

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 OPPOSITION TO PATENT OWNER'S MOTION TO
EXCLUDE**

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Patent Owner Belden Inc. (“Belden”) did not timely object to Petitioner CommScope Technologies LLC (“CommScope”)’s Exhibit 1055 and thus waived any motion to exclude. Even had Belden properly objected, there still would be no basis to exclude Exhibit 1055. Among other reasons, Exhibit 1055 is already a part of the file history of the ’537 patent, and Belden has not provided any persuasive reason for why the Board should be precluded from considering it.

I. Belden Failed to Timely Object to Exhibit 1055 Under 37 C.F.R. § 42.64

Belden did not timely object to Exhibit 1055. “Any objection to evidence submitted during a preliminary proceeding must be filed within ten business days of the institution of trial.” 37 C.F.R. § 42.64(b)(1). Exhibit 1055 was filed with the Petition, and Belden did not file any objection to it within ten business days of institution of the trial. The purpose of this objection under § 42.64(b)(1) is to allow the party relying on the evidence to cure the objection by filing “supplemental evidence.” 37 C.F.R. § 42.64(b)(1)-(2); *see Juniper Networks, Inc. v. Swarm Tech. LCC*, IPR2021-01445, Paper 62 at 12-13 (PTAB Feb. 7, 2023). If a party does not file a timely objection, thereby giving the other party an opportunity to supply supplemental evidence to cure the objection, the party “forfeit[s] its right to object to evidence ... and, as a result, forfeit[s] its request that [the Board] exclude the evidence.” *Id.* at 13. That is what happened here.

Belden implicitly concedes that it did not timely object. Instead, Belden argues that it objected in “Patent Owner’s Preliminary Response (Paper 6), in Patent Owner’s Sur-Reply prior to institution (Paper 9), in Patent Owner’s Response (Paper 20), and again in Patent Owner’s Sur-Reply (Paper No. 34).” Paper 37 at 2. However, the Board has repeatedly explained that objections in patent owner papers that were not filed within ten business days of the institution of trial (as required by 37 C.F.R. § 42.64(b)(1)) are untimely and insufficient to preserve the objection. *Juniper Networks*, IPR2021-01445, Paper 62 at 12-13 (objection in patent owner’s preliminary response was untimely); *Deere & Company v. Richard Gramm*, IPR2015-00899, Paper 40 at 68 (PTAB Sep. 22, 2016) (“An objection raised in a preliminary response nearly three months prior to the institution of the trial is not ‘within ten business days of the institution of trial.’ Thus, we agree with Petitioner that Patent Owner did not object ... within the time period set forth in § 42.64(b)(1).”); *Unified Patents, LLC v. 2BCOM, LLC*, IPR2020-00996, Paper 65 at 54 (PTAB Jan. 10, 2023) (objections in Patent Owner Response were “well after the time for objections had passed.”); *Microsoft Corp. v. IPA Techs. Inc.*, IPR2019-00837, Paper 42 at 54 (PTAB Oct. 22, 2020) (evidentiary arguments raised in the Patent Owner Response and Sur-reply regarding hearsay were waived because patent owner “did not raise an objection on evidentiary grounds pursuant to 37 C.F.R. § 42.64(b)(1)”).

II. Exhibit 1055 Should Not Be Excluded

Aside from the untimeliness of Patent Owner's objection, there is no basis to exclude Exhibit 1055.

First, Exhibit 1055 is already part of the prosecution history of the '537 patent. Exhibit 1055 was of record and discussed during the *inter partes* reexamination of the '537 patent. Ex-1058 at 57, 61 (examiner finding the reference disclosed twisted pairs), 81, 84 (same); *see also id.* at 10-12, 14, 42, 70-74, 90-95 (Patent Owner not disputing the reference discloses twisted pairs). Belden has not cited any authority that would support excluding a patent or printed publication that is already part of the prosecution history.

Second, as the Board noted in its institution decision, Belden has failed to provide a persuasive reason why the Board should disregard Exhibit 1055. Paper 10, 26-28. CommScope does provide a certified translation of the Yanagita patent that Belden does not dispute complies with 37 C.F.R. § 42.63, and the Board has noted that Director Vidal's memorandum states "evidence outside of the prior art patents or printed publications" may be used by the Board "when assessing 35 U.S.C. § 102 or 35 U.S.C § 103 issues in an IPR." *Id.* (citing June 9, 2022 USPTO Memorandum, Updated Guidance on the Treatment of Statements of the Applicant in the Challenged Patent in Inter Partes Reviews under § 311). Further, the Board

has noted that “the asserted prior art is the foreign language [] reference itself, not any particular translation of that reference.” Paper 27, 3.

Third, Belden used the Exhibit 1055 translation previously without objection. Paper 30, 15 n.3; *see also* Ex-1077 at 48-49, 45, 115 and Ex-1058. Moreover, Exhibit 1055 is consistent with Exhibit 1012 (the certified translation filed in this proceeding). *Id.* Belden has not identified any persuasive reason that the Board should be precluded from considering such a document in this proceeding.

For the reasons explained in Sections I and II above, CommScope respectfully requests that the Board deny Belden’s motion to exclude.

Respectfully submitted,

Dated: September 5, 2024

/Peter M. Kohlhepp/
Timothy A. Lindquist (Reg. No. 40,701)
Dennis C. Bremer (Reg. No. 40,528)
Peter M. Kohlhepp (*Pro Hac Vice*)
Ryan D. Rypka (Reg. No. 79,451)
CARLSON CASPERS VANDENBURGH &
LINDQUIST, P.A.
225 South Sixth Street, Suite 4200
Minneapolis, MN 55402
Telephone: (612) 436-9600
Facsimile: (612) 436-9605
dbremer@carlsoncaspers.com
tlindquist@carlsoncaspers.com
pkohlhepp@carlsoncaspers.com
rrypka@carlsoncaspers.com

*Counsel for Petitioner, CommScope
Technologies, LLC*

CERTIFICATION OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and the agreement of the parties, the undersigned certifies that on September 5, 2024, a true and correct copy of the foregoing *Petitioner's Opposition to Patent Owner's Motion to Exclude* was served via electronic mail upon the following:

Denis J. Sullivan (Ref. No. 47,980)
Thomas Hoehner (Reg. No. 73,474)
BARCLAY DAMON, LLP
Barclay Damon Tower
125 East Jefferson St.
Syracuse, NY 13202
Telephone: (315) 425-2700
dsullivan@barclaydamon.com
thoehner@barclaydamon.com

Cory C. Bell (Reg. No. 75,096)
FINNEGAN, HENDERSON, FARABOW,
GARRETT, & DUNNER LLP
2 Seaport Lane, 6th Floor
Boston, MA 02210-2001
Telephone: (617) 646-1641
cory.bell@finnegan.com

/Peter M. Kohlhepp/
Peter M. Kohlhepp