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Paper No. 12
Entered: October 31, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMSCOPE, INC,
Petitioner,

v.

TQ DELTA, LLC,
Patent Owner.

IPR2022-00833
Patent 9,485,055 B2

Before JEAN R. HOMERE, LYNNE E. PETTIGREW, and KARA L. SZPONDOWSKI, *Administrative Patent Judges.*

HOMERE, *Administrative Patent Judge.*

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background and Summary

CommScope, Inc. ("Petitioner")[1] filed a Petition requesting *inter partes* review of claims 1, 4, 5, 7, 9–11, 14, 15, 17, 19, and 20 ("the challenged claims") of U.S. Patent No. 9,485,055 B2 (Ex. 1001, "the '055 patent"). Paper 2 ("Pet."), 1. TQ Delta, LLC. ("Patent Owner")[2] filed a Preliminary Response. Paper 8 ("Prelim. Resp."). Pursuant to our authorization, Petitioner filed a Reply (Paper 9, "Reply"), and Patent Owner filed a Sur-reply (Paper 11, "Sur-reply").

Pursuant to 37 C.F.R. § 42.4(a), we have the authority to determine whether to institute review. Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the petition "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." *See* 37 C.F.R. § 42.108. For the reasons expressed below, we determine that, on this record, Petitioner has not established a reasonable likelihood that it would prevail with respect to at least one of the challenged claims of the '055 patent. Accordingly, we do not institute an *inter partes* review as to the challenged claims on the grounds of unpatentability presented.

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[1] Petitioner identifies itself as well as CommScope Holding Company, Inc. as real parties-in-interest. Pet. 80–81.
[2] Patent Owner identifies itself as the real-party-in-interest. Paper 5, 1.

B. Related Matters

The parties indicate that the '055 patent is involved in the following proceedings:

TQ Delta, LLC v. Nokia, Inc., Case No. 2:21-cv-00309 (E.D. Tex.), filed August 13, 2021. Pet. 81; Paper 5, 1; Paper 6, 3;

TQ Delta, LLC v. CommScope Holding Co., Case No. 2:21-cv-003010 (E.D. Tex.), filed August 13, 2021 (the "Texas case"). Pet. 81; Paper 5, 1; Paper 6, 3; *see also* Ex. 2002 (District Court Consolidation Order) (consolidated the Nokia case[3] into the Texas case).

C. The '055 Patent

The '055 patent relates to a method and system for retransmitting packets in a communications system involving digital subscriber line (DSL) technology. Ex. 1001, 1:28–33, 2:28–33, 8:66–9:4. Because packet retransmission reduces error but increases latency, the system allows low packet error rate (PER) packets to be retransmitted using error control, whereas low-latency packets are not retransmitted. *Id.* at 2:1–12. As shown in Figure 1 below, the '055 patent describes using transceiver (200, 300) including a transmitter and a receiver having common circuitry (e.g., retransmission buffer 250, 350) to facilitate retransmission of low PER packets. *Id.* at 9:64–10:16.

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[3] TQ Delta sued Nokia on various patents in *TQ Delta, LLC v. Nokia Corp.*, Case No. 2:21-cv-00309 (E.D. Tex.), filed August 13, 2021 (the "Nokia case").

