

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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COMMSCOPE, INC.  
Petitioner

v.

TQ DELTA, LLC.  
Patent Owner

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U.S. Patent No. 9,485,055  
Issue Date: November 1, 2016  
Title: PACKET RETRANSMISSION AND MEMORY SHARING

Case No. IPR2022-00833

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**PETITIONER'S REPLY TO PATENT OWNER'S PRELIMINARY  
RESPONSE**

Mail Stop PATENT BOARD  
Patent Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

## **I. INTRODUCTION.**

CommScope respectfully submits this paper in response to patent-owner TQ Delta's argument that institution should be denied on the ground that Nokia is an unnamed real party in interest (RPI). TQ Delta's argument is based on several misstatements of law and fact and should be rejected accordingly for at least the following reasons.

First, The Board has already considered and rejected TQ Delta's speculation and related argument that CommScope and Nokia are RPIs in connection with Nokia's recent IPR petition. Second, TQ Delta's assertion that CommScope and Nokia coordinated the filing of their IPRs against TQ Delta is based on nothing more than rank speculation that is conclusively defeated by the accompanying Supplemental Declaration of Jim Shead (Ex. 1028, "Shead Decl."). Third, TQ Delta's recitation of the applicable legal standard for adjudicating whether Nokia is an RPI suggests that any party that stands to benefit from cancellation of the patent is an RPI. That too is wrong and contorts the relevant law as set forth by the Board, the USPTO, and the Federal Circuit. Finally, there is no need for the Board to even decide this issue because Nokia's status as an RPI will have no impact on the decision to institute this IPR.

## **II. ARGUMENT.**

- 1. The Board Has Already Rejected TQ Delta's Contention that Commscope And Nokia Are Co-RPIs Or Privies.*

On August 18, 2022, the Board issued its Institution Decision in IPR2022-00471. *See Nokia of America Corp. v. TQ Delta, LLC*, Paper 11 (PTAB Aug. 18, 2022). In instituting Nokia’s IPR, the Board considered TQ Delta’s RPI arguments with respect to Nokia and CommScope and rejected them. *Id.* at 8-18. In rejecting TQ Delta’s argument, the Board reiterated “that mere benefit is not the standard for determining whether a party is an RPI. *Id.* at 13 (citing *Bowtech, Inc. v. MCP IP, LLC*, IPR2019-00379, Paper 14 at 23 (PTAB July 3, 2019)). The Board also cited testimony, similar to the testimony from Mr. Shead here, showing that Nokia acted independently of CommScope in filing its petition on the ’835 Patent. *Id.* at 15. On this IPR too, the record evidence establishes that CommScope acted independently of Nokia and that Nokia is not an RPI as a result.

2. *CommScope And Nokia Have Not Coordinated Their Filing Of IPRs Against TQ Delta.*

TQ Delta’s lead argument that CommScope and Nokia must have coordinated their IPR strategy is entirely speculative. TQ Delta speculates that because “none of Nokia’s and CommScope’s combined 13 IPR petitions overlap and cover the same patents” the parties must have employed “a... joint strategy.” TQ Delta’s statement that there is no overlap is *false*. Both Nokia and CommScope have filed (different) petitions challenging the ’835 Patent. *See* IPR2022-00352 (CommScope); IPR2022-00471 (Nokia).

In any event, the Board need not resort to speculation to determine whether Nokia and CommScope coordinated with regard to the IPRs. As attested to in the attached sworn declaration of Jim Shead, Senior Corporate Counsel – Litigation for CommScope, *every* IPR filed by CommScope against TQ Delta was the product of CommScope’s sole discretion and control. Shead Decl. ¶¶ 4, 7. That is, no individuals other than CommScope’s employees, counsel, and consultants acting under the direction of CommScope participated in CommScope’s decision to file the IPRs that CommScope brought against TQ Delta. *Id.* ¶ 8. Likewise, the fees and other expenses associated with the preparation and filing of the various IPRs were borne by CommScope exclusively. *Id.* And CommScope did not consider Nokia’s (or anyone else’s) interests when filing the IPRs; every IPR filed by CommScope was filed because CommScope itself made the decision that it was in CommScope’s business interests to challenge the validity of the patent before the Board. *Id.* ¶¶ 4-7.

*3. CommScope’s IPR Was Not Filed At Nokia’s Behest—Nokia Is Not An RPI.*

TQ Delta’s argument that Nokia must be an unnamed RPI to this petition because Nokia stands to benefit from the cancellation or invalidation of the claims challenged by CommScope has been rejected repeatedly by the Board and the Federal Circuit. Put simply, this is not the test for determining RPI status.

