

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE TECHNOLOGIES LLC,
Petitioner,

v.

BELDEN INC.,
Patent Owner.

IPR2023-01058
Patent 10,832,833 B2

Before KRISTINA M. KALAN, KIMBERLY MCGRAW, and
SHARON FENICK, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

CommScope Technologies LLC (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–8 and 48–50 of U.S. Patent No. 10,832,833 B2 (Ex. 1001, “the ’833 patent”). Belden Inc. (“Patent Owner”) filed a Preliminary Response (Paper 7, “Prelim. Resp.”).

To institute *inter partes* review, we must determine that the information presented in the Petition shows “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). For the reasons discussed below, we decline to institute *inter partes* review.

A. *Related Proceedings*

The parties identify the following district court litigation as a related matter: *Belden Inc. v. CommScope, Inc.*, Case No. 22-783-RGA (D. Del.). Pet. vii; Paper 5, 1.

The parties also identify IPR2023-01056, challenging claims of U.S. Patent No. 9,991,030, as a related case. *Id.*

B. *Real Parties-in-Interest*

Petitioner identifies CommScope Technologies LLC, CommScope, Inc. of North Carolina, CommScope, Inc., and CommScope Holding Company, Inc. as real parties-in-interest. Pet. vii. Patent Owner identifies Belden Inc. as the real party-in-interest. Paper 5, 1.

C. *The ’833 Patent (Ex. 1001)*

The ’833 patent is titled “High Performance Data Communications Cable,” and relates to a data cable including “a filler for controlled placement of pairs of conductors within a data cable and controlled application angle of an electromagnetic interference (EMI) reducing tape.”

Ex. 1001, code (54), 1:23–27. The '833 patent explains that high performance data cables must meet “strict specifications for maximum return loss and crosstalk.” *Id.* at 1:37–39. Crosstalk is caused by EMI between adjacent pairs of conductors in a cable, whereby signal flow in a first pair of conductors generates an electromagnetic field received by a second pair of conductors. *Id.* at 1:45–50. Alien crosstalk may result between adjacent cables in a typical installation with a large number of cables. *Id.* at 1:50–56. The '833 patent discusses cables with reduced internal cable return loss and external cable alien crosstalk (“ANEXT”) coupling noise. *See id.* at 5:33–43.

Figure 1 of the '833 patent is reproduced below.

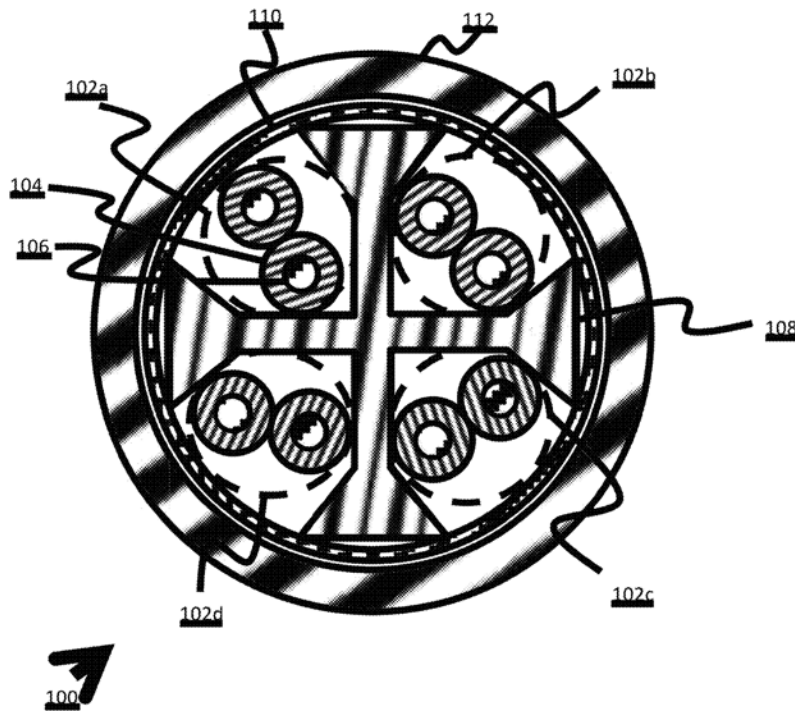


FIG. 1

Figure 1 illustrates a cross-section of an embodiment of an unshielded twisted pair cable incorporating a filler. *Id.* at 4:38–39. Cable 100 includes filler 108 having a cross-section with four arms radiating from a central

point thereby forming four channels. *Id.* at 6:60–67. The cable contains four pairs of individual conductors 106, each conductor being surrounded by insulation 104. *Id.* at 6:28–30. Each pair of insulated conductors forms unshielded twisted pair 102a–102d. *Id.* Conductive barrier tape 110 surrounds filler 108 and twisted pairs 102a–102d. *Id.* at 7:38–40. Jacket 112 surrounds conductive barrier tape 110. *Id.* at 7:61–67. Figure 3A is reproduced below.

