

**2012-1297
(Reexamination No. 90/010,017)**

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

**IN RE TELES AG INFORMATIONSTECHNOLOGIEN and SIGRAM SCHINDLER
BETEILIGUNGSGESELLSCHAFT MBH**

Appeals from the United States Patent and Trademark Office,
Board of Patent Appeals and Interferences.

**APPELLANTS' CONSENTED-TO MOTION FOR LEAVE TO FILE
AN AMENDED REPLY BRIEF**

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February 25, 2013

Appellants Teles AG Informationstechnologien and Sigram Schindler Beteiligungsgesellschaft MBH hereby move pursuant to Federal Rule of Appellate Procedure 27(a)(1) for leave to file an “Amended Reply Brief for Plaintiffs-Appellants” to their original “Reply Brief for Plaintiffs-Appellants” filed on February 20, 2013. This Motion is being filed within 5 days of the original filing of the “Reply Brief for Plaintiffs-Appellants.”

In support of the factual circumstances that necessitate this request, the “Declaration of Prof. Dr.-Ing. Sigram Schindler” is attached hereto as Appendix A. The proposed “Amended Reply Brief of Plaintiffs-Appellants” for which acceptance is requested is attached hereto as Appendix B.

Here is an explanation of what happened: Dr. Schindler is both: (a) the Chief Executive Officer, founder, and major stockholder of Appellant Teles AG (“Teles”); and (b) the President, founder, and sole stockholder of Appellant Sigram Schindler Beteiligungsgesellschaft mbH (“SSBG”).

Although Appellants rely on legal counsel, in actuality, Dr. Schindler was the primary author of that Reply Brief filed on February 20, 2013 in this Appeal. The undersigned attorney and his colleagues representing Appellants certainly are aware of their legal and ethical obligations to this Court (and to any court) and they have assured that every paper filed by them on behalf of Appellants has met those obligations. However, compared to other clients, Appellants’ counsel’s role in the

substantive drafting of papers has been less than typical. Appellants' counsel certainly gave substantive suggestions and reviewed/approved all of the content, as well as correcting grammatical and spelling errors and rewording phrases into proper English. However, Dr. Schindler ultimately approved all of the content and was to review all content before filing. In summary, he exercised close control of the Reply Brief in this Appeal.

Concerning Section II.C.3 of the Reply Brief filed February 20, Appellants' counsel had revised and omitted certain legal arguments from Section II.C.3 from the draft version that Dr. Schindler prepared. Due to his being on an airplane headed back to Berlin, Germany on February 20, 2013, the same day that the Reply Brief was filed, Dr. Schindler was unavailable to review legal counsel's revisions and omissions to Section II.C.3 prior to the Reply Brief's filing much later in the day. There was no way to contact Dr. Schindler to provide to him a revised version when he was on the airplane. In Dr. Schindler's opinion, Section II.C.3 of the Reply Brief, as filed, does not contain all of the arguments that Appellants had intended.

Dr. Schindler arrived at Foley & Lardner LLP's offices in DC starting at about noon on February 20. He left around 2:30 pm to be able to catch his airplane. (Dr. Schindler did not want to stay in the U.S. another day until the preparing and filing process was complete, due to a health concern that arose that

same day, which he says is due to his advanced age. For that reason, he wanted to go back to Germany immediately.) The next day, when he reviewed an as-filed copy of the Reply Brief, Dr. Schindler was very surprised and upset to see changes to that Section II.3.C.

In his opinion, there was some misunderstanding or miscommunication or mistake between Appellants' counsel and him. Dr. Schindler had not intended Section II.C.3 of the Reply Brief to be revised unless there was a necessary reason to do so.

Accordingly, Appellants respectfully ask for leave to file an "Amended Reply Brief." Appellants ask for the understanding of this Court in allowing Appellants to file an Amended Reply Brief so that what Appellants intended to file is actually now filed. As the CEO of Teles and as the President of SSBG, Dr. Schindler feels very strongly that now filing the version of the Reply Brief that had been intended to be filed is in Appellants' best interests. Appellants hope that this misunderstanding or miscommunication or mistake can be corrected. Appellants submit that there is no prejudice to Appellee.

Concerning the changes that were made to the Reply Brief that are reflected in the proposed Amended Reply Brief in Appendix B, first, Section II.C.3 of the Reply Brief has been revised. Unfortunately, revising Section II.C.3 put the Amended Reply Brief over the word limit. So, second, the Amended Reply Brief

was amended in places other than Section II.C.3 to bring the word count down below 7,000. Appellants' counsel believes that such amendments in places other than Section II.C.3 amount to "word smithing" and not to substantive or factual changes. Of course, a "comparison document" that shows the exact changes between the Reply Brief and the Amended Reply Brief can be provided.

Accordingly, Appellants respectfully request that the Court grant this motion for leave to file the "Amended Reply Brief" attached hereto as Appendix B.

Statement of Consent

Appellants notified counsel for Appellee David J. Kappos of the United States Patent and Trademark Office ("USPTO") that Appellants would be filing this Motion and explained the basis for seeking the request to file an "Amended Reply Brief." Counsel for the USPTO graciously indicated that they consent to the requested action, for Appellants to file an "Amended Reply Brief for Plaintiffs-Appellants."

February 25, 2013

Respectfully submitted

/s/ Michael D. Kaminski

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CASE NO. 2012-1297**

CERTIFICATE OF INTEREST

Counsel for Plaintiffs-Appellants, certifies the following.

1. The full name of every party or amicus represented by me is:

Teles AG Informationstechnologien, and Sigram Schindler

Beteiligungsgesellschaft mbH.

