

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TYCO ELECTRONICS CORPORATION)	
)	
Plaintiff,)	
)	
vs.)	Case No.: <u>4:14-CV-107</u>
)	
BELDEN INC.)	
BELDEN CANADA INC.)	
BELDEN CDT (CANADA) INC.)	
)	
Defendants.)	
)	

COMPLAINT

This is a complaint under 35 U.S.C. § 146 for remedy by civil action of the decision by the United States Patent and Trademark Office Patent Trial and Appeal Board in Patent Interference No. 105,863. Plaintiff Tyco Electronics Corporation alleges as follows:

Parties

1. Plaintiff Tyco Electronics Corporation (“TE”) is a Pennsylvania corporation with its principal place of business in Berwyn, Pennsylvania.
2. Upon information and belief, Defendant Belden Inc. is a Delaware corporation with its principal place of business in this judicial district in St. Louis, Missouri.
3. Upon information and belief, Defendant Belden Canada Inc. is a Canadian corporation with a place of business in this judicial district and a principal place of business in Cobourg, Ontario, Canada.

4. Upon information and belief, Defendant Belden CDT (Canada) Inc. was a Canadian corporation with a place of business in this judicial district and a principal place of business in Toronto, Ontario, Canada.

5. Upon information and belief, Belden Canada Inc. is the successor to Belden CDT (Canada) Inc. and/or Belden CDT (Canada) Inc. is doing business as Belden Canada Inc. In corporate filings with the United States Security and Exchanges Commission, Belden Inc. stated that Belden Canada Inc. is “successor by amalgamation to Belden CDT (Canada) Inc., Miranda Technologies ULC and Byres Security ULC.” Belden Canada Inc. and Belden CDT (Canada) Inc. are referred to herein collectively as “Belden Canada.”

6. Upon information and belief, Belden Inc. exercises operational control over Belden Canada. Upon information and belief, Belden Inc. is the parent of Belden Canada. Upon information and belief, Belden Inc. and Belden Canada share common officers and/or directors. Upon information and belief, there are common directors and/or officers for Belden Inc. and Belden Canada residing in this judicial district. For example, upon information and belief, the Chief Executive Officer of Belden Inc., John Stroup, is also the Chief Executive Officer of Belden Canada, and the Chief Financial Officer of Belden Inc., Henk Derksen, is also the Chief Financial Officer of Belden Canada.

Jurisdiction

7. This Court has subject matter jurisdiction pursuant to 35 U.S.C. § 146 and 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over defendants under general and/or specific jurisdiction.

9. Belden Inc. has continuous and systematic contacts with this judicial district. According to Belden Inc.'s website and press releases, Belden Inc.'s corporate headquarters is in St. Louis, Missouri. Upon information and belief, Belden, Inc. owns and/or leases property in this judicial district. Upon information and belief, Belden Inc. has employees, including officers, in this judicial district. Upon information and belief, Belden has registered as a foreign corporation in Missouri and has registered the Missouri Secretary of State as its registered agent.

10. Belden Canada has continuous and systematic contacts with this judicial district. Upon information and belief, Belden Canada has employees in this judicial district. Upon information and belief, all of Belden Canada's officers, except for one, are located in this judicial district, including the Chief Executive Officer, Chief Financial Officer, Vice President, and Secretary. Upon information and belief, all of Belden Canada's directors, except for one, are located in this judicial district. Through such officers and directors, upon information and belief, Belden Canada systematically and continually does business in this judicial district. Furthermore, upon information and belief, this action arises from Belden Canada transacting business and/or making a contract in this judicial district. As set forth below, this action arises from an interference declared during prosecution of a U.S. patent application owned by Belden Canada. Upon

information and belief, an officer of Belden Canada located in this judicial district, Mr. Kevin Bloomfield, was involved in the prosecution of that application, including executing in this judicial district a legal document necessary for that prosecution, and that prosecution resulted in the interference that is the subject matter of this action.

11. Upon information and belief, Belden Inc. and Belden Canada are parties in interest under 35 U.S.C. § 146. A Notice of Real Party In Interest filed in the United States Patent and Trademark Office in connection with Patent Interference No. 105,863 states: “real party in interest is Belden CDT (Canada) Inc. . . . Belden Inc. is the parent of Belden CDT (Canada) Inc.”

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Background

13. TE is the owner of U.S. Patent No. 7,325,976 (“TE Patent”), which issued on February 5, 2008, and relates to a system of keyed communications connectors in which only certain plugs can mate with certain receptacles. Mr. Michael Gurreri (“Gurreri”) is a named inventor of the TE Patent. The filing date for the TE Patent is October 20, 2005. The TE Patent claims priority to, and incorporates by reference all of, U.S. Provisional Application No. 60/218,705 (“Gurreri Provisional Application”), which was filed on July 17, 2000; U.S. application Serial No. 09/908,140, which was filed on July 17, 2001; and U.S. application Ser. No. 10/982,374, which was filed on November 4, 2004.

