

Sullivan, Denis J.

From: Peter M Kohlhepp <PKohlhepp@carlsoncaspers.com>
Sent: Thursday, April 18, 2024 10:20 AM
To: Sullivan, Denis J.
Cc: Hoehner, Thomas; Cory.Bell@finnegan.com; Tim A Lindquist; Dennis C Bremer; Ryan Rypka
Subject: RE: TIME SENSITIVE - IPR2023-01061, IPR2023-01062

Denis – as a follow-up, I note that Belden’s inconsistent position also appears in Belden’s summary judgment motion and the District Court’s summary judgment order (Docket Nos. 139 and 216 in the Superior Essex case).

Also, in addition to the documents CommScope has already requested, there appear to be others that are not publicly accessible but that contain the inconsistency, including:

- Exhibits 34 and 41 to Dkt. 125, referenced in the judge’s summary judgment order (Dkt. 216) (these exhibits appear to be under seal)
- A stipulation that Belden agreed to that appears to pertain to what the GmbH-866 patent disclosed—called JTX-397 in the trial transcript.

Regards,
Peter

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Intellectual Property Law

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From: Peter M Kohlhepp <PKohlhepp@carlsoncaspers.com>
Sent: Tuesday, April 16, 2024 10:30 AM
To: Sullivan, Denis J. <DSullivan@barclaydamon.com>
Cc: Hoehner, Thomas <thoehner@barclaydamon.com>; Cory.Bell@finnegan.com; Tim A Lindquist <TLindquist@carlsoncaspers.com>; Dennis C Bremer <DBremer@carlsoncaspers.com>; Ryan Rypka <RRypka@carlsoncaspers.com>
Subject: RE: TIME SENSITIVE - IPR2023-01061, IPR2023-01062

Denis – we remain confused by Belden’s requests. We have identified what we believe is an inconsistent position—the position that GmbH-866 discloses twisted pairs. We are seeking documents from the Superior Essex litigation that do not appear to be publicly available but that Belden, as the party to that litigation and the party taking the positions, has. Publicly available documents (just as accessible to you as to us) that appear to indicate that Belden took the inconsistent position are the trial transcript from the Superior Essex trial and the Judge’s Memorandum Opinion (Dkt. 310) following the jury verdict. The trial transcript is large, but as a courtesy I’m attaching the (much smaller) Memorandum Opinion.

Happy to hop on a call if that would be helpful. And if Belden is willing to just provide the documents we have requested, of course there will not be a need to go forward with a call with the Board.

CommScope v. Belden
IPR2023-01061, -01062
Belden EX-2008

Thanks,
Peter

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From: Sullivan, Denis J. <DSullivan@barclaydamon.com>

Sent: Monday, April 15, 2024 2:30 PM

To: Peter M Kohlhepp <PKohlhepp@carlsoncaspers.com>

Cc: Hoehner, Thomas <thoehner@barclaydamon.com>; Cory.Bell@finnegan.com; Tim A Lindquist <TLindquist@carlsoncaspers.com>; Dennis C Bremer <DBremer@carlsoncaspers.com>; Ryan Rypka <RRypka@carlsoncaspers.com>

Subject: TIME SENSITIVE - IPR2023-01061, IPR2023-01062

Peter – As you know, on Thursday, Belden specifically asked CommScope to identify and provide “any documents or information from another proceeding, including the Superior Essex litigation, where you believe Belden took an inconsistent position.” CommScope refused to do so. But in your email to the Board today, which improperly included CommScope arguments, you indicated that “Based on publicly available documents, Petitioner believes that Patent Owner took a position in a previous district court trial concerning the same patents is that inconsistent with positions Patent Owner is now taking. Specifically, it appears that Patent Owner previously took the position that the GmbH-866 reference disclosed twisted pairs; Patent Owner is now taking the opposite position.”

By 11:00 AM ET tomorrow (TUES), please identify and provide the “publicly available documents” that you referred to in your email to the Board. And if the “publicly available documents” are referring only to the reexamination documents already addressed in the parties preliminary replies and sur-replies, please confirm.

Thank you.

Denis

From: Peter M Kohlhepp <PKohlhepp@carlsoncaspers.com>

Sent: Friday, April 12, 2024 10:27 AM

To: Sullivan, Denis J. <DSullivan@barclaydamon.com>

Cc: Hoehner, Thomas <thoehner@barclaydamon.com>; Cory.Bell@finnegan.com; Tim A Lindquist <TLindquist@carlsoncaspers.com>; Dennis C Bremer <DBremer@carlsoncaspers.com>; Ryan Rypka <RRypka@carlsoncaspers.com>

Subject: RE: IPR2023-01061, IPR2023-01062

Denis,

Your email below does not respond to my question of whether Belden would oppose CommScope’s alternative relief—a motion to have the documents produced as “additional discovery.” The additional discovery is in the interests of justice

because, as explained in my previous emails, CommScope has reason to believe Belden took positions in those documents that are inconsistent with positions it is now taking in these IPRs.

Regarding routine discovery, we sent the follow-up email in part to give Belden a chance to clarify in the event it did not take the position during the Superior Essex case that GmbH-866 discloses twisted pairs. Your email declines that invitation. Given that, it is CommScope's understanding that Belden did contend that GmbH-866 discloses twisted pairs during the Superior Essex case. That position is inconsistent with positions Belden is now taking. We also identified several specific documents that we believe are inconsistent, including expert reports, testimony transcripts, and Belden discovery responses (e.g., interrogatory and RFA responses regarding GmbH-866). Given Belden's refusal to produce the documents, it appears we are at an impasse as to routine discovery.