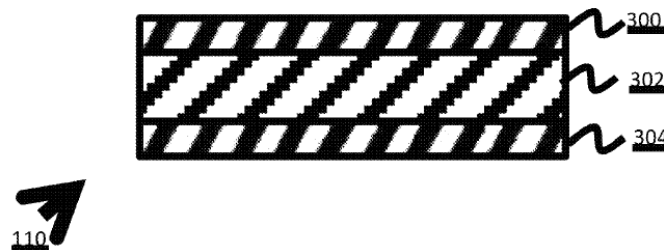


FIG. 3A

Figure 3A illustrates a cross-section of barrier tape 110. *Id.* at 7:44–48. Barrier tape 110 includes conductive material 302 located between two layers of dielectric material 300, 304. *Id.* at 7:48–51. Exemplary conductive materials may include aluminum foil. *Id.* Exemplary dielectric materials may include polyester (PET). *Id.* Figure 3A shows conductive layer 302 extending to the edges of dielectric layers 300, 304. *See id.* at 7:55–57.

D. Illustrative Claim

Of the challenged claims, Claims 1, 48, 49, and 50 are independent. Claim 1 is reproduced below.

1. A cable for reducing alien cross-talk and return loss between adjacent twisted pairs of conductors comprising:
 - a first twisted pair of conductors having a first side portion and a first outwardly facing portion;
 - a second twisted pair of conductors having a second side portion and a second outwardly facing portion;

- a filler member configured to non-conductively shield the first side portion of the first twisted pair of conductors from the second side portion of the second twisted pair of conductors;
- a barrier tape configured to encircle the filler member and the first and second outwardly facing portions of the first and second twisted pairs of conductors so as to non-conductively shield the first and second outwardly facing portions of the first and second twisted pairs of conductors;
- a jacket configured to encircle the barrier tape;
- wherein the second twisted pair of conductors is located adjacent to a portion of the filler member, and wherein the first twisted pair of conductors is located adjacent to the portion of the filler member;
- wherein the barrier tape includes a non-conductive layer and a conductive layer;
- wherein the filler member is made of a non-conductive material;
- wherein the filler member includes a plurality of arms that are each configured to radially extend outwardly so as to form a first channel shaped to partially enclose the first twisted pair of conductors and a second channel shaped to partially enclose the second twisted pair of conductors;
- wherein the first terminal portion of the filler member includes a first outwardly facing terminal surface, the second terminal portion of the filler member includes a second outwardly facing terminal surface, and the barrier tape is configured to encircle the first and second outwardly facing terminal surfaces and the first and second twisted pairs of conductors;
- wherein the filler member is configured to extend along a longitudinal portion of the cable and is configured to non-conductively shield the first and second twisted pairs of conductors from being electrically coupled to each other along the longitudinal portion of the cable.

Id. at 11:32–12:7.

E. Asserted Grounds of Unpatentability

Petitioner asserts that claims 1–8 and 48–50 would have been unpatentable on the following grounds:

Ground	Claims Challenged	35 U.S.C. § ¹	Reference(s)
1	1–8, 48–50	102	Cook ²
2	1–8, 48–50	102	Glew ³
3	1, 3–8, 48–50	102	Roberts ⁴
4	1, 3–8, 48–50	103	Roberts, Jachimowicz-172 ⁵
5	1, 3–8, 48–50	103	Grounds 3 and/or 4, Jachimowicz-036 ⁶
6	1–8	103	Grounds 3–5, Simons ⁷
7	1–8, 48–50	102	Pfeiler ⁸

In support of its unpatentability arguments, Petitioner relies on the declaration of Kenneth Cornelison. Ex. 1006.