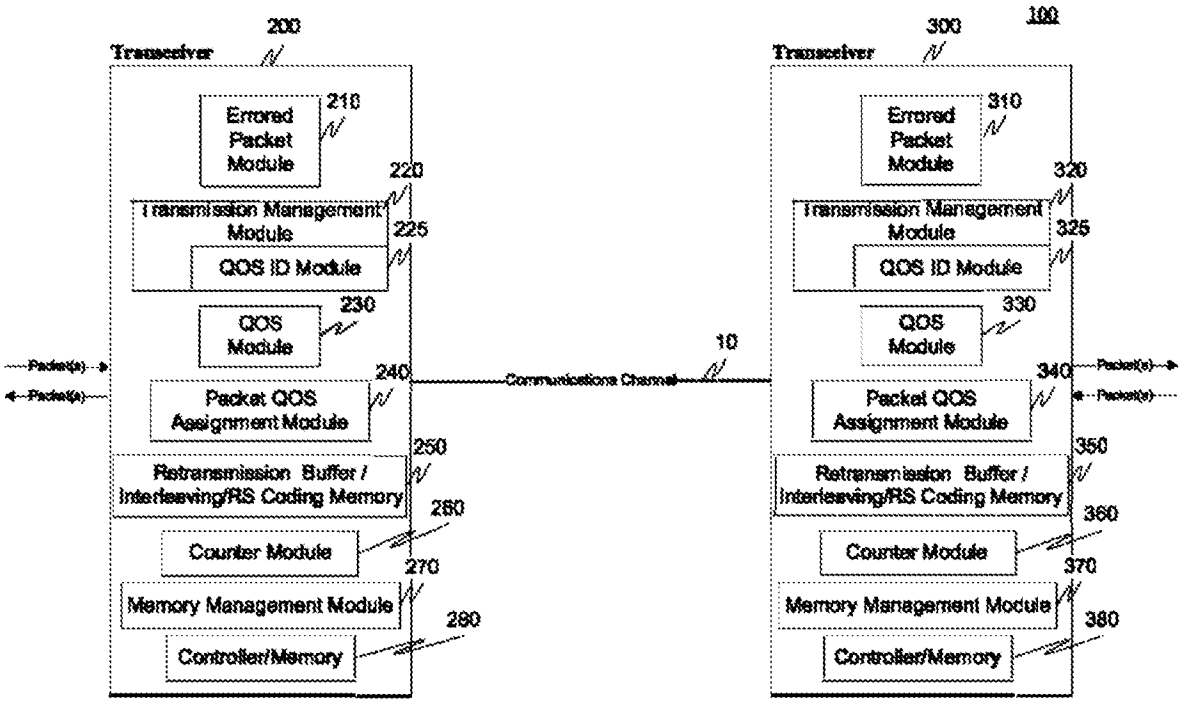

Fig. 1

Figure 1, reproduced above, depicts transceiver 200 transmitting packet information including quality of service (QOS) metrics (e.g. latency and PER) via communications channel 10 to receiving transceiver 300 for possible retransmission. *Id.* at 1:28–33. In particular, upon determining from a packet header field received from a higher layer of a communication device that the underlying packet has a low PER (i.e., re-transmittable type packet), transceiver 200 appends a sequence ID (SID) thereto, stores the packet in retransmission buffer 250, and forwards the packet to transceiver 300, which in turn retransmits the packet. *Id.* at 1:44–54, 2:8–12, 11:25–31, 12:8–15, 12: 40–53, 21:19–27. Conversely, upon identifying the packet as having a low latency, transceiver 200 simply transmits the packet without

attaching a SID thereto so that transceiver 300 forwards the packet to an upper layer for processing without retransmission. *Id.* at 21:12–18.

D. Illustrative Claim

Of the challenged claims, claims 1 and 11 are independent. Claim 1 is illustrative and is reproduced below:

> A method of packet retransmission, in a transceiver, comprising:
>
> transmitting, by the transceiver, a first type of packet; and:
>
> transmitting, by the transceiver, a second type of packet,
>
> wherein the first type of packet is stored in a retransmission buffer after transmission and the second type of packet is not stored in a retransmission buffer after transmission,
>
> wherein the first and second types of packet comprise a header field that indicates whether a transmitted packet is a first type of packet or a second type of packet, and
>
> wherein the header field of the first type of packet comprises a sequence identifier (SID) that is incremented after the first type of packet is transmitted and the header field of the second type of packet does not comprise the SID of the first type of packet.

Ex. 1001, 23:65–24:14.

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