14. Upon information and belief, Belden Canada is the owner of U.S. Patent Application No. 12/365,593 (“Belden Application”). Mr. Luc Milette (“Milette”) is the named inventor of the Belden Application. The filing date for the Belden Application is

February 4, 2009. The Belden Application claims priority to Provisional Application No. 60/504,189, filed on September 22, 2003.

15. On December 5, 2011, pursuant to 35 U.S.C. § 135, the Board of Patent Appeals and Interferences (which later became the Patent Trial and Appeal Board, both of which are collectively referred to herein as the “Board”) issued a Declaration of Interference between certain claims of the TE Patent and Belden Application. The interference was numbered Patent Interference No. 105,863 and styled Gurreri v. Milette (corresponding to the first named inventors’ names). The Declaration of Interference assigned Gurreri as the Junior Party and Milette as the Senior Party. The Declaration of Interference listed one Count and identified claims 1-7 of the TE Patent and claims 1-7 of the Belden Application as the claims corresponding to the Count.

16. TE and, upon information and belief, Belden Inc. and Belden Canada are the parties in interest for the interference.

17. During the interference, Gurreri filed a motion, entitled “Gurreri Substantive Motion 1” to be according the benefit for Count 1 of the July 17, 2000 filing date of the Gurreri Provisional Application. In decisions dated December 13, 2012 and February 1, 2013, the Board denied this motion.

18. During the interference, Gurreri filed a motion, entitled “Gurreri Motion No. 4 Judgment of Priority,” to be granted priority over the Belden Application based on prior invention. In a decision dated November 18, 2013, the Board denied this motion.

19. On November 18, 2013, the Board entered judgment in the interference against Gurreri and ordered claims 1-7 of the TE Patent cancelled.

Cause of Action

20. The allegations of paragraphs 1 through 19 are re-alleged as if fully set forth herein.

21. TE is dissatisfied with the Board's decisions in the interference and seeks remedy by civil action under 35 U.S.C. § 146. This action is with respect to each and every decision, rulings on motion, judgment, and finding adverse to Gurreri in the interference. Non-exhaustive examples of such are listed below.

22. The Board erred in ordering judgment awarded against Gurreri and in canceling claims 1-7 of the TE Patent.

23. The Board erred in denying Gurreri Motion No. 4 Judgment of Priority in which it determined that Gurreri is not entitled to priority as to the subject matter of the Count. For example, in Interference Paper 171, the Board erred in its conclusion that "[t]he preponderance of the evidence on the record before us does not show that Gurreri conceived of or reduced to practice the subject matter of the Count before 22 September 2003, Milette's earliest accorded priority date."

24. The Board erred in denying Gurreri's Substantive Motion 1 which sought to have the TE Patent be accorded benefit for the Count to the filing date of Provisional Application No. 60/218,705. For example, in Interference Papers 107 and 114, the Board erred in concluding that "Gurreri provisional application does not provide sufficient written description for at least one feature of Count 1."

25. The Board erred in dismissing Gurreri's motion to correct inventorship for the TE Patent and in denying Gurreri's motion to correct the TE Patent specification's priority statement through a certificate of correction.

26. TE is harmed by the foregoing and is entitled to remedy by civil action. TE has not appealed the Board's decision to United States Court of Appeals for the Federal Circuit.

Prayer for Relief

TE respectfully requests the following relief:

- A. A judgment reversing the Board's judgment and decisions;
- B. A judgment that the TE Patent and not the Belden Application is entitled to priority as to the subject matter of the Count of Patent Interference No. 105,863;
- C. A judgment that the TE Patent is entitled to the benefit of the filing date of the Gurreri Provisional Application as to the subject matter of the Count of Patent Interference No. 105,863;
- D. A judgment that claims 1-7 of the TE Patent are not canceled and any order necessary to effectuate this;
- E. A judgment that claims 1-7 of the Belden Application are unpatentable based on lack of priority of invention, and any claims issuing from the Belden Application corresponding to the subject matter of the Count of Patent Interference No. 105,863 are null, void, or invalid;
- F. An award of such costs and fees as appropriate; and
- G. Such other and further relief that this Court may deem just and equitable, including remand or orders to the United States Patent and Trademark Office.

Demand for Jury Trial

Actions under 35 U.S.C. §146 are equitable, but if there be any issues triable by jury, pursuant to Rule 38 of the Federal Rules of Civil Procedure, TE demands a trial by jury of all such issues.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

/s/ Rodney A. Harrison

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