In *NOF Corporation v. Nektar Therapeutics*, the Patent Owner made a similar argument that TQ Delta makes here, contending that a non-party was an RPI because it was “a clear beneficiary that ha[d] a preexisting, established relationship with the petitioner.” See *NOF Corporation v. Nektar Therapeutics*, IPR2019-01394, Paper 22 at 9 n.9 (PTAB Feb. 5, 2020). The Board clarified that while RPIs must have relationships with petitioners and stand to benefit from a favorable result in the IPR, this was not the crux of the analysis. *Id.* Instead, as the Board explained, the issue turns on whether, in filing the IPR, the “petitioner [was] representing the non-party’s interests.” *Id.* (citing *AIT*, 897 F.3d at 1351).

The focus on control over the filing of the IPR proceeding is similarly reflected in the USPTO’s Consolidated Trial Practice Guide (at 15-17) and in the Federal Circuit’s recent jurisprudence on the issue. See *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1028 (Fed. Cir. 2021) (describing “the heart of the inquiry” as “whether a petition has been filed at a party’s behest”) (quotations omitted); *AIT* at 1342–43 (noting the importance of “whether a [ ]party exercises [or could exercise] control over a petitioner’s participation in a proceeding, or whether a [ ]party is funding the proceeding or directing the proceeding”); *WesternGeco LLC v. Ion*, 889 F.3d 1308, 1320–21 (Fed. Cir. 2018) (finding no privity where, among other facts, the evidence demonstrated the parties had no control over each other and had no collective funding).

Here, TQ Delta points to *nothing* to suggest that CommScope filed this IPR at Nokia's behest. And this stands to reason: As discussed in the previous section, CommScope filed this IPR on its own initiative to further its own business interests. That CommScope and Nokia stand to benefit from each other's efforts to invalidate the asserted patents and have retained overlapping experts to assist them in their respective efforts is of no relevance to the ultimate analysis.

*4. The Board Does Not Need To Determine If Nokia Is An Unnamed RPI Because It Is Immaterial To Institution.*

Finally, TQ Delta's RPI argument is ultimately immaterial as it is not a bar to institution. As the Board held in *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 at 18–19 (PTAB Oct. 6, 2020) (designated precedential)), the Board need not address whether an entity is an unnamed RPI where it would not create a time bar or estoppel under 35 U.S.C. § 315. As the Board explained in *SharkNinja*, the PTAB's jurisdiction to institute an IPR proceeding does not turn on whether a "correct" identification of all RPIs have been made in a petition. *Id.* at 18 (citing *Lumentum Holdings, Inc. v. Capella Photonics, Inc.*, IPR2015-00739, Paper 38 at 6 (PTAB Mar. 4, 2016) (precedential)). Accordingly, the RPI issue is merely a collateral one that does not impact institution of this IPR.

Dated: September 1, 2022

/Sanjeet Dutta/

Sanjeet K. Dutta (Reg. No. 46,145)

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GOODWIN PROCTER LLP  
601 Marshall Street  
Redwood City, California 94063  
Email: sdutta@goodwinlaw.com  
Tel.: +1 (650) 752-3100  
Fax: +1 (650) 853-1038

*Lead Counsel for Petitioner*

## **CERTIFICATE OF SERVICE**

Pursuant to 37 CFR 42.6, the undersigned hereby certifies that

### **“PETITIONER’S REPLY TO PATENT OWNER’S PRELIMINARY**

**RESPONSE”** were served by email upon lead counsel for Patent Owner, pursuant to Patent Owner’s agreement to accept service by email as set forth in Patent Owner’s Mandatory Notices.

Christian J. Hurt (Reg No. 63,659)  
[churt@davisfirm.com](mailto:churt@davisfirm.com)  
The Davis Firm PC  
213 N. Fredonia Street, Suite 230  
Longview, Texas 75601  
Tel: (903) 230-9090  
Peter J. McAndrews (Reg No. 38,547)  
[pmcandrews@mcandrews-ip.com](mailto:pmcandrews@mcandrews-ip.com)  
David Z. Petty (Reg No. 52,119)  
[dpetty@mcandrews-ip.com](mailto:dpetty@mcandrews-ip.com)  
McAndrews, Held & Malloy Ltd.  
500 West Madison Street, 34<sup>th</sup> Floor  
Chicago, IL 60661  
Tel. (312) 775-8269  
[tqd@davisfirm.com](mailto:tqd@davisfirm.com)  
[TQD-IPR2022-00352@mcandrews-ip.com](mailto:TQD-IPR2022-00352@mcandrews-ip.com)

Dated: September 1, 2022

*/Sanjeet K. Dutta/*

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Sanjeet K. Dutta (Reg. No. 46,145)