UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE TECHNOLOGIES LLC,
Petitioner,

v.

BELDEN INC.,
Patent Owner.

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

PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE

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EXHIBIT LIST

EXHIBIT	DESCRIPTION
EX-1012	English language translation of Japanese Patent Publication S43015470 ("Yanagida"), and attached Declaration of translator Anthea Heyes
EX-1055	English Translation of Japanese Patent Publication No. S43-15470 used in prior reexamination of US 6,998,537
EX-2013	Deposition Transcript of Kenneth Cornelison, July 25, 2024

Patent Owner Belden Inc. ("Patent Owner") replies to Petitioner Commscope LLC ("Petitioner")'s Opposition To Patent Owner's Motion To Exclude (Paper 39). Patent Owner's objection to the uncertified translation of Yanagita (EX-1055) was timely, and Petitioner ignored the rules and did not even attempt to remedy its failure to certify the translation under 37 C.F.R. § 42.63(b). Thus, EX-1055 is inadmissible under 37 C.F.R. § 42.61(a) and must be excluded.

I. PATENT OWNER'S OBJECTION TO EX-1055 WAS TIMELY, AS IMPLICITLY CONCEDED BY PETITIONER, WHICH THEN MADE NO ATTEMPT TO PROVIDE SUPPLEMENTAL EVIDENCE.

Patent Owner did not "implicitly concede" that its objection to EX-1055 was untimely as Petitioner incorrectly alleges. Opposition (Paper 39) 2. Rather, it was Petitioner that implicitly conceded Patent Owner's objection was in fact timely. Patent Owner filed and served objections to EX-1055 ***four times***, beginning with a core argument in its Preliminary Response. PO Preliminary Response (Paper 6) 18, n. 7; PO Sur-Reply prior to institution (Paper 9) 2; PO Response (Paper 20) 38, n. 7; PO Sur-Reply (Paper 34) 18. Accordingly, Petitioner has been on notice of Patent Owner's objection to EX-1055 under 37 C.F.R. § 42.63(b) since Patent Owner filed its Preliminary Response on September 21, 2023. In fact, as Patent Owner pointed out in its Motion (Paper 37), Petitioner ***admitted*** in its Reply that it was well aware of Petitioner's objection. Petitioner Reply (Paper 30) 15, n. 3.

Petitioner correctly states that the purpose of "objection[s] under § 42.64(b)(1) is to allow the party relying on the evidence to cure the objection by filing 'supplemental evidence.'" Opposition 1. But Petitioner never bothered to cure its evidentiary problem. Despite having been aware of Patent Owner's objection to the uncertified English translation in EX-1055 since September 21, 2023—as well as knowing that an affidavit attesting to the accuracy of the translation was required under 37 C.F.R. § 42.63(b) as evidenced by the fact that the translation of Yanagita Petitioner itself commissioned in EX-1012 included such an affidavit—at no time did Petitioner even attempt to serve supplemental evidence. Petitioner's disingenuous claim now that it was not afforded an opportunity to supply supplemental evidence to cure Patent Owner's objection simply does not hold water.

37 C.F.R. 42.64(b)(1) requires that "[a]ny objection to evidence submitted during a preliminary proceeding must be filed within ten business days of the institution of the trial." Petitioner filed its objection to EX-1055 in its Preliminary Response well before ten business days of the institution of trial. Petitioner attempts to argue form over substance, alleging that Patent Owner's objection in its filed papers are insufficient. But under the same facts in which a patent owner raised the impropriety of an uncertified translation based on 37 C.F.R. § 42.63(b) in its preliminary response, the Board found that "[g]iven the ambiguity in 37 C.F.R. 42.64(b)(1), we determine that Patent Owner ***timely submitted its objection and***

