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Paper 24
Entered: April 28, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BERK-TEK LLC
Petitioner

v.

BELDEN TECHNOLOGIES INC.
The Patent Owner

Case IPR2013-00069
Patent 7,663,061 B2

Before JAMESON LEE, JOSIAH C. COCKS, and
PHILLIP J. KAUFFMAN, *Administrative Patent Judges*.

KAUFFMAN, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. BACKGROUND

A. Introduction

On December 3, 2012, Petitioner, Berk-Tek, LLC, filed a petition for *inter partes* review of claims 1-21 of U.S. Patent No. 7,663,061 B2 ("the '061 patent").[1] Paper 1 ("Pet."). On May 23, 2013, the Board instituted a trial for each of claims 1-21, on one or more grounds of unpatentability. Paper 11 ("Dec.").

After institution of trial, the Patent Owner filed a patent owner response (Paper 16, "PO Resp."), but did not file a motion to amend claims. Petitioner subsequently filed a reply. Paper 17 ("Pet. Reply").

A consolidated oral hearing resulting in a single transcript was held on January 8, 2014, for this case and for *inter partes* review 2013-00058, a related case involving the same parties.[2]

We have jurisdiction under 35 U.S.C. § 6(c). This final written decision is issued pursuant to 35 U.S.C. § 318(a).

Claims 1-21 of the '061 Patent are *unpatentable*.

B. Standard for Decision with Respect to Patentability

When, as here, an *inter partes* review is instituted and not dismissed, the Board shall issue a final written decision with respect to the patentability

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[1] In the Petition, Petitioner is identified as "Nexans, Inc." Paper 1. On April 18, 2013, Nexans informed the Board that Nexans's successor in interest is "Berk-Tek, LLC." Paper 10.

[2] A transcript of the final hearing is included in the record as Paper 23 ("Tr.").

of any patent claim challenged by the petitioner. 35 U.S.C. § 318(a). The standard for determining patentability is set forth in 35 U.S.C. § 316(e), which provides as follows:

> *(e) Evidentiary standards* - In an inter partes review instituted under this chapter, the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.

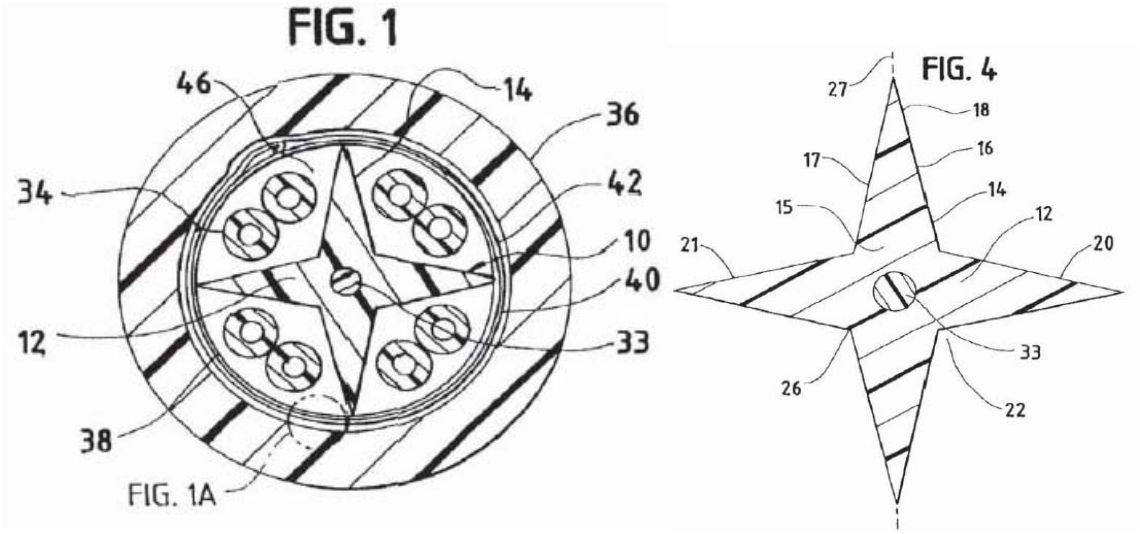
C. The '061 Patent

The '061 Patent discloses a high performance data cable. Ex. 1001, 1:12. As background, the '061 Patent discloses that many data communications systems utilize high performance data cables having at least four twisted pairs (a pair of conductors twisted about each other). *Id*. at 1:18-19. These cables must meet exacting specifications with regard to data speed and electrical characteristics. *Id*. at 1:25-27.