I note that we are quite confused by Belden's request that CommScope "provide" documents from another proceeding where it believes Belden has taken an inconsistent position. Obviously, CommScope is asking Belden to produce these documents because CommScope was not part of the prior proceedings and therefore does not have them.

Please respond promptly regarding whether Belden opposes CommScope's alternative relief (a motion for additional discovery), so that we can reach out to the Board to schedule a single call on both issues. (To be clear, CommScope believes the documents are routine discovery and it should not be forced to spend the resources to file a motion for additional discovery). We appreciate you providing availability on April 16-18; please also provide your availability for a call on Friday April 19 and the first few days of the following week.

Regards,
Peter

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From: Sullivan, Denis J. <DSullivan@barclaydamon.com>

Sent: Thursday, April 11, 2024 10:29 AM

To: Peter M Kohlhepp <PKohlhepp@carlsoncaspers.com>

Cc: Hoehner, Thomas <thoehner@barclaydamon.com>; Cory.Bell@finnegan.com; Tim A Lindquist <TLindquist@carlsoncaspers.com>; Dennis C Bremer <DBremer@carlsoncaspers.com>; Ryan Rypka <RRypka@carlsoncaspers.com>

Subject: RE: IPR2023-01061, IPR2023-01062

Peter – We respectfully are confused by CommScope's failure to understand Belden's position repeated here: The "routine discovery" rule addresses information that is inconsistent with a position advanced by a party. Belden is not aware of any such information and therefore will not be producing any documents. To the extent that you are seeking further clarification of Belden's positions, please refer to our papers submitted in this proceeding, including without limitation, our Sur-Reply on this issue.

If CommScope is aware of any documents or information from another proceeding, including the Superior Essex litigation, where you believe Belden took an inconsistent position, please identify and provide those documents (or confirm that you are not aware of any).

As for availability for a call with the Board, we are generally available on the mornings of Tuesday-Thursday (April 16-18).

Thanks.

Denis

From: Peter M Kohlhepp <PKohlhepp@carlsoncaspers.com>
Sent: Tuesday, April 9, 2024 8:25 PM
To: Sullivan, Denis J. <DSullivan@barclaydamon.com>
Cc: Hoehner, Thomas <thoehner@barclaydamon.com>; Cory.Bell@finnegan.com; Tim A Lindquist <TLindquist@carlsoncaspers.com>; Dennis C Bremer <DBremer@carlsoncaspers.com>; Ryan Rypka <RRypka@carlsoncaspers.com>
Subject: Re: IPR2023-01061, IPR2023-01062

Denis,

CommScope does not understand Belden's position. Please clarify. For example, is it Belden's position that Belden did not previously take the position that GmbH-866 disclosed twisted pairs? Or is Belden maintaining that its previous position that GmbH-866 disclosed twisted pairs is nonetheless not inconsistent with its current position, for some other reason(s)? If so, please provide those reasons.

Also, CommScope intends to seek the documents referenced in my email below as both routine discovery and as additional discovery. To that end, please let us know if Belden opposes a motion to produce such documents as additional discovery. Please also let us know times next week when Belden is available for a call with the Board.

Thanks,
Peter

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On Apr 6, 2024, at 6:33 AM, Sullivan, Denis J. <DSullivan@barclaydamon.com> wrote:

Peter – As you note, the “routine discovery” rule addresses information that is inconsistent with a position advanced by a party. Belden is not aware of any such information and therefore will not be producing any documents by your April 8, 2024 deadline. To the extent that you believe a

meet and confer would be helpful, please let me know your availability for a call on Tuesday (I am out of the office on Monday).

Thanks.

Denis

Denis J. Sullivan

Pronouns: he/him/his
Partner

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From: Peter M Kohlhepp <PKohlhepp@carlsoncaspers.com>
Sent: Thursday, April 4, 2024 4:59 PM
To: Sullivan, Denis J. <DSullivan@barclaydamon.com>; Hoehner, Thomas <thoehner@barclaydamon.com>; cory.bell@finnegan.com
Cc: Tim A Lindquist <TLindquist@carlsoncaspers.com>; Dennis C Bremer <DBremer@carlsoncaspers.com>; Ryan Rypka <RRypka@carlsoncaspers.com>
Subject: IPR2023-01061, IPR2023-01062

Counsel,

CommScope believes that Belden possesses documents that are both relevant to and inconsistent with positions Belden has advanced in IPR2023-01061 and IPR2023-01062. Such documents are “routine discovery” and should have already been produced to CommScope. 37 CFR 42.51(b)(1)(iii) (“Unless previously served, **a party must serve relevant information that is inconsistent with a position advanced by the party during the proceeding concurrent with the filing of the documents or things that contains the inconsistency**”).

These documents likely include expert reports, testimony transcripts (e.g., deposition transcripts) and Belden discovery responses from *Belden Technologies Inc. et al v. Superior Essex Inc.*, Civil Action No. 1-08-cv-00063 (D.Del. 2008) (the “Superior Essex”). For example, CommScope understands that in *Superior Essex* Belden took the position that German Patent No. DE 297 19 866 U1 (“GmbH-866”) discloses twisted pairs of insulated conductors. Belden has advanced an inconsistent position in the IPRs.

Such documents may also include documents from the prior *inter partes* reexamination proceedings that concern references at issue in these IPRs and are inconsistent with positions Belden is now advancing.

Please serve the documents required by 37 CFR 42.51(b)(1)(iii) by no later than Monday, April 8, 2024. If Belden refuses to do so, please explain why and provide Belden's availability for a call with the Board regarding this matter.

Regards,
Peter Kohlhepp

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