satisfied the requirement set forth in 37 C.F.R. 42.64(b)(1)." *Square, Inc. v. REM Holdings 3, LLC*, IPR2014-00312, Paper 58 at 35-36 (PTAB July 7, 2015) (noting "Petitioner has been on notice of Patent Owner's objection concerning the [translation] from the early stages of the proceeding"). S*ee also*, *Dropbox, Inc. v. Synchronoss Technologies, Inc.*, IPR2016-00850, Paper 41 at 18 (PTAB October 5, 2016) (the Board "treat[ing] certain arguments . . . in Patent Owner's Preliminary Response as objections pursuant to 37 C.F.R. § 42.64(b)(1) and grant[ing] Petitioner ten business days from institution to serve supplemental evidence in accordance with 37 C.F.R. § 42.64(b)(2)."). Petitioner's reliance on *Unified Patents, LLC v. 2BCOM, LLC*, IPR2020-00996, Paper 65 at 54 (PTAB Jan. 10, 2023) is inapposite as there the Patent Owner filed hearsay objections ***for the first time*** in its Patent Owner Response, which was after the objection deadline. Moreover, *Unified Patents* does ***not*** stand for the proposition that Patent Owner's objections were improper simply for being asserted in Patent Owner's Response paper.

Patent Owner's early and repeated objections to EX-1055—which Petitioner directly acknowledged in its Reply—left Petitioner with ample opportunity to provide as supplemental evidence an affidavit attesting to the accuracy of the uncertified translation in EX-1055 as required under 37 C.F.R. § 42.63(b). And while other panels have found the same objection Patent Owner made timely and sufficient under 37 C.F.R. § 42.64(b)(1), the Board should also use its discretion

under 37 C.F.R. § 42.5 and grant Patent Owner's motion in the interests of justice. There is no prejudice as Petitioner was well aware of the requirements under 37 C.F.R. § 42.63(b), was placed on notice of the impropriety of EX-1055 on September 21, 2023, and nonetheless chose to ignore the rules and do nothing to correct the situation through supplemental evidence.

II. PETITIONER'S ARGUMENTS DO NOT JUSTIFY WAIVING 37 C.F.R. § 42.63(B), AND EXHIBIT EX-1055 SHOULD BE EXCLUDED.

Petitioner does not dispute that the Yanagita translations in EX-1012 and EX-1055 are ***different***. PO Sur-Reply (Paper 34) 18; EX-2013 132:12-133:3. It begs the question which is the more accurate translation? Petitioner does not know. *See* EX-2013 133:16-135:6. Rule 37 C.F.R. § 42.63(b) exists for a reason and states that an affidavit attesting to the accuracy of the translation ***must*** be filed with the document. Petitioner was well aware of this requirement but ignored the Rule, and now asks the Board to do the same. The Board should not ignore this important rule, and Petitioner's arguments are unpersuasive.

First, Petitioner relies on EX-1055 having been in a prior reexamination. But that reexamination did not require a certified translation, and it does not excuse Petitioner's failure now to comply with 37 C.F.R. § 42.63(b). Why did Petitioner not simply have EX-1055 certified? Maybe Petitioner tried to and was unable? Moreover, this proceeding already has a certified Yanagita translation in EX-1012,

which Petitioner relied on. Petitioner does not need a second, different, and uncertified translation from another proceeding to try and show what Yanagita allegedly discloses. Nor should Petitioner be rewarded for circumventing the rules and allowed to cherry-pick the specific language it wants to take from each translation in order to best suit its needs.

Second, Petitioner's reliance on the Director's memorandum regarding "***evidence*** outside of prior art patents or printed publications" is to no avail. Opposition 3. 37 C.F.R. § 42.63 is titled "Form of Evidence." EX-1055 does not comply with 37 C.F.R. § 42.63(b), and thus it is not "admissible" "***evidence***" under the Rules and must be excluded. *See also*, 37 C.F.R. 42.61(a) ("Evidence that is not taken, sought, or filed in accordance with this subpart is ***not admissible***.").

Third, Petitioner oddly asserts that Patent Owner "used" EX-1055 previously in reexamination. Opposition 4. This is a red herring. Again, 37 C.F.R. § 42.63(b) was not at issue in that proceeding, and the fact that Patent Owner was required to respond to assertions regarding numerous prior art references and combinations at that time, and chose to make certain arguments while not making others, has nothing to do with Petitioner's failure now to authenticate the Yanagita translation in EX-1055 in this proceeding.

For all of these reasons and those presented in Patent Owner's Motion, the Board should grant Patent Owner's motion and exclude EX-1055.

Date: September 12, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **PATENT OWNER'S REPLY IN SUPPORT OF ITS MOTION TO EXCLUDE** was served pursuant to 37 C.F.R. § 42.6(e) via electronic mail on September 12, 2024, on the following:

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