The cable of the '061 Patent includes a separator[3] having grooves that accommodate twisted pair conductors allowing for easy spacing of the twisted pairs that improves near-end cross-talk (NEXT) and lessens the need for complex and hard to control lay procedures and individual shielding. *Id*. at 1:28-29, 55-57, 60-63.

[3] Also known as an "interior support" and a "star separator." *See, e.g.*, Ex. 1001, 1:13-14; 6:46.

Figures 1 and 4 of the ’061 Patent are reproduced below:



Figures 1 and 4 are vertical cross-sectional views of the cable and the interior support, respectively.

In this embodiment, interior support 10 includes central region 12 with four prongs or splines 14 that extend both along the longitudinal length of interior support 10 and radially outward from the central region of interior support 10. *Id*. at 3:57-58, 4:1-3, 13-24; figs. 1, 4. Insulated twisted pairs of conductors 34 are disposed within grooves 22 defined by each pair of adjacent prongs 14, and run the longitudinal length of interior support 10. *Id*. at 5:10-12; fig. 1.

D. Illustrative Claims

Of the challenged claims 1, 7, 12, and 19 are independent. Claim 1 is illustrative, and is reproduced below:

> 1. A communications cable comprising:
>
> a plurality of twisted pairs that carry communications signals;
>
> a pair separator disposed among the plurality of twisted pairs,
>
> the pair separator comprising a central body portion and a plurality of arms radially extending from the central body portion, each pair of adjacent arms defining a channel; and
>
> a cable covering surrounding the plurality of twisted pairs and the pair separator along the length of the cable;
>
> wherein at least one twisted pair of the plurality of twisted pairs is respectively located in the channel defined by each pair of adjacent arms;
>
> wherein the plurality of twisted pairs and the pair separator are helically twisted together along the length of the cable; and
>
> wherein the cable covering does not include an electrically conductive shield.

E. Prior Art References Supporting Alleged Unpatentability of Claims 1-21

JP '307	Sh056 (1981)-7307	Jan. 26, 1981	Ex. 1005[4]
Tessier '046	CA 2,058,046	Aug. 22, 1992	Ex. 1003
Meer '417[5]	CA 2,071,417	Dec. 18, 1993	Ex. 1006

F. Pending Grounds of Unpatentability Against Claims 1-21[6]

Reference(s)	Grounds	Claims
Tessier '046	§ 102	1-5 and 7-20
Tessier '046 and Meer '417	§ 103	6
Tessier '046 and JP '307	§ 103	21

II. CLAIM INTERPRETATION

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Claim terms are also given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). If an inventor acts as his or her own lexicographer, the definition must be set forth in the specification with reasonable clarity, deliberateness, and precision. *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998).

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[4] Exhibit 1005 contains both the Japanese and English language versions of the reference.
[5] The named inventor is Harry van der Meer.
[6] *See* Dec. 16-17.

The challenge is to interpret claims in view of the specification without unnecessarily importing limitations from the specification into the claims. *See E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003). If a feature is not necessary to interpret what the inventor means by a claim term, it is "extraneous" and should not be read into the claim. *Renishaw PLC*, 158 F.3d at 1249; *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988). The construction that stays true to the claim language and most naturally aligns with the inventor's description is likely the correct interpretation. *See Renishaw PLC*, 158 F.3d at 1250.

A. Channels

1. Board Interpretation

We begin our claim construction analysis with the claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) ("It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." (citations and quotations omitted)). Independent claim 1 is directed to a communications cable that includes a plurality of twisted pairs, a pair separator, and a cable covering. The pair separator includes a plurality of arms, each pair of adjacent arms defining a channel. At least one twisted pair of the plurality of twisted pairs is located in the channel.

