

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CISCO SYSTEMS, INC.  
Petitioner

v.

CAPELLA PHOTONICS, INC.  
Patent Owner

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Case IPR2014-01166  
Patent RE42,368

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**PATENT OWNER'S MOTION FOR *PRO HAC VICE* ADMISSION  
OF NICHOLAS J. NOWAK UNDER 37 C.F.R. § 42.10(c)**

***Mail Stop "PATENT BOARD"***  
Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Exhibit List**

<i>Exhibit #</i>	<i>Description</i>
<b>2001</b>	Provisional Patent Application No. 60/267,285
<b>2002</b>	Transcript of Patent Trial and Appeal Board Teleconference in Case IPR2014-01166, Thursday, March 5, 2015
<b>2003</b>	Affidavit of Nicholas J. Nowak in Support of <i>Pro Hac Vice</i> Admission

## I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.10(c) and the Notice of Filing Date Accorded to Petition (Paper 3), Patent Owner Capella Photonics, Inc. (“Patent Owner”) respectfully requests the *pro hac vice* admission of Nicholas J. Nowak in this proceeding.

## II. GOVERNING LAW, RULES, AND PRECEDENT

Section 42.10(c) states as follows:

The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause, subject to the condition that lead counsel be a registered practitioner and to any other conditions as the Board may impose. For example, where the lead counsel is a registered practitioner, a motion to appear *pro hac vice* by counsel who is not a registered practitioner may be granted upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.

The Board has stated that any motion for *pro hac vice* admission under 37 C.F.R. § 42.10(c) must be filed in accordance with the “Order – Authorizing Motion for *Pro Hac Vice* Admission” entered in Case IPR2013-00010 (MPT) (“*Motorola Order*”). (See *Motorola Order*, p. 2.)

The *Motorola Order* requires that such motions (1) “[c]ontain a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice*

during the proceeding;” and (2) “[b]e accompanied by an affidavit or declaration of the individual seeking to appear attesting to the following”:

- i. Membership in good standing of the Bar of at least one State or the District of Columbia;
- ii. No suspensions or disbarments from practice before any court or administrative body;
- iii. No application for admission to practice before any court or administrative body ever denied;
- iv. No sanctions or contempt citations imposed by any court or administrative body;
- v. The individual seeking to appear has read and will comply with the Office Patent Trial Practice Guide and the Board’s Rules of Practice for Trials set forth in part 42 of the C.F.R.;
- vi. The individual will be subject to the USPTO Code of Professional Responsibility set forth in 37 C.F.R. §§ 10.20 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a);
- vii. All other proceedings before the Office for which the individual has applied to appear *pro hac vice* in the last three (3) years; and
- viii. Familiarity with the subject matter at issue in the proceeding.

### III. STATEMENT OF FACTS

Based on the following facts, and supported by the Affidavit of Mr. Nowak, submitted herewith as Ex. 2003, Patent Owner requests the *pro hac vice* admission of Nicholas J. Nowak in this proceeding:

1. Patent Owner's lead counsel, Robert Greene Sterne, is a registered practitioner (Reg. No. 28,912). Patent Owner's back-up counsel, Jason D. Eisenberg, is a registered practitioner (Reg. No. 43,447).
2. Mr. Nowak is Of Counsel at the law firm of Sterne, Kessler, Goldstein and Fox P.L.L.C. (Ex. 2003 at ¶ 3.)
3. Mr. Nowak is an experienced patent litigation attorney. Mr. Nowak has been a patent litigation attorney for 13 years. (*Id.* at 4.) Mr. Nowak has been litigating patent cases during the entire time period, and has litigated numerous patent infringement actions involving a variety of technologies. He has significant experience in all aspects of patent litigation, including depositions, claim construction proceedings, and various stages of trial. (*Id.*)
4. Mr. Nowak is a member of good standing of the Bars of: Massachusetts, New York, the District of Columbia, the United States Court of Appeals for the Federal Circuit, and the United States District Court for the Southern District of New York. (*Id.* at 5.)

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