II. ANALYSIS

Petitioner contends that claims 1–8 and 48–50 are anticipated under 35 U.S.C. § 102 by Cook (Pet. 11–30), Glew (Pet. 30–47), or Pfeiler (Pet. 78–98) and that claims 1, 3–8, and 48–50 are anticipated by Roberts (Pet. 48–69). Petitioner also contends that claims 1, 3–8, and 48–50 would have been obvious under 35 U.S.C. § 103 over Roberts and Jachimowicz-172 (Pet. 69–71) or over Grounds 3 and/or 4 and Jachimowicz-036 (Pet. 71–75), and that claims 1–8 would have been obvious over any of Grounds 3–5 and Simons (Pet. 75–78).

¹ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”), amended 35 U.S.C. §§ 102 and 103. Because the ’833 patent has an effective filing date after the effective date of the applicable AIA amendments, we refer to the post-AIA versions of §§ 102 and 103.

² US 9,363,935 B1, issued June 7, 2016 (Ex. 1010).

³ US 2013/0248240 A1, published September 26, 2013 (Ex. 1008).

⁴ US 3,622,683, issued November 23, 1971 (Ex. 1009).

⁵ US 3,894,172, issued July 8, 1975 (Ex. 1014).

⁶ US 3,233,036, issued February 1, 1966 (Ex. 1013).

⁷ US 3,911,200, issued October 7, 1975 (Ex. 1012).

⁸ US 7,335,837 B2, issued February 26, 2008 (Ex. 1011).

Patent Owner “disagrees with Petitioner’s unpatentability contentions,” but states that it “has disclaimed each of the Challenged Claims under 35 U.S.C. § 253.” Prelim. Resp. 1. Patent Owner asserts that when “a patent owner properly records a disclaimer of all patent claims challenged in a petition, binding Board precedent and rules preclude institution of IPR.” *Id.* (citing *General Elec. Co. v. United Techs. Corp.*, IPR2017-00491, Paper 9 (PTAB July 6, 2017) (precedential); 37 C.F.R. § 42.107(e) (stating “[n]o *inter partes* review will be instituted based upon disclaimed claims”). More particularly, Patent Owner asserts that it “complied with 37 C.F.R. § 1.321(a) by submission of Form PTO/SB/43 (‘DISCLAIMER IN PATENT UNDER 37 C.F.R. § 1.321(A)’) on September 18, 2023” and paid the required fee, and, thus “has met the requirements for an effective disclaimer of all Challenged Claims under 35 U.S.C. § 253 and 37 C.F.R. § 1.321(a).” *Id.* at 2–3 (citing Ex. 2001).

Patent Owner further asserts: “The present statutory disclaimer is not an admission or acquiescence by Patent Owner with regard to the Petition, and should not and cannot be construed as a request for an adverse judgment.” Prelim. Resp. 3. Patent Owner summarizes that “in the interest of judicial and economic efficiency, Patent Owner has filed an effective statutory disclaimer under 35 U.S.C. § 253” and that, accordingly, “the Board should deny institution consistent with the Board’s binding precedent.” *Id.*

A conference call was held with the parties on October 24, 2023, pursuant to Petitioner’s request for permission to file a motion requesting that the Board construe Patent Owner’s disclaimer of all challenged claims as a request for adverse judgment. Patent Owner opposed this request.

During the call, Petitioner argued that it intended to rely on *Arthrex, Inc. v. Smith & Nephew, Inc.*, 880 F.3d 1345 (Fed. Cir. 2018) to argue that Patent Owner’s disclaimer should be construed to be a request for adverse judgment, which Petitioner argued was appropriate under the circumstances of this case. Patent Owner opposed, citing the Board’s precedential *General Electric* decision as governing in the present circumstances. *General Electric*, Paper 9 (relying on 37 C.F.R. § 42.107(e), denying institution when Patent Owner had submitted a pre-institution disclaimer of all challenged claims). During the call, we denied Petitioner’s request for authorization to file the motion. Although *Arthrex* permits the Board to grant adverse judgment when a patent owner cancels all claims at issue prior to institution (*see Arthrex, Inc.*, 880 F.3d at 1350 (“37 C.F.R. 42.73(b) *permits* the Board to enter an adverse judgment when a patent owner cancels all claims at issue after an IPR petition has been filed, but before an institution decision” (emphasis added))), Petitioner failed to identify any persuasive reason why the Board should do so in present circumstances. *See also Cisco Systems, Inc. v. SecurityProfiling, LLC*, IPR2021-01428, Paper 13 (PTAB Mar. 14, 2021) (determining that denial of institution without granting adverse judgment was sufficient when Patent Owner had submitted a pre-institution disclaimer of all challenged claims); *General Electric*, Paper 9.