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

Teles AG Informationstechnologien and

Sigram Schindler Beteiligungsgesellschaft mbH.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or agency or are expected to appear in this court are:

Foley & Lardner LLP and its attorneys: Michael D. Kaminski, Howard N. Shipley, George E. Quillin, and Ryan A. Schmid.

Fried, Frank, Harris, Shriver & Jacobson LLP and its attorneys: James W. Dabney, Douglas W. Baruch and John F. Duffy.

Novak Druce + Quigg LLP and its attorney: Vincent M. DeLuca.

Date: February 25, 2013

Signature of Counsel /s/ George E. Quillin

Printed name of counsel: George E. Quillin

CERTIFICATE OF SERVICE

I certify that on this 25th day of February, 2013, in accordance with Fed. R. App. Pro. 27(a)(1) and Federal Circuit Rule 27, the foregoing **APPELLANTS'** **CONSENTED-TO MOTION FOR LEAVE TO FILE AN AMENDED** **REPLY BRIEF** is being served electronically on counsel for Appellee via the court's CM/ECF system.

February 25, 2013

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APPENDIX A

APPENDIX B

**2012-1297
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**UNITED STATES COURT OF APPEALS
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**IN RE TELES AG INFORMATIONSTECHNOLOGIEN and SIGRAM SCHINDLER
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Appeals from the United States Patent and Trademark Office,
Board of Patent Appeals and Interferences.

DECLARATION OF PROF. DR.-ING. SIGRAM SCHINDLER

I, Sigram Schindler, declare as follows:

1. I am the first-named inventor of the subject U.S. Patent No. 6,954,453 (“the ‘453 Patent”), the validity of which is currently at issue in Appeal No. 2012-1297, pending before this Court. (Also, Appeal No. 2012-1297 is a companion case to this Appeal No. 2012-1513, which involves U.S. Patent No. 7,145,902. On February 6, 2013, legal counsel filed a Brief (“the ‘902 Brief”) in Appeal No. 2012-1513.)

2. I am presently the Chief Executive Officer of Teles AG (“Teles”), the original assignee of the ‘453 Patent. I founded Teles AG in 1983. I am still the major stockholder for Teles AG.

3. I am also presently the President of Sigram Schindler Beteiligungsgesellschaft mbH (“SSBG”), another company that I personally founded. SSBG is the current assignee of the ‘453 Patent.

4. I am now 77 years of age. My senior age perhaps provides me with more of a sense of urgency and focus to my significant responsibilities to Teles AG and to SSBG.

5. On February 20, 2013, legal counsel for Teles and SSBG filed a Reply Brief (“the ‘453 Reply Brief”) in Appeal No. 2012-1297.

6. Although I rely on legal counsel, in actuality, I was the primary author the ‘453 Reply Brief. In fact, footnote 4 of the ‘453 Reply Brief recognized my “significant contributions to this Brief.” Legal counsel was supposed to revise the material I prepared, to correct grammatical and spelling errors and to reword phrases into proper English, as I am a native-German speaker. I was responsible for all of the content and was to review all content before filing, to retain complete control of the ‘453 Patent Reply Brief.

7. Concerning Section II.C.3 of the ‘453 Reply Brief, legal counsel completely revised and omitted certain legal arguments from the draft I prepared. I was unavailable to review legal counsel’s revisions to Section II.C.3 prior to the filing of the ‘453 Reply Brief. The reason for this was that I was on an airplane

headed back to Berlin, Germany. Accordingly, Section II.C.3 of the ‘453 Reply Brief, as filed, does not contain all of the legal arguments that I drafted.

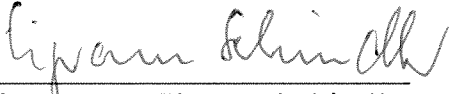
8. I will now describe what happened the day the brief was filed. I was at Foley & Lardner LLP’s offices in DC starting at about noon on February 20, the same day that the ‘453 Reply Brief had to be filed. I then left around 2:30 pm to be able to catch my airplane. I felt a physical need to return back to Germany, as I was concerned about my health. There must have been some misunderstanding or miscommunication or mistake between legal counsel and me. I had intended Section II.C.3 of the ‘453 Reply Brief to not be revised unless there was a necessary reason to do so, but it was. Section II.C.3 was revised before filing. While I was traveling in the airplane, legal counsel had no way to contact me. Accordingly, I had no way to approve the final version of the ‘453 Reply Brief before filing. The next day, when I reviewed a copy of the ‘453 Reply Brief, I was very surprised and upset to see changes to that section.

9. I was told by legal counsel that the rules do not provide for a “substitute brief” to be filed – that once a brief is filed it can not be changed. Nonetheless, I instructed legal counsel to ask for the understanding of this Court in allowing me to file a substitute ‘453 Reply Brief so that what my companies intended to file is actually now filed. As the CEO of Teles and as the President of SSBG, I very strongly feel that now filing the version of the ‘453 Reply Brief that I

had intended be filed is in the best interests of my companies. I hope that this misunderstanding or miscommunication or mistake can be corrected.

10. Similarly, for the companion Appeal concerning the '902 Patent, I had drafted Sections IV-VI; Footnote 1 of the '902 Brief reflects this. For the '902 Brief, I had instructed legal counsel to prepare certain sections, while I retained control over Sections IV-VI. However, for the '902 Brief, I had the opportunity to review the final version of that brief before filing.

11. I declare that the above statements are true to the best of my knowledge, information and belief, and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under 18 U.S.C. § 1001.


Prof. Dr.-Ing. Sigrum Schindler

Date: February 25, 2013