The Specification of the '061 Patent does not provide a lexicographical definition of "channel." Indeed, the term "channel" is used

in the claims, but is not used in the remainder of the Specification. An ordinary meaning of "channel" is "a long gutter, groove, or furrow." Ex. 2001; Ex. 2002. Nothing in the Specification of the '061 Patent is inconsistent with the ordinary meaning that a channel is a "long gutter, groove, or furrow."

The '061 Patent is a continuation of application No. 09/765,914, now U.S. Patent No. 7,339,116 ("the '116 Patent"), which is a continuation-in-part of application No. 08/629,509, now U.S. Patent No. 5,789,711 (the '711 Patent") and application No. 09/074,272, now U.S. Patent No. 6,222,130 ("the '130 Patent"). Ex. 1001, 1:3-8.

Because the '061 Patent derives from the same parent application and shares common terms with the '116 Patent, we construe claim terms in the '061 Patent consistent with their use in the '116 Patent.[7] *See NTP v. Research in Motion, Ltd.*, 418 F. 3d 1282, 1292 (Fed. Cir. 2005) (When construing claim in patents that derive from the same parent application and share common terms, "we must interpret the claims consistently across all asserted patents.").

In the '116 Patent, independent claim 1 is directed to a data cable that includes an interior support having a plurality of projections where adjacent projections define an "open space," and one of the plurality of twisted pairs is disposed in each open space. Ex. 3001, 6:45-61. Claim 3 of the '116 Patent depends from independent claim 1 and requires that the open space be

[7] The term "channels" is not used in the '711 Patent or the '130 Patent.

one selected from "a group consisting of a channel, a groove, a duct, and a passage." *Id*. at 6:65-67. Independent claim 4 and its dependent claim 6 utilize the claim terms "open space" and "channel" in the same manner. *Id*. at 7:1-15; 8:1-17. The term "channel" is not otherwise used in the '116 Patent.

Independent claims 7 and 12 of the '061 Patent contain uses of the term "channel(s)" similar to that of independent claim 1.[8]

Therefore, in the specific context of these claims, consistent with the '116 and '061 Patents, a channel, as a long gutter, groove, or furrow is a type of open

space defined by the interior support within which one of the plurality of twisted pairs is disposed.

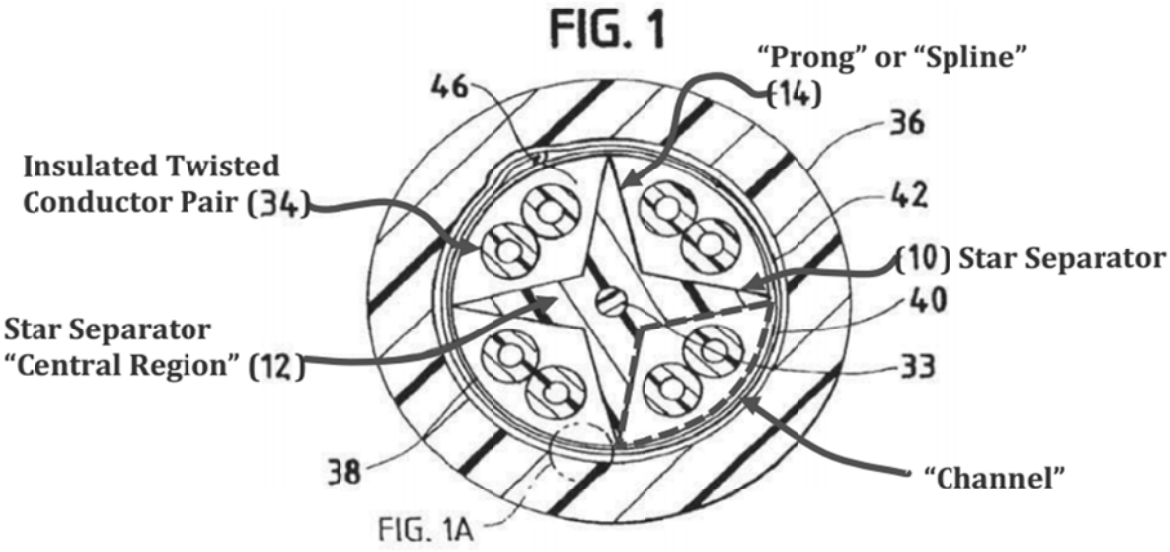
2. The Patent Owner Argument

The Patent Owner argues that "channels" as claimed are substantially enclosed passages formed in the cable by the interior support and the jacket. Ex. 2004, 4; *see also* PO Resp. 10-12.

