing products remain relevant to the instant litigation, as sales of such infringing products evidence the commercial success of the inventions embodied by the Patents-in-Suit. <i>See, e.g., Gambro Lundia AB v. Baxter Healthcare Corp.</i>, 110 F.3d 1573, 1579 (Fed. Cir. 1997)(sales of the accused infringer's products constituted "significant evidence of commercial success of [the patentee's] invention"). Belden's experts opined about the commercial success of Superior Essex's accused products in their analyses of secondary considerations of non-obviousness. (<i>See</i> D.I. 125, Ex. 34 at ¶¶ 124, 163, 216, 256, 297, 342; Ex. 31 at ¶ 78.) It would therefore be improper to preclude Belden from presenting evidence, argument, or testimony regarding the Superior Essex products that the Court has determined infringe the asserted claims of the Patents-in-Suit as a matter of law. <i>See, e.g., Stratoflex, Inc. v. Aeroquip Corp.</i>, 713 F.2d 1530, 1539	Superior Essex object's to any evidence or argument concerning any issues of infringement. Belden has failed to identify any nexus between sales of Superior Essex products and the specific invention covered by the claims at issue. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> Superior Essex's Proposed Statements 34-41).

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		(Fed. Cir. 1983)(holding that the district court had erroneously failed to consider commercial success, the court stated “a court must not stop until all pieces of evidence on that issue have been fully considered and each has been given its appropriate weight.”). Superior Essex fails to appreciate that when a patentee can demonstrate that a “successful product is the invention disclosed and claimed in the patent, it is presumed that the commercial success is due to the patented invention.” <i>J.T. Eaton & Co. v. Atlantic Paste & Glue Co.</i>, 106 F.3d 1563, 1571 (Fed. Cir. 1997). And, “[i]f a patentee makes the requisite showing of nexus between commercial success and the patented invention, the burden shifts to the challenger to prove that the commercial success is instead due to other factors extraneous to the patented invention, such as advertising or superior workmanship.” <i>Id.</i> at 1571. The Court has determined as a matter of law that the infringing Superior Essex products are covered by the asserted claims of the Patents-in-Suit. Thus, it is Superior Essex burden to show the absence of a nexus.	

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<u>29.</u>	It is not contested that the following Superior Essex data cable products infringe Claims 27 and 31 of U.S. Patent No. 6,074,095 (the '095 Patent): a. Category 6 CMR/CMP cables with tape separators; b. DataGain Category 6+ CMP/CMR; c. DataGain Category 6+ Limited Combustible.	See position in Statement 28.	See position in Statement 28.
<u>30.</u>	It is not contested that the following Superior Essex data cable products infringe Claim 19 of U.S. Patent No. 6,998,537 (the '537 Patent): a. Category 6 CMR/CMP cables with tape separators; b. DataGain Category 6+ CMR/CMP; c. DataGain Category 6+ Limited Combustible.	See position in Statement 28.	See position in Statement 28.

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<u>31.</u>	It is not contested that the following Superior Essex data cable products infringe Claim 2 of U.S. Patent No. 7,179,999 (the '999 Patent): a. Category 6 CMR/CMP cables with tape separators; b. DataGain Category 6+ CMR/CMP; c. DataGain Category 6+ Limited Combustible.	See position in Statement 28.	See position in Statement 28.
<u>32.</u>	It is not contested that the following Superior Essex data cable products infringe Claims 1 and 2 of U.S. Patent No. 5,424,491 (the '491 Patent): a. 10Gain Category 6A CMP; b. 10Gain XP Category 6A CMR/CMP; c. Category 6A ScTP CMR/CMP; d. Cobra Category 5e+ CMP; e. Cobra Category 5e+ Limited Combustible.	See position in Statement 28.	See position in Statement 28.

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<u>33.</u>	It is not contested that Superior Essex's 10Gain Category 6A CMR/CMP cables infringe Claim 13 of U.S. Patent No. 7,135,641 (the '641 Patent).	See position in Statement 28.	See position in Statement 28.
STATEMENTS ON INFRINGEMENT PROPOSED BY SUPERIOR ESSEX			
<u>34.</u>	It is not contested that DataGain CMP cables manufactured, marketed and/or sold by Superior Essex with no varying insulation thickness among the twisted pairs of conductors do <u>not</u> infringe Claims 1 and 2 of the '491 Patent.		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (See D.I. 106 at 2-3).

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<u>35.</u>	It is not contested that 10Gain Category 6A CMR/CMP, NextGain Category 6eX CMR/CMP, Bundled Category 6, DataGain Category 6+ CMP, DataGain Category 6+ Limited Combustible, Category 6 CMP, Marathon, OSP Category 5e BBDE/BBDNE/ BBDGE, and OSP BBD6/ BBDN6/BBDG6 cables manufactured, marketed and/or sold by Superior Essex do <u>not</u> infringe Claims 1 and 2 of the '491 Patent.		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> D.I. 216 at 33-35).
<u>36.</u>	It is not contested that Category 6 CMR/CMP cables with tape separators, DataGain Category 6+ CMP/CMR, and DataGain Category 6+ Limited Combustible cables manufactured, marketed and/or sold by Superior Essex do <u>not</u> infringe Claim 1 of the '053 Patent.		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> D.I. 216 at 30-31).

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<u>37.</u>	It is not contested that Category 6 CMP cables manufactured, marketed and/or sold by Superior Essex with no varying insulation thickness among the twisted pairs of conductors do <u>not</u> infringe Claims 1 and 2 of the '491 Patent.		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> D.I. 106 at 2-3).
<u>38.</u>	It is not contested that Marathon Cat 5e CMP cables manufactured, marketed and/or sold by Superior Essex with no varying insulation thickness among the twisted pairs of conductors do <u>not</u> infringe Claims 1 and 2 of the '491 Patent.		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> D.I. 106 at 2-3).
<u>39</u>	It is not contested that Cobra Category 5e+ CMP cables manufactured, marketed and/or sold by Superior Essex with no varying insulation thickness among the twisted pairs of conductors do <u>not</u> infringe Claims 1 and 2 of the '491 Patent.		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> D.I. 106 at 2-3).

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<u>40.</u>	It is not contested that Category 6 CMR cables manufactured, marketed and/or sold by Superior Essex with no separator do <u>not</u> infringe Claims 27 and 31 of United States Patent No. 6,570,095 ("the '095 Patent"), Claim 19 of United States Patent No. 6,998,537 ("the '537 Patent"), and Claim 2 of United States Patent No. 7,179,999 ("the '999 Patent").		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> D.I. 106 at 2-3).
<u>41.</u>	It is not contested that Category 6 CMP cables manufactured, marketed and/or sold by Superior Essex with no separator do <u>not</u> infringe Claims 27 and 31 of the '095 Patent, Claim 19 of the '537 Patent, and Claim 2 of the '999 Patent.		Superior Essex objects to any evidence or argument concerning any issues of infringement. However, should the Court rule that such evidence is admissible, then the stipulation should also include the products determined or agreed to not infringe. (<i>See</i> D.I. 106 at 2-3).