

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

BERK-TEK LLC  
Petitioner

v.

BELDEN TECHNOLOGIES INC.  
Patent Owner

---

Case IPR2013-00057 (JL)  
Patent 6,074,503

---

Before JAMESON LEE and STEPHEN C. SIU, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On September 9, 2013, a telephone conference was held between respective counsel for the parties and Judges Lee and Siu. Counsel for Belden initiated the conference call to discuss what he described as improper Reply of Berk-Tek. According to counsel, Berk-Tek did not support its Petition with any declaration testimony, but submitted a 60-page declaration accompanied by at least 19 exhibits to support its Reply. Also according to counsel, all of that information was

previously available to Berk-Tek and should not have been held back, to be submitted in a Reply, when Belden has no further opportunity to respond.

The Board explained that a trial within a trial will not be held, complete with respective briefings, on whether Berk-Tek's Reply is improper for including information it should have submitted in its Petition, and also that it is not the test for determining appropriateness of a Reply merely to see whether information was previously available to Berk-Tek and could have been submitted with its Petition. Much of the analysis centers on the scope and content of Belden's Patent Owner Response, in addition to whether the issue was one Berk-Tek sufficiently addressed without a supporting declaration in its Petition. It also would be unreasonable to expect a Petitioner to submit supporting testimony for every matter that possibly may be involved in a dispute. On the other hand, factual disputes which reasonably should have been anticipated may require supporting testimony.

In a nutshell, there is no hard and fast rule which can be expediently applied without getting into the substantive merit in detail. The Board intends to consider the matter when rendering its final written decision, not earlier, and it is a matter the Board can decide without need of special briefing.

Counsel for Belden inquired whether Belden can cross-examine Berk-Tek's reply declarant. The Board explained that cross-examination of declarants including reply declarants is provided under 37 C.F.R. § 42.51(b)(1)(ii) as routine discovery, and that if necessary, Belden may file a motion for observations on cross-examination. As noted in the Scheduling Order (Paper 12), a motion for observation on cross-examination is a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness. The observation must be a

concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit (including another part of the same testimony). An observation is not an opportunity to raise new issues, to re-argue issues, or to pursue objections. Each observation should be in the following form:

In exhibit \_\_, on page \_\_, lines \_\_, the witness testified \_\_. That testimony is relevant to the \_\_\_\_ [stated or argued] on page \_\_, lines \_\_ of \_\_\_\_\_. The testimony is relevant because \_\_\_\_\_.

Each observation should not exceed one short paragraph, and the entirety of the observations is limited to five pages. The Board may decline consideration or entry of argumentative observations.

The Board cautioned counsel for Petitioner that if its reply indeed is inappropriate and includes material it should have submitted together with its Petition, the Board may decline the entirety of the Reply and reply declaration without separating the appropriate from the inappropriate. The Board agreed to give Belden two days to consider whether to file a Revised Reply.

It is

**ORDERED** that Belden may conduct cross-examination of Berk-Tek's reply declarant and file a motion for observations on cross-examination by Due Date 4;

**FURTHER ORDERED** that Petitioner may file, by September 12, 2013, a Revised Reply which only removes arguments and which relies on less of the reply declaration currently of record; and

Case IPR2013-00057  
Patent 6,074,503

**FURTHER ORDERED** that the parties may, within twenty (20) days of the date of this order, file a joint submission, limited to a single double-spaced page, inclusive of the signature block but exclusive of the cover page, titled “Notice of Allegation of Improper Reply,” which serves not as briefing but simply as a written record and reminder that appropriateness of the Petitioner’s reply has been raised by Patent Owner and should be considered by the Board in the final written decision.

Case IPR2013-00057  
Patent 6,074,503

For PETITIONER:

Joseph Sofer  
Robert Haroun  
SOFER & HAROUN L.L.P  
[joesofer@soferharoun.com](mailto:joesofer@soferharoun.com)

For PATENT OWNER:

Matthew B. Lowrie  
Aaron W. Moore  
FOLEY & LARDNER LLP  
[m\\_lowrie-PTAB@foley.com](mailto:m_lowrie-PTAB@foley.com)  
[a\\_moore-PTAB@foley.com](mailto:a_moore-PTAB@foley.com)