[8] Independent claim 19 does not recite "channels." Rather, the adjacent arms of the interior support define "grooves." Ex. 1001, 8:22-43.

An annotated version of Figure 1 of the ’061 Patent is reproduced below:

The ’061 Patent



This annotated version of Figure 1 of the ’061 Patent
is a cross-sectional view of a cable.

The Patent Owner annotated Figure 1 with a dotted line identified as a “channel.” The Patent Owner asserts that the ordinary meaning of the term “channels” viewed in light of the Specification supports the interpretation that “channels” are substantially enclosed passages formed in the cable by the interior support and the jacket. PO Resp. 9-11.

a) Ordinary Meaning

The Patent Owner proffers that ordinarily “channel” is understood to mean either “a usually tubular enclosed passage: CONDUIT,” or “an especially tubular enclosed passage: CONDUIT, PIPE, DUCT <the poison ~

in a snake's fangs." PO Resp. 10. Based upon these ordinary meanings, the Patent Owner argues that "channels" as claimed are substantially enclosed passages formed in the cable by the interior support and the jacket. Ex. 2004, 4; *see also* PO Resp. 10-12.

This contention contradicts the plain language of each of the independent claims. As explained above, each of the independent claims calls for the separator to define the channels, not the separator support in combination with the jacket. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (the claims define the invention).

The Patent Owner's claim construction is also flawed in that the ordinary meaning of "channel" proffered is a tubular enclosed passage, yet the Patent Owner asks that "channel" be interpreted as a *substantially* enclosed passage. As pointed out by Petitioner, nothing in the '061 Patent requires the channels to be "substantially enclosed." *See* PO Resp. 1. As detailed below, the Patent Owner does not explain cogently how such a deviation from the ordinary meaning of the term "channel" is warranted by the Specification. *See e.g., In re Translogic Tech., Inc.*, 504 F.3d at 1257 (absent a lexicographical definition, claim terms should be given their ordinary meaning as understood by a person of ordinary skill in the art).

b) Specification

The Patent Owner's claim interpretation looks to three portions of the Specification for support. First, the Patent Owner observes that the Specification indicates that each pair of adjacent prongs 14 of interior support 10 defines a groove 22. PO Resp. 11 (citing Ex. 1001, 4:42).

Indeed, the ’061 Patent contains such disclosure. *See* Ex. 1001, 4:21; fig. 2. This disclosure does not describe the groove as a substantially enclosed passage formed by the interior support and the jacket. Further, the Patent Owner fails to explain persuasively how this disclosure regarding a groove relates to the scope of the term “channel.”

Second, the Patent Owner asserts that in the ’061 Patent the term “channels” is reserved for describing each substantially enclosed space that is formed when the jacket is closed around the arms to enclose the twisted pairs. PO Resp. 11. In support of this assertion, the Gareis Declaration states, “when the ’061 patent describes the space between its prongs or splines, it uses the term ‘groove,’ and that the term ‘channel’ is reserved for contexts in which the area between the prongs/splines is also enclosed by the jacket, forming a substantially enclosed passage.” Ex. 2003 ¶ 25.

This assertion is incorrect in terms of the structure that defines the channel and in terms of the extent of the channel. Regarding structure, the ’061 Patent does not describes a “channel” as a space defined by the interior support in combination with the jacket. Rather, as detailed above, the ’061 Patent consistently indicates that the interior support defines the channels. Regarding the extent of the channel, the ’061 Patent does not describe “channels” as substantially enclosed passages.

