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11 CISCO SYSTEMS, INC.

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11
12 SAN FRANCISCO DIVISION

13 CAPELLA PHOTONICS, INC.,

14 Plaintiff,

15 v.

16 CISCO SYSTEMS, INC.,

17 Defendant

Case No. C 14-03348-EMC

**CISCO'S RENEWED MOTