

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CAPELLA PHOTONICS, INC.,
Patent Owner.

Cases IPR2015-00726¹ and IPR2015-00727²
Patents RE42,368 E and RE42,678 E³

Before JOSIAH C. COCKS, KALYAN K. DESHPANDE, and
JAMES A. TARTAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

ORDER
Requests for Oral Argument
37 C.F.R. § 42.70

¹ Case IPR2015-01958 has been joined with this proceeding.

² Case IPR2015-01961 has been joined with this proceeding.

³ This order addresses issues that are the same in the identified cases. The parties are authorized to use this heading when filing a single paper in each proceeding, provided that such heading includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the heading.”

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The date set for oral hearing in these proceedings is May 24, 2016, if hearing is requested by either party and granted by the Board. IPR2015-00726, Paper 12; IPR2015-00727, Paper 9. Patent Owner requests oral hearing and Petitioner does not. IPR2015-00726, Papers 29, 30; IPR2015-00727, Papers 27, 28. Patent Owner's request for oral hearing is *granted*.

Each side will have forty (40) minutes, total, to present its argument in both cases. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in these reviews are unpatentable and shall open the hearing. In light of the similarity in issues and evidence presented in both cases, the hearing shall proceed as follows. Petitioner will open the hearing by presenting its case regarding the challenged claims for which the Board instituted trial in both IPR2015-00726 and IPR2015-00727. After Petitioner's presentation, Patent Owner will respond to Petitioner's argument with respect to both IPR2015-00726 and IPR2015-00727. Petitioner may reserve rebuttal time to respond to arguments presented by Patent Owner.

The hearing will commence at 1:00 PM on May 24, 2016, on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia. The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are requested to contact the Board at least 10 days in advance of the hearing to discuss the matter.

The parties are reminded that, under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit.

The Board will not consider any deposition testimony that has not been so filed.

Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least five business days before the hearing date and filed no later than the time of the oral argument. The parties also shall provide a courtesy copy of any demonstrative exhibits to the Board at least five business days prior to the hearing by emailing them to Trials@uspto.gov.

The parties must file any objections to the demonstrative exhibits with the Board at least two business days before the hearing. Any objection to demonstrative exhibits that is not timely presented will be considered waived. The objections should identify with particularity which demonstrative exhibits are subject to objection, and include a short (one sentence or less) statement of the reason for each objection. No argument or further explanation is permitted. The Board will consider the objections and schedule a conference if deemed necessary. Otherwise, the Board will reserve ruling on the objections until after the oral argument. The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits.

The Board expects lead counsel for each party to be present in person at the oral hearing. However, any counsel of record may present the party's argument. If either party expects that its lead counsel will not be attending the oral argument, the parties should initiate a joint telephone conference

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with the Board no later than two business days prior to the oral hearing to discuss the matter.

Any special requests for audio-visual equipment should be directed to Trials@uspto.gov. Requests for special equipment will not be honored unless presented in a separate communication not less than five days before the hearing directed to the above email address.

ORDER

Oral argument in IPR2015-00726 and IPR2015-00727 will commence at 1:00 PM on May 24, 2016, on the ninth floor of the Madison Building East, 600 Dulany Street, Alexandria, Virginia.

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