

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC.
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Case IPR2014-01166
Patent RE42,368

**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTION TO
SUBMIT SUPPLEMENTAL INFORMATION**

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
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March 19, 2015
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Exhibit List

Ex. No.	Description
2001	Provisional Patent Application No. 60/267,285
2002	Transcript of Patent Trial and Appeal Board Teleconference in Case IPR2014-01166, Thursday, March 5, 2015

I. INTRODUCTION

The Board should deny Petitioner's Motion to Submit Supplemental Information Under 37 C.F.R. § 42.123(a) regarding priority dates and claim construction, including the Patent Owner's proposed claim constructions and infringement contentions. Petitioner's request is improper, premised on a *guess* as to what the Patent Owner *may* argue in future proceedings. Petitioner's request contains improper attorney argument responding to the Patent Owner's preliminary response. Petitioner's request is overly broad because Petitioner requests submission of nearly 500 pages of material. And finally, Petitioner's request fails to address the confidentiality of the materials covered under the terms of a strict protective order in the concurrent district court litigation. Given that the Petitioner has failed to overcome preliminary obstacles to its motion, let alone meet its burden for submission of supplemental information, the Patent Owner respectfully requests that the Board deny Petitioner's Motion to Submit Supplemental Information Under 37 C.F.R. § 42.123(a).

II. ARGUMENT

A. Legal Standard

"[S]ubmitting supplement information under 37 C.F.R. § 42.123(a) as a vehicle to respond to a possible position that another party may take in the future is improper." *Medtronic, Inc. v. Endotach LLC*, IPR2014-00100, p. 4 (Paper No. 18, Apr. 21, 2014); *see also, Mentor Graphics Corp. v. Synopsys, Inc.*, IPR2014-

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