

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 REPLY IN SUPPORT OF PETITIONER'S MOTION TO
EXCLUDE EXHIBIT 2012**

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There is no dispute that the uncited paragraphs of Exhibit 2012 are irrelevant to the issues in this proceeding. Thus, those paragraphs should be excluded from this proceeding under Federal Rules of Evidence 401 and 402 as irrelevant.

As to the paragraph of Exhibit 2012 that Belden did cite (¶334), CommScope acknowledges that the Board granted Belden permission to file that paragraph. CommScope moved to exclude Exhibit 2012 in its entirety to ensure that its objection was properly preserved.

I. There is No Dispute that the Uncited Paragraphs of Exhibit 2012 are Irrelevant and Should be Excluded

The Board allowed Belden to file Exhibit 2012 for a limited purpose: to cite a paragraph where one of its experts from a prior district court litigation discussed twisted pairs with respect to GmbH-866. Paper 38 at 3; Paper 36 at 3. Belden cited only ¶334 of Exhibit 2012. Paper 34 at 21-22. Belden does not dispute that it has not cited any other paragraph of Exhibit 2012, and it makes no argument regarding the relevance of any paragraph of Exhibit 2012 except for ¶334. Thus, it is undisputed that the uncited paragraphs of Exhibit 2012 are irrelevant, and the Board should exclude the uncited portions of Exhibit 2012 on that basis alone. Fed. R. Evid. 401 and 402 (“Irrelevant evidence is not admissible.”).

II. The Board Should Exclude Paragraph 334

Belden makes much of the fact that the Board allowed Belden to file Exhibit 2012 and argues that CommScope seeks “a second bite at the apple.” Paper 37 at 3.

However, CommScope's purpose in also moving to exclude Exhibit 2012 in its entirety was not to obtain a second bite, but rather to ensure its objections are preserved in the record of this proceeding. CommScope expressly acknowledged in its motion that the Board had decided to allow Belden to file Exhibit 2012 for the limited purpose stated. Paper 36 at 3.

Substantively, Belden's response did not dispute that CommScope will not have an opportunity to cross-examine Dr. Horenstein regarding his opinions or that Belden could have obtained (and in fact did obtain) Dr. Horenstein's report earlier. Thus Belden could have properly filed Exhibit 2012 with its patent owner response.

Belden has also not demonstrated that the consideration of Exhibit 2012 is in the interest of justice. Belden mischaracterizes ¶334 of Exhibit 2012 as "identifi[ng] the specific portion of" Exhibit 1057 (the translation used in the prior district court litigation) that discloses twisted pairs. However, ¶334 of Exhibit 2012 addresses a different element of the claims, one that Belden does not now dispute in this proceeding: whether the twisted pairs are "twisted about a common central axis to form a twisted pair cable." Ex-2012 at ¶334. Dr. Horenstein's opinion that the cited portions of GmbH-866 disclosed twisted pairs rather than twisted pairs "twisted about a common central axis" does not mean, as Belden implies, that it was his sole basis for concluding that GmbH-866 disclosed twisted pairs. Had

CommScope been able to cross-examine him, it is likely that Dr. Horenstein would have identified many other portions of Exhibit 1057 that disclosed twisted pairs, including the additional portions that CommScope has identified in its papers. *See* Paper 30 at 20-27; Ex-1057 at 2, 4, 5.

Belden also makes several immaterial arguments about CommScope actions that do not go to the merits of whether Exhibit 2012 should be excluded. For example, the fact that CommScope did not cite ¶334 in its reply is a red herring. As explained above, paragraph 334 discusses an element of the claims that Belden has not challenged GmbH-866 discloses. Paragraph 334 is also about a different patent (the '999 patent) than the one challenged in this IPR. Belden also argues that CommScope requested production of the Horenstein Report, but it was Belden's obligation to produce it under 37 C.F.R. § 42.51(b)(1)(iii). CommScope merely sought to enforce its right to discover "information that is inconsistent with a position advanced by" Belden. *See id.*

Finally, Belden's arguments miss the issue. The issue is the *timing* of Belden's citation to and filing of Exhibit 2012. Belden could have—and pursuant to the rules should have—filed Exhibit 2012 and cited to its ¶334 long *before* the sur-reply stage. Belden certainly had Exhibit 2012 well before it filed its Patent Owner Response (it is Belden's own document), but by waiting until the sur-reply

stage to file it, Belden deprived CommScope of any opportunity to respond to it with evidence.

III. It is Belden’s Burden to Prove Authentication, Not CommScope’s

Belden mischaracterizes the authentication requirement under Fed. R. Evid. 901. Belden argues that CommScope has not provided “evidence or argument that EX-2012 is not what it says it is on its face.” Paper 38 at 4. But it is Belden’s burden to establish that Exhibit 2012 is authentic, not CommScope’s. Fed. R. Evid. 901(a) (“... the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.”). Belden provided no such evidence.

IV. CommScope’s Objection to Exhibit 2012 was Timely

CommScope properly objected to Exhibit 2012 within 5 days of its introduction into the case. *See* Papers 34, 35; 37 C.F.R. 42.64(b)(1) (“Once a trial has been instituted, any objection must be filed within five business days of service of evidence to which the objection is directed.”). Belden served and cited to Exhibit 2012 with its sur-reply on August 20, 2024. *See* Paper 34. CommScope then timely objected five business days later on August 27, 2024. *See* Paper 35.

Belden’s argument that CommScope should have objected to Exhibit 2012 within 5 business days of when it was produced to CommScope—not when it was

made of record in the proceeding—is unsupported by any case¹ and simply does not make sense. Many objections, such as hearsay, depend on how the evidence is used. CommScope could not provide an objection “with sufficient particularity to allow correction in the form of supplemental evidence” as required by 37 C.F.R. § 42.64(b)(2) without first knowing that Belden intended to use the evidence in this IPR and also how Belden intended to use it.

Respectfully submitted,

Dated: September 12, 2024

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¹ The case Belden cites involves exhibits that were served and filed with Petitioner’s reply and were of record in the proceeding. *New U Life Corp. v. Axxess Global Sciences, LLC*, IPR2019-01141, Paper 24 at 3-5 (PTAB Aug. 26, 2020).

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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 September 12, 2024, a true and correct copy of the foregoing *Petitioner's Reply in Support of Petitioner's Motion to Exclude Exhibit 2012* was served via electronic mail upon the following:

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