Third, the Patent Owner contends that the contrast of the term “channels” as used in claims 1, 7, and 12 to use of the term “grooves” in claim 19 illustrates that the terms have different meanings and, therefore, interpreting “channels” and “grooves” as interchangeable is an erroneous

claim construction. PO Resp. 11-12. As explained above, a channel and a groove are each a type of open space defined by the interior support. The Patent Owner does not distinguish persuasively a channel from a groove in a manner that supports the Patent Owner's claim interpretation that a channel is a substantially enclosed passage.

c) Declaration

As mentioned above, the Patent Owner offers the declaration of Mr. Gareis, a co-inventor of the '061 Patent, stating that a person of ordinary skill in the art of designing twisted pair cables would have understood the term "channel" to mean a substantially enclosed passage in the cable. Ex. 2003 ¶ 25. Beyond the erroneous factual assertion regarding the use of the term "channel" in the '061 Patent explained above, the Declaration suffers from other shortcomings.

For the reasons that follow, this contention is unpersuasive. First, we note that the statement does not go so far as to assert that "channel" is a term of art; rather, the assertion relates to the meaning of "channel" in light of the Specification. Second, as detailed above, the intrinsic evidence as to the meaning of the claim term "channel" is unambiguous so that we need not resort to expert testimony. *See* Ex. 2003 ¶ 11; *Bell & Howell Document Mgmt. Prods. Co. v. Altek Sys.*, 132 F3d 701, 705 (Fed. Cir. 1997); *see also Roton Barrier, Inc. v. Stanley Works*, 79 F.3d 1112, 1126 (Fed. Cir. 1996). Third, the statement is conclusory in that it is not supported by a citation to the Specification or an ordinary meaning. *See* 37 C.F.R. § 42.65(a); *see also Rohm and Haas Co. v. Brotech Corp*., 127 F.3d 1089, 1092 (Fed. Cir 1997).

For these reasons, the claim construction put forth in the Declaration is unpersuasive.

d) In the Cable

At the hearing, the Patent Owner elaborated that "channels" as claimed are substantially enclosed passages because the claim recites that the "channels" are "in the data communications cable." Tr. at 31. This argument is not relevant because the quoted language is not contained in the claims at issue.

e) Conclusion

For these reasons, we decline to accept the Patent Owner's claim construction.

B. Helically Twisted Together

1. Board Interpretation

a) Claim Language

Independent claims 1, 12, and 19 are each apparatus claims directed to a communications cable. Each claim recites, "wherein the plurality of twisted pairs and the interior support are helically twisted together along the length of the cable." Ex. 1001, 6:55-57; 8:1-3, 38-40. While the clause at issue begins with the term "wherein," it does not merely state the result of limitations elsewhere recited in the claim. Only this clause recites that the twisted pair conductors and the interior support are twisted together about a common axis. Therefore, this clause adds to the patentability or substance

of the claim. *Cf. Texas Instruments, Inc. v. U.S. Int'l Trade Comm'n*, 988 F2d 1165, 1172 (Fed. Cir. 1993).

The claims do not recite that the claimed structure is the structure produced by twisting the twisted pairs along with the interior support. Nor do the claims recite that the cable is "closed" or "cabled."

b) Specification

The Specification of the '061 Patent does not include a lexicographical definition of the claim phrase "helically twisted together," or any of the terms in that phrase. Nor does the '061 Patent describe the process of helically twisting together the twisted pair conductors and the interior support.

The '061 Patent describes that the separator may be "cabled" with a helixed or S-Z configuration to define helically twisted grooves that accommodate the twisted pairs. Ex. 1001, 5:18-23. Thus, the separator alone is "cabled," and being "cabled" is not described as twisting the twisted pairs along with the separator. More importantly, the claims do not require that the separator is "cabled;" rather, as noted above, the claims require that the twisted pairs and the interior support are helically twisted together along the length of the cable.

c) Interpretation

The structure required by the claims is the twisted pairs and the interior support helically twisted together along the length of the cable. The claims are not limited to a structure produced by a certain method of manufacture.

2. Patent Owner Argument

The Patent Owner does not provide an explicit claim construction. Rather, the Patent Owner implies a claim construction through reference to the prior art. Specifically, the Patent Owner argues that Tessier '046's core member 22 and body 32 are pre-formed as helixes as opposed to being helically twisted together with the twisted conductor pairs, and for that reason, Tessier '046 cannot anticipate claims 1, 12, and 19. PO Resp. 14-15. In support of this contention, the Gareis Declaration states that the "cabling" process of the '061 Patent calls for forming the cable by helically twisting the conductor pairs along with the separator about a common axis. Ex. 2003 ¶¶ 30-33.

