**IN THE 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. 8,276,048
Issue Date: September 25, 2012
Title: Resource Sharing in a Telecommunications Environment

Case No. IPR2023-00064

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# PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO MOTION FOR JOINDER

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
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# I. INTRODUCTION.

The Board should grant CommScope, Inc.'s (hereinafter "CommScope" or "Petitioner") Motion for Joinder and reject the arguments raised in TQ Delta's Opposition (Paper 9, "Opposition"). *First*, Patent Owner concedes—as it must—that the one-year time bar does not apply to the instant petition. *Second*, because the Board has already held that the Petition's grounds present "a compelling unpatentability challenge" it should institute to review the '048 Patent on the merits and uphold the Board's mandate "to improve patent quality." *Third*, TQ Delta's arguments—based on inapposite cases and illusory concerns—should be rejected.

# II. ARGUMENT.

## A. TQ Delta Concedes That Time-Barred Petitions May Be Instituted and Joined.

TQ Delta concedes that 35 U.S.C. § 315(b) expressly permits time barred entities to file copycat IPR petitions seeking joinder. Opposition, at 5. Moreover, the authority cited in TQ Delta's Opposition supports CommScope's position that joinder is appropriate for time-barred petitions "where fairness requires it and to avoid undue prejudice to a party" *Proppant Express Invs. v. Oren Techs.*, IPR2018-00914, Paper 38 at 4 (PTAB Mar. 13, 2019) (precedential). CommScope should be permitted to challenge the '048 Patent on the merits.

## B. The Petition Presents A Compelling Unpatentability Challenge and Should be Reviewed on the Merits

The Board has found "compelling evidence" that the challenged claims are

unpatentable based on the grounds in CommScope's copycat petition. *Nokia of America Corp. v. TQ Delta, LLC*, IPR2022-00666, Paper 10, at 7 (PTAB Sept. 27, 2022) (holding that Nokia's petition "presents a compelling unpatentability challenge."). The Director recently reiterated that the IPR system was established "as a mechanism 'to improve patent quality and restore confidence in the presumption of validity that comes with issued patents.'" *Code200 et al. v. Bright Data Ltd.*, IPR2022-00861,-00862, Paper 18, at 5 (PTAB. Aug. 23, 2022) (*precedential*) (citing *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 272 (2016)).

Because the Board has already held that the grounds in the petition present "a compelling unpatentability challenge" and the purpose of the IPR system is to "improve patent quality," the Board should institute Petitioner's IPR to reach a decision on the merits. S*ee OpenSky Indus. v. VLSI Tech. LLC*, No. IPR2021-01064, Paper 102 (PTAB Oct. 4, 2022) (*precedential*) at 46-47 (noting importance of "removing patents that do not support innovation" as evidenced by "patent challenges with compelling merits"); IPR2022-00861, -00862, Paper 18, at 6 (vacating denial of joinder motion and noting that "the Patent Owner's concerns of fairness are outweighed by the benefits to the patent system of improving patent quality by reviewing the merits of the challenges raised in the petitions.").

The need for the Board to reach a merits decision on the '048 Patent is magnified in this proceeding because TQ Delta has broadly asserted the challenged

claims against numerous entities including CommScope, Nokia, Adtran, ZyXEL, Zhone, and 2Wire and may assert this patent against many more defendants. Therefore, there is a compelling public interest in granting joinder to ensure that TQ Delta cannot avoid a final written decision by settling with Nokia.

Any procedural argument that joinder would be inappropriate due to the termination of the Nokia IPR should be rejected. In similar circumstances where motions for joinder are pending prior to the settlement of the underlying IPR, the Board routinely grants joinder and permits the copycat petitioner to proceed in the IPR. *See e.g., AT&T Services, Inc. v. Convergent Media Solutions, LLC*, IPR2017-01237, Paper 10 (PTAB. May 10, 2017); *Qualcomm Inc. v. Bandspeed, Inc*., IPR2015-00314;-01577 (PTAB, Nov. 16, 2015).[1]

**C. TQ Delta's Other Arguments Should be Rejected.**

*First,* the '048 Patent is likely invalid and should be reviewed on the merits consistently with the PTAB's mandate. IPR2022-00861,-00862, Paper 18, at 5.

