

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUJITSU NETWORK COMMUNICATIONS, INC.
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Inter Partes Review Case No. IPR2015-00726
Patent No. RE42,368

**CORRECTED PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. RE42,368 UNDER 35 U.S.C. §§ 311-319 AND
37 C.F.R. §§ 42.1-.80, 42.100-.123**

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TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>MANDATORY NOTICES AND FEES</u>	2
III.	<u>CERTIFICATION OF GROUNDS FOR STANDING</u>	3
IV.	<u>BACKGROUND</u>	4
V.	<u>CLAIM CONSTRUCTION</u>	8
VI.	<u>LEVEL OF ORDINARY SKILL IN THE ART</u>	13
VII.	<u>OVERVIEW OF CHALLENGE AND RELIEF REQUESTED</u>	13
	A. Summary of Grounds for Challenge.....	14
	B. Motivation to Combine References.....	15
	C. Ground 1: Claims 1-6, 9-12 and 15-22 Are Anticipated by Smith ..	16
	D. Ground 2: Claims 1, 2, 5, 6, 9-12 and 15-21 would have been obvious by the combination of Bouevitch and Carr.....	24
	E. Ground 3: Claims 1-4, 17 and 22 would have been obvious by the combination of Bouevitch and Sparks.....	47
	F. Ground 4: Claims 1-6, 9-12 and 15-22 would have been obvious by the combination of Smith and Tew	57
	G. Ground 5: Claims 1, 2, 5, 6, 9-12 and 15-21 would have been obvious by the combination of Bouevitch, Carr and Tew.....	59
	H. Ground 6: Claims 1-4, 17 and 22 would have been obvious by the combination of Bouevitch, Sparks and Tew	59
VIII.	<u>CONCLUSION</u>	60
	ATTACHMENT A:	61
	ATTACHMENT B: APPENDIX OF EXHIBITS	62

I. INTRODUCTION

Petitioner Fujitsu Network Communications, Inc. (“FNC” or “Petitioner”) requests *inter partes* review of claims 1-6, 9-12, and 15-22 (“Petitioned Claims”) of U.S. Patent No. RE42,368 (“the ‘368 patent”) (Ex. 1001), assigned on its face to Capella Photonics, Inc. (“Capella”).

This Petition relies on two primary references: U.S. Patent No. 6,798,941 (“Smith”) (Ex. 1009) and U.S. Patent No. 6,498,872 (“Bouevitch”) (Ex. 1002).

Smith, which was not before the Patent Office, renders all of the Petitioned Claims anticipated or obvious in combination with U.S. Patent Publication No. 2002/0081070 (“Tew”) (Ex. 1007). Notably, Smith discloses the precise features that Capella relied upon to distinguish over the prior art it identified in its reissue application.

Bouevitch was before the Patent Office during the reissue prosecution, but Capella admitted that its original claims were overbroad and invalid over Bouevitch in view of one or more of three additional references. Although Capella amended its claims to purportedly overcome their deficiency, the amended claims fail to distinguish over the prior art references identified herein as Bouevitch in combination with U.S. Patent No. 6,442,307 (“Carr”) (Ex. 1005) or U.S. Patent No. 6,625,340 (“Sparks”) (Ex. 1006) and optionally Tew render all of the Petitioned Claims obvious.

The Petitioned Claims are currently being challenged in view of the combination of Bouevitch and Smith in IPR2014-01166. This Petition presents different grounds and prior art references than those addressed in that challenge.

Inter partes review of the Petitioned Claims should be instituted because this petition shows that there is a reasonable likelihood that Petitioner will prevail on the Petitioned Claims. Each limitation of each Petitioned Claim is disclosed by and/or obvious to a person having ordinary skill in the art (“PHOSITA”) in light of the prior art discussed herein. Claims 1-6, 9-12, and 15-22 of the ‘368 patent should be found unpatentable and canceled.

II. MANDATORY NOTICES AND FEES

Real Parties-in-Interest: Petitioner Fujitsu Network Communications, Inc. and Fujitsu Limited are the real parties-in-interest in this petition.

Related Matters: Capella has asserted the ‘368 patent in the following actions: *Capella Photonics, Inc. v. Cisco Systems, Inc.*, No. 3:14-cv-03348; *Capella Photonics, Inc. v. Fujitsu Network Communications, Inc.*, No. 3:14-cv-03349; *Capella Photonics, Inc. v. Tellabs Operations, Inc.*, No. 3:14-cv-03350; *Capella Photonics, Inc. v. Ciena Corporation*, No. 3:14-cv-03351 (collectively, “Capella Litigation”). Claims 1-6, 9-12, and 15-22 of the ‘368 patent are asserted in the Capella Litigation. Petitioner is also filing a petition for *inter partes* review against U.S. Patent No. RE42,678, which is the other patent asserted in the Capella

Litigation and is related to the '368 patent. *Inter partes* review No. 2014-01166 is directed to the '368 Patent, and *inter partes* review No. 2014-01276 is directed to U.S. Patent No. RE42,678.

Counsel: Lead counsel in this case is Christopher E. Chalsen (PTO Reg. No. 30,936); backup counsel is Lawrence T. Kass (PTO Reg. No. 40,671), Nathaniel T. Browand (PTO Reg. No. 59,683) and Suraj K. Balusu (PTO Reg. No. 65,519). A power of attorney accompanies this Petition.

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Payment: Under 37 C.F.R § 42.103(a), the Office is authorized to charge the fee set forth in 37 C.F.R. § 42.15(a) to Deposit Account No. 133250 as well as any additional fees that might be due in connection with this Petition.

III. CERTIFICATION OF GROUNDS FOR STANDING

Petitioner certifies under 37 C.F.R § 42.104(a) that the patent for which

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