To the extent that the Patent Owner's argument can be seen as a contention that the step of twisting the twisted pairs along with the separator is claimed, such a contention is unpersuasive because the claims at issue are apparatus claims. *See* Pet. Reply 13 (noting that the claims at issue are product claims and do not cover a process).

The statement in the Gareis Declaration that as a result of the "cabling" process, the separator/interior support is twisted along with the twisted pairs about a common axis, is contradicted by the reference itself. *See* Ex. 2003 ¶ 33. As detailed above, the '061 Patent does not describe "cabling" as twisting the twisted pairs along with the separator; rather, the '061 Patent describes that being "cabled" defines grooves in the separator. Significantly, as detailed above, claims 1, 12, and 19 do not require cabling or closing the cable. Instead, claims 1, 12, and 19 each require the twisted

pairs and the separator to be helically twisted together along the length of the cable. For that reason, the meaning of "cabled" is not determinative of our claim construction.

The Patent Owner's argument also can been seen as an assertion that helically twisting the twisted pairs along with the interior support, as opposed to separately twisting the components and intertwining them, produces a different structure. We have no evidence before us that the structures resulting from these two processes differ. However, we need not make such a determination because nothing in the claim language or the Specification limits the claims to the structure produced by a specified process. As explained above, the claims require that the twisted pairs and the interior support are helically twisted together along the length of the cable, and the claims are not limited to a structure produced by a certain method of manufacture. That is, the structure required by the claims could be produced by either method of manufacture.

3. Conclusion

The structure required by the claims is the twisted pairs and the interior support helically twisted together along the length of the cable, and the claims are not limited to a structure produced by a certain method of manufacture.

III. PATENTABILITY

A. Alleged Anticipation by Tessier '046

Petitioner contends that claims 1-5 and 7-20 are unpatentable over Tessier '046. Petitioner provides detailed explanations as to how each claim element, arranged as is recited in these claims, is disclosed by Tessier '046. Pet. 15-16, 25-28; Pet. Reply 1-15. Upon review of the Petition, Patent Owner's Response and Petitioner's Reply, we determine that Petitioner has shown by a preponderance of the evidence that claims 1-5 and 7-20 are unpatentable under 35 U.S.C. § 102 as anticipated by Tessier '046.

To anticipate a patent claim under 35 U.S.C. § 102, "a single prior art reference must expressly or inherently disclose each claim limitation." *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1334 (Fed. Cir. 2008). "It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986).

1. Tessier '046

Tessier '046 discloses an electrical telecommunications cable. Ex. 1003, 1:2-3. The cable comprises: a plurality of twisted pairs of individually insulated conductors, a spacer means, and an outer jacket. Ex. 1003 at 2:1-5; 2:11-20; 3:2-6. The spacer means extends along the axis of the cable and has radially outwardly extending projections that are spaced apart circumferentially and define recess regions in which the conductors are disposed. *Id.*

Figures 2 and 3 of Tessier ’046, are reproduced below:

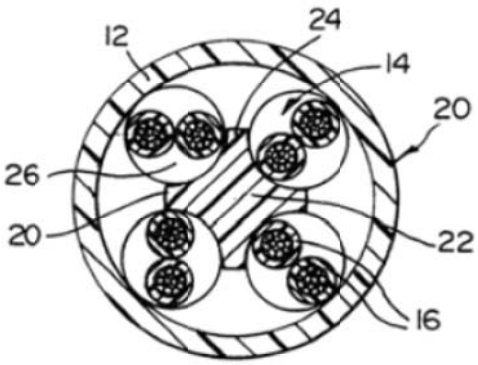


FIG. 2

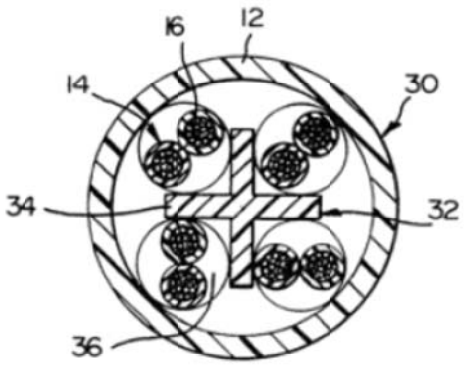


FIG. 3

Figures 2 and 3 illustrate the second and third embodiments of Tessier ’046, respectively.