*Second*, the Board already has rejected – twice – TQ Delta's primary argument in opposition to joinder, *viz*., that Nokia and CommScope are somehow gaming the system. *See Nokia of America Corp. v. TQ Delta, LLC*, IPR2022-00665, Paper 10, at 5-11 (PTAB Oct. 3, 2022). TQ Delta's never-ending effort to

[1] Although the Board terminated the Nokia IPR, termination occurred well after CommScope notified the Board and all related parties of its copycat petition and attempted to schedule a conference call to discuss the proceedings. Ex. 1038.

try to show wrongdoing by CommScope and Nokia is baseless.

*Third*, TQ Delta's argument that joinder should be denied due to its settlement with Nokia should be rejected. Where a compelling validity challenge is mounted on a patent, it should be decided on the merits. IPR2021-01064, Paper 102, at 46-47. Further, because this is CommScope's first petition on the '048 patent and the grounds are the same as the grounds asserted in the Nokia IPR there are no roadmapping concerns that would trigger review under *General Plastic*.

Indeed, the *Apple Inc. v. Uniloc 2017 LLC*, IPR2020-00854, Paper 9 at 13 (PTAB. Oct. 28, 2020) (precedential) and *HTC Corp. v. Ancora Techs. Inc.*, IPR2021-00570, Paper 17 at 13 (PTAB June 10, 2021) decisions cited by TQ Delta both involved petitioners' asserting second petitions that were different from their initial rejected petitions and were subject to analysis under *General Plastic.* The reasoning from Apple and HTC *does not in any way apply here*. This is CommScope's first petition challenging the '048 Patent. Further, that 2Wire defended itself in the Delaware litigation against TQ Delta's infringement assertions on the '048 Patent has no bearing on the Board's decision to institute.

*Fourth*, denying joinder would prejudice CommScope and arbitrarily deny its statutory right under § 315(b) to seek joinder to instituted IPR proceedings. *Sony Mobile Commc'ns Ab v. Ancora Techs., Inc.*, IPR2021-00663, Paper 17 (PTAB. June 10, 2021); *see also Intel Corp. v. VLSI Technology LLC*, IPR2022-

00479, Paper 13 at 18 (rejecting argument that joinder of otherwise time-barred parties would "effectively circumvent the time limitation in § 315(b).").

*Finally*, granting joiner would not prejudice TQ Delta. TQ Delta settled its litigation against Nokia *after* CommScope filed its copycat petition. Further, this issue exists in every proceeding subject to a joinder motion. *Global Foundries U.S. Inc. v. Godo Kaisha IP Bridge 1*, IPR2017-00925 and IPR2017-00926, Paper 13 at 10 (June 9, 2017). Accused infringers file copycat petitions and joinder motions to ensure challenges are decided on the merits in situations like these.

Any alleged concerns regarding scheduling should also be rejected. Scheduling issue may be addressed under 35 U.S.C. § 316(11). TQ Delta's real party in interest and privity arguments have also already been rejected. IPR2022-00666, Paper 10, at 8-11. Further, although CommScope originally contemplated a silent understudy role prior to the settlement (Motion, at 1), alleged concerns that CommScope will take an active role in this proceeding are heavily outweighed by the PTAB' s statutory mandate to "improve patent quality."

## II. CONCLUSION.

For the foregoing reasons, CommScope respectfully requests that its Petition for *Inter Partes* Review of the '048 patent be granted and that the proceedings be joined with Nokia's IPR, IPR2022-00666.

Date: December 23, 2022

Respectfully submitted,

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**CERTIFICATION OF SERVICE ON PATENT OWNER**

Pursuant to 37 C.F.R. §§ 42.6(e), the undersigned certifies that on December 23, 2022, a complete copy of the foregoing Reply was served upon lead counsel for Patent Owner, pursuant to Patent Owner's agreement to accept such service by email as set forth in Patent Owner's Mandatory Notices.

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