

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

BELDEN INC. and PPC BROADBAND, INC.,
Petitioner,

v.

COMMSCOPE, INC. OF NORTH CAROLINA,
Patent Owner.

IPR2025-00833
Patent 9,266,697 B2

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

DECISION
Denying Institution of *Inter Partes* Review

CommScope, Inc. of North Carolina (“Patent Owner”) filed a request for discretionary denial (Paper 7, “DD Req.”) in the above-captioned case, and Belden Inc. and PPC Broadband, Inc. (collectively, “Petitioner”) filed an opposition (Paper 8, “DD Opp.”). With authorization, Patent Owner filed a Reply (Paper 11), and Petitioner filed a Sur-reply (Paper 12).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

Some considerations counsel against discretionary denial. For example, the projected final written decision due date in the Board proceeding is November 23, 2026. *See* DD Opp. 41. The district court’s scheduled trial date is May 17, 2027, and the time-to-trial statistics suggest trial will begin in August 2027. *Id.* Therefore, it is likely that the final written decision in this proceeding will issue before the district court trial occurs.

Other considerations favor discretionary denial. In particular, the challenged patent has been in force for nine years creating strong settled expectations for Patent Owner. DD Req. 2. Patent Owner provides evidence that the invention was commercialized at least seven years ago and is still on the market. *Id.* at 3; Ex. 2001; Ex. 2006. Patent Owner also provides evidence of patent marking of the commercialized product. DD Req. 3–4; Ex. 2001, 2. Finally, Patent Owner provides evidence that Petitioner has been aware of the challenged patent since at least 2022, showing where Petitioner cited the challenged patent in an unrelated *inter partes* review and an information disclosure statement. DD Req. 4.

Petitioner argues that the Examiner erred during prosecution by performing an incomplete search after being reversed on appeal. DD Opp. 22–23. In particular, Petitioner argues that the search was based on the Examiner’s prior claim construction and not the Board’s claim construction decided on appeal. *Id.* Thus, according to Petitioner, the Examiner should have performed “a targeted prior art search for bags made of a ‘flexible material’ consistent with the Board’s interpretation.” *Id.* (citing Ex. 1003, 19–20). This argument is unconvincing as the evidence of record indicates that the Examiner did perform a search for flexible bags and Petitioner does not sufficiently address why this search was inadequate. Ex. 1003, 20.

Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is denied under 35 U.S.C. § 314(a).

In consideration of the foregoing, it is:

ORDERED that Patent Owner’s request for discretionary denial is *granted*;

FURTHER ORDERED that the Petition is *denied*, and no trial is instituted.

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