

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BELDEN INC. and PPC BROADBAND, INC.,
Petitioners,

v.

COMMSCOPE, INC. OF NORTH CAROLINA,
Patent Owner.

Case No. IPR2025-00833
U.S. Patent No. 9,266,697

**PETITIONERS' SUR-REPLY IN OPPOSITION TO PATENT OWNER'S
REQUEST FOR DISCRETIONARY DENIAL**

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Patent Owner's request for discretionary denial should be denied. Given the opportunity to dispute or deny several critical facts and arguments presented by Petitioners, which demonstrated why the Director should not exercise discretion to deny institution, Patent Owner conspicuously failed to even attempt to dispute or challenge them. Patent Owner's silence coupled with its new arguments that actually support Petitioner's positions confirm that the Director should refer this proceeding to allow the Board to address and correct the material errors made by the Examiner.

I. Patent Owner Does Not Dispute That the Office Materially Erred.

In its Reply, Patent Owner does not dispute that the Examiner committed several material errors identified by Petitioners in their Opposition (Paper 8). For example, Patent Owner does not dispute that the Examiner failed to even conduct a prior art search under the Board's different construction of "flexible material" (*e.g.*, cardboard is not flexible material) after the appeal. Paper 8, 3-4, 22-24. Nor does Patent Owner dispute that the Examiner failed to reconsider the claims and the prior art after the appeal in light of the intervening *Williamson* opinion. Paper 8, 25-29. These undisputed facts of material error warrant referral under § 325(d) for consideration on the merits.

II. Patent Owner Does Not Dispute the Key Facts Supporting Petitioners' Settled Expectations.

In its Reply, Patent Owner also does not dispute the key facts supporting Petitioners' settled expectations that it would not be sued and therefore would not

need to invalidate the claims of the '697 Patent. For example, Patent Owner does not dispute that the Petitioners' Accused Product was (i) marketed more than one year before the '697 Patent issued, and (ii) on the market for almost a decade before Patent Owner first made its infringement allegations. Paper 8, 1, 34-38. Unable to deny these critical facts, Patent Owner resorted to attempting to set up a strawman argument, such as by incorrectly asserting that Petitioners' alleged "'settled' expectations [are] based on a 'new' [means-plus-function] construction" (Paper 11, 1)—an argument never made by Petitioners. These undisputed facts regarding Patent Owner's unexplained and inexcusable delay in accusing Petitioners of infringement for almost a decade warrant referral for consideration on the merits.

III. Patent Owner's Reply Confirms That It Should Not Have Any Settled Expectations Regarding the Validity of its Broadly Interpreted Claims, Which Cover Well Known and Conventional Features Found in Petitioners' Accused Product.

In its Opposition, Petitioners explained that Patent Owner should not enjoy any settled expectations as to the validity of the broad claim scope asserted in the litigation. Paper 8, 2-3, 29-34. For instance, Petitioners demonstrated how the Board had already determined, and that Patent Owner knew, that cable payout containers with a pair of frames supporting a cable reel in the container were well known and conventional in several earlier IPRs. Paper 8, 31-33; Paper 7, 4. More specifically, Petitioners identified three prior art references from those IPRs with priority dates predating the June 2009 priority date of the '697 Patent that disclosed these features,

namely *Johanson* (Ex. 1026) (filed March 25, 2009), *Wilkinson* (Ex. 1027) (filed June 7, 2005), and *Galgano* (Ex. 1028) (filed April 16, 2008). Paper 8, 32-33.

In its Reply, Patent Owner does not dispute that the earlier IPRs apply references that are (i) prior art to the '697 Patent and (ii) disclose cable payout containers with a pair of frames supporting a cable reel in the container. Unable to avoid those undisputed facts, Patent Owner instead attempted to engage in misdirection by relying upon various irrelevant points, such as regarding how the challenged patents in the earlier IPRs were not prior art to the '697 Patent and that Petitioners did not rely upon those three references in this proceeding. Paper 11, 4.

Not only did Patent Owner never dispute the evidence that cable payout containers with a pair of frames supporting a cable reel in the container were well known and conventional at the time of filing its patent, it provided further evidence supporting Petitioners' argument, such as by identifying *Cote* (EX-1010) as yet another prior art reference cited during prosecution that also disclosed a pair of frames supporting a cable reel under Patent Owner's construction of "removable insert." Paper 11, 2.

The reliance on the Examiner's findings during prosecution also reaffirms the impact of material error identified by Petitioner. While the Examiner mapped the claimed "removeable insert" to *Cote*'s pair of frames prior to *Williamson*, the

Examiner never reconsidered the claims and the prior art after the appeal in light of the intervening *Williamson* opinion. Paper 8, 6-7, 26-27.

The undisputed fact that a pair of frames supporting a cable reel in a container was well known and conventional, supports Petitioners' settled expectations arguments and warrants referral under § 325(d) for consideration on the merits. Indeed, Patent Owner's only argument on the merits does not apply to the Board's construction that the Board construed "flexible materials" as materials "capable of being bent, usually without breaking; easily bent," EX-1003, 28, but rather adds a negative limitation that the "main compartment constructed of a flexible material" cannot contain anything else beyond a flexible material, such as a reinforcement or any other component that adds stiffness to the flexible material. Paper 7, 12-14. Such a need to further narrow the Board's prior claim construction highlights the strong merits of the Petition.

IV. Conclusion

The Petition should be forwarded for consideration of the merits to address and correct the material errors made by the Examiner.

Dated: September 5, 2025

By: / Cory Bell /
Cory Bell, Reg. No. 75,096

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioners’
Sur-Reply in Opposition to Patent Owner’s Request for Discretionary Denial**
was served on September 5, 2025, via e-mail directed to counsel of record for the
Patent Owner at the following:

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Dated: September 5, 2025

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