A “patent owner may file a statutory disclaimer under 35 U.S.C. 253(a) in compliance with § 1.321(a) of this chapter, disclaiming one or more claims in the patent. No *inter partes* review will be instituted based on disclaimed claims.” 37 C.F.R. § 42.107(e).

A disclaimer under 35 U.S.C. § 253(a) is “considered as part of the original patent” as of the date on which it is “recorded” in the U.S. Patent

and Trademark Office (“Office”). 35 U.S.C. § 253(a). For a disclaimer to be “recorded” in the Office, the document filed by the patent owner must:

- (1) Be signed by the patentee, or an attorney or agent of record;
- (2) Identify the patent and complete claim or claims, or term being disclaimed. A disclaimer which is not a disclaimer of a complete claim or claims, or term will be refused recordation;
- (3) State the present extent of patentee’s ownership interest in the patent; and
- (4) Be accompanied by the fee set forth in [37 C.F.R.] § 1.20(d).

37 C.F.R. § 1.321(a); *see also Vectra Fitness, Inc. v. TNWK Corp.*, 162 F.3d 1379, 1382 (Fed. Cir. 1998) (holding that a § 253(a) disclaimer is immediately “recorded” on the date that the Office receives a disclaimer meeting the requirements of 37 C.F.R. § 1.321(a), and that no further action is required in the Office for a disclaimer to be “recorded”). Under our precedential *General Electric* decision, a “‘patent owner may file a statutory disclaimer under 35 U.S.C. [§] 253(a) in compliance with § 1.321(a) of this chapter, disclaiming one or more claims in the patent’ and ‘[n]o *inter partes* review will be instituted based on disclaimed claims.’” *General Electric*, Paper 9 at 2 (declining to institute *inter partes* review when all challenged claims were disclaimed under 35 U.S.C. § 253(a)).

Here, Patent Owner filed a statutory disclaimer of claims 1–8 and 48–50 of the ’833 patent. Ex. 2001. The statutory disclaimer is signed by Christopher W. Day, who is listed as “VP, AGC and Chief IP Counsel” of Belden Inc. Ex. 2001, 3; *see* 37 C.F.R. § 1.321(a)(1) (requiring the disclaimer to be signed by the patentee, or an attorney or agent of record). The statutory disclaimer states “Patentee hereby disclaims . . . the following

complete claim(s) in the above-identified patent: 1–8 and 48–50.”

Ex. 2001, 3; *see* 37 C.F.R. § 1.321(a)(2) (requiring the disclaimer to identify the patent and complete claim or claims, or term disclaimed). The statutory disclaimer states that the “extent of patentee’s ownership interest in the above-identified patent is: 100% Ownership Interest (Assignment recorded in the US Patent Office) Reel 050527 Frame 0001.” Ex. 2001, 3; *see* 37 C.F.R. § 1.321(a)(3) (requiring statement of patentee’s ownership interest in the patent); *see also* Ex. 2002 (Assignment Document at Reel/Frame 050527/0001). Patent Owner asserts that payment of the fee accompanied the filing of the statutory disclaimer. Ex. 2001, 5–6; Prelim. Resp. 2–3; *see* 37 C.F.R. § 1.321(a)(4) (requiring disclaimer be accompanied by the fee set forth in 37 C.F.R. § 1.20(d)).

Based on our review of Exhibit 2001 and Office public records, we conclude that a disclaimer of claims 1–8 and 48–50 of the ’833 patent under 35 U.S.C. § 253(a) has been recorded in the Office as of September 18, 2023. Based on the information in Exhibit 2001 and the public record, we find that the disclaimer complies with the above-listed requirements of 37 C.F.R. § 1.321(a).

Because all challenged claims 1–8 and 48–50 have been disclaimed under 35 U.S.C. § 253(a), in compliance with 37 C.F.R. § 1.321(a), and we determine that a denial of institution is sufficient to dispose of this case, no *inter partes* review is instituted in this proceeding. 37 C.F.R. § 42.107(e); *General Electric*, Paper 9 at 2–3.

III. CONCLUSION

For the reasons set forth above, we *deny* the Petition and do not institute *inter partes* review.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Petition is *denied* and no *inter partes* review is instituted.

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