In the second embodiment, cable 20 is comprised of jacket 12 surrounding four pairs 14 of insulated conductors 16 and central core member 20 (both the cable and the central core member are labeled “20” in figure 2). Ex. 1003, 2:36-3:1; 3:36-4:4. The central core member “extends axially along the cable and is formed from a tensile dielectric material.” *Id*. at 4:4-5. The central core member includes central mass 22 and four projections 24, with concave sides, that are equally angularly placed around the axis of the central core member and define recesses 26 between them; an individual twisted pair of the conductors lies in each of the four recesses between the projections. *Id*. at 4:5-14. “The projections 24 and thus the recesses 26 extend in helical fashion along the core member 20 to allow the

pairs 14 to lie within the recesses in stranded fashion." *Id*. at 4:14-17 (emphasis added).

The third embodiment is similar to the second embodiment except that central core member 20 of the second embodiment is replaced by in the third embodiment by body 32 formed by four helically extending spokes 34 that lie at right angles to each other in cross-section-shaped ("cruciform fashion"). Spokes 34 of the body 32 form recess regions 36 that accommodate the pairs 14 of conductors 16. *Id.* at 4:22-37.

In both the second and third embodiments, jacket 12 holds pairs 14 of conductors 16 in their respective recesses (26, 36). *Id*. at 2:4-5; 4:14-17, 35-37; figs. 2, 3.

We have reviewed the parties' arguments and supporting evidence, and determine that the explanations and supporting evidence provided by Petitioner as to how each element of the challenged claims is described by Tessier '046 have merit. Our analysis will focus on the deficiencies alleged by the Patent Owner.

2. "Channels" (Claims 1, 7, and 12)

The Patent Owner argues that Tessier '046 discloses one large cylindrical channel with core member 20 being located in the center.[9] PO Resp. 12-13; Ex. 2003 ¶¶ 27-28.

This contention is premised on the interpretation that "channels" as claimed are substantially enclosed passages formed by the separator and the

[9] Patent Owner does not present additional arguments for the associated dependent claims.

jacket. As explained above, this interpretation is incorrect. Consequently, the Patent Owner's argument is unpersuasive because it is not commensurate in scope with the claims at issue. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) ("[A]ppellant's arguments fail from the outset because . . . they are not based on limitations appearing in the claims.").

Tessier '046 discloses a second (cable 20) and third embodiment (cable 30), each including an interior support (central mass 22, body 32) having radially outwardly extending projections 24 or spokes 34 that define channels (recess regions 26, 34). Ex. 1003, 2:36-3:35; figs. 2, 3; Pet. 15-16, 24-28. These channels (recess regions 26, 34) permit twisted pairs 14 of conductors 16 to be individually disposed within them. Ex. 1003, 4:35-37. Further, these channels (recess regions 26, 34), in combination with the jacket 12, maintain the twisted pairs 14 of conductors 16 in their respective channels. *Id*. at 4:14-17; figs. 2, 3.

For these reasons, the Patent Owner's arguments are unpersuasive with regard to independent claims 1, 7, and 12 and their respective dependent claims 2-5, 8-11, and 13-18.

3. "Twisted together" (Claims 1, 12, and 19)

The Patent Owner argues that independent claims 1, 12, and 19 cannot be anticipated by Tessier '046 because core member 22 and body 32 are pre-formed as helixes rather than being helically twisted together with the conductor pairs.[10] PO Resp. 14-16.

[10] Patent Owner does not present additional arguments for the associated

This argument is premised on the interpretation that the claims are limited to a structure produced by twisting the twisted pairs along with the separator and do not cover a structure produced by separately twisting those components and then intertwining them. As explained above, the claims at issue are not limited in this manner. Thus, the Patent Owner's argument is unpersuasive because it is not commensurate in scope with the claims at issue. *See In re Self*, 671 F.2d at 1348.

