

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CISCO SYSTEMS, INC., CIENA CORPORATION,
CORIANT OPERATIONS, INC., CORIANT (USA) INC., and
FUJITSU NETWORK COMMUNICATIONS, INC.
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Case IPR2014-01166¹
Patent No. RE42,368

PATENT OWNER CAPELLA PHOTONICS INC.'S NOTICE OF APPEAL

via PTAB E2E
Patent Trial and Appeal Board

via Hand Carry
Director of the United States Patent and Trademark Office
c/o Office of the General Counsel, 10B20
Madison Building East
600 Dulany Street
Alexandria, VA 22314

via CM/ECF
United States Court of Appeals for the Federal Circuit

¹ Case IPR2015-00816 has been joined with this proceeding.

INTRODUCTION

Capella Photonics, Inc.'s appeal stems from the Patent Trial and Appeal Board's Final Written Decision entered on January 28, 2016 (Paper 44) (the "Final Written Decision") and the Board's decision on the Patent Owner's Request for Rehearing entered on June 28, 2016 (Paper 46) (the "Rehearing Decision") in the above-captioned *inter partes* review of United States Patent No. RE42,368. This notice is timely filed within 63 days of the Rehearing Decision. 37 C.F.R. § 90.3(b)(1).

CAPELLA PHOTONICS, INC.'S APPEAL

Please take notice that under 35 U.S.C. §§ 141(c), 142, 319; 37 C.F.R. §§ 90.2(a), 90.3(a), and Federal Rules of Appellate Procedure/Federal Circuit Rule 4(3)(a), Patent Owner Capella Photonics, Inc. hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision and the Rehearing Decision based on the "Decision, Institution of *Inter Partes* Review" entered on January 30, 2015 (Paper 8) (the "Institution Decision").

CAPELLA PHOTONICS, INC.'S ISSUES ON APPEAL

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Capella Photonics, Inc.'s issues on appeal include at least: (i) the Board's finding that claims 1–6, 9-11, 13, and 15-22 would have been obvious over Bouevitch, Smith, and Lin; (ii) the Board's finding that claim 12 would have been obvious over Bouevitch, Smith,

Lin, and Dueck; (iii) the Board's claim construction; (iv) the Board's determination that Smith was prior art; (v) the undecided issues stemming from the Board's Order (Paper 28) requesting additional briefing on (1) what a party must show to establish that a patent is prior art as of the date of its provisional application when relied upon to challenge claims in an inter partes review proceeding alleging obviousness under 35 U.S.C. § 103(a), particularly with respect to whether *Dynamic Drinkware* altered the required showing; (2) whether *Dynamic Drinkware* is consistent with, or conflicts with, *In re Giacomini*, 612 F.3d 1380, 1383 (Fed. Cir. 2010) or *Ex parte Yamaguchi*, 88 U.S.P.Q.2d 1606 (B.P.A.I. 2008); (3) whether the Smith '683 Provisional provides written description support for the claims of Smith, which Order was never decided on its merits, (vi) improperly shifting the burden to disprove obviousness to the Patent Owner; and (vii) any findings or determinations supporting or related to the aforementioned issues as well as all other issues decided adversely to Capella Photonics, Inc. in any orders, decisions, rulings, phone conference decisions, and/or opinions.

Simultaneously with this submission, Capella Photonics, Inc. is filing a true and correct copy of this Notice of Appeal with the Director of the United States Patent and Trademark Office and a true and correct copy of the same, along with the required docketing fee, with the Clerk of the United States Court of Appeals for the Federal Circuit as set forth in the accompanying Certificate of Filing.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/Jason D. Eisenberg/

Robert Greene Sterne (Reg. No. 28,912)
Jason D. Eisenberg (Reg. No. 43,447)
Attorneys for Patent Owner

Date: July 26, 2016
1100 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-2600

CERTIFICATE OF FILING

The undersigned hereby certifies that, in addition to being electronically filed through PTAB E2E, a true and correct copy of the above-captioned **PATENT OWNER CAPELLA PHOTONICS, INC.'S NOTICE OF APPEAL** is being filed by hand with the Director on July 26, 2016, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel, 10B20
Madison Building East
600 Dulany Street
Alexandria, VA 22314

The undersigned also hereby certifies that a true and correct copy of the above-captioned **PATENT OWNER CAPELLA PHOTONICS, INC.'S NOTICE OF APPEAL** and the filing fee is being filed via CM/ECF with the Clerk's Office of the United States Court of Appeals for the Federal Circuit on July 26, 2016.

Respectfully submitted,

Date: July 26, 2016

/Jason D. Eisenberg/

Jason D. Eisenberg (Reg. No. 43,447)
Attorney for Patent Owner

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