Upon review of the Petition, Patent Owner's response and Petitioner's reply, we determine that Petitioner has shown by a preponderance of the evidence that Tessier '046 anticipates claims 1-5 and 7-20.

B. Alleged Obviousness over Tessier '046 and Meer '417

Claim 6 depends from claim 1, and recites, "wherein the communications cable is about 0.300 to 0.400 is [sic] diameter."[11]

As noted in section I.F. above, Petitioner contends that claim 6 is unpatentable as obvious over Tessier '046 and Meer '417. Petitioner provides sufficient explanations and evidence to demonstrate by a preponderance of the evidence that the combination of Tessier '046 and Meer '417 would have rendered the claimed subject matter obvious to one with ordinary skill in the art. Pet. 15-16, 19, 34; Pet. Reply 1-8, 10-15.

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dependent claims.

[11] *See also* Dec. 12-13 (explaining that the dimensions of claim 6 are in inches).

1. Meer '417

Meer discloses a telecommunications cable having a diameter between about 0.27 inches and about 0.43 inches. Pet. 19, 34; Ex. 1006, 1:2-3, 8; Table II. Meer discloses the desirability of minimizing the outside diameter of communications cables. Ex. 1006, 1:4-3:3.

2. Analysis

We have reviewed the parties' arguments and supporting evidence.

As discussed above, Meer discloses a cabling having a diameter overlapping the claimed range, and the desirability of minimizing communications cable outside diameter.

Our analysis will focus on the deficiencies alleged by the Patent Owner.

The Patent Owner argues that Meer does not cure the deficiencies of Tessier identified in the argument against the first ground of unpatentability. PO Resp. 16. Therefore, the Patent Owner is applying the arguments against claim 6 by virtue of its dependence from independent claim 1. These arguments are unpersuasive for the reasons given in the analysis of independent claim 1 in the first ground of unpatentability above.

Upon review of the Petition, Patent Owner's response, and Petitioner's reply, we determine that Petitioner has shown by a preponderance of the evidence that claim 6 is unpatentable as obvious over Tessier '046 and Meer '417.

C. *Alleged Obviousness over Tessier '046 and JP '307*

As noted in section I.F. above, Petitioner contends that claim 21 is unpatentable as obvious over Tessier '046 and JP '307. Petitioner provides sufficient explanations and evidence to demonstrate by a preponderance of the evidence that claim 21 is unpatentable as obvious over Tessier '046 and JP '307. Pet. 15-16, 28-29, 34; Pet. Reply 1-8, 10-15.

1. JP '307

JP '307 discloses a device for overall manufacture of insulation clad communications cables, and specifically discloses S-Z stranding of cable components. Pet. 18-19, 29; JP '307, p. 24.

2. Analysis

Having reviewed the parties' arguments and supporting evidence, we determine that Petitioner's explanations and supporting evidence demonstrate by a preponderance of the evidence that the challenged claims are unpatentable as obvious over Tessier '046 and JP '307. Our analysis will focus on the deficiencies alleged by the Patent Owner.

The Patent Owner argues that JP '307 does not cure the deficiencies of Tessier identified in the argument against the first ground of unpatentability. PO Reply 17. Therefore, The Patent Owner is applying the arguments against claim 21 by virtue of its dependence from independent claim 19. These arguments are unpersuasive for the reasons given in the analysis of independent claim 19 in the first ground of unpatentability above.

Upon review of the Petition, Patent Owner's response, and Petitioner's reply, we determine that Petitioner has shown by a

preponderance of the evidence that claim 21 is unpatentable as obvious over Tessier ’046 and JP ’307.

IV. CONCLUSION

Berk-Tek has met its burden of proof by a preponderance of the evidence in showing under 35 U.S.C. § 103 that: (1) claims 1-5 and 7-20 are unpatentable as anticipated by Tessier ’046; (2) claim 6 is unpatentable as obvious over Tessier ’046 and Meer ’417; and (3) claim 21 is unpatentable as obvious over Tessier ’046 and JP ’307.

V. ORDER

In consideration of the foregoing, it is

ORDERED that claims 1-21 of the U.S. Patent 7,663,061 Patent are unpatentable; and

FURTHER ORDERED that because this is a final written decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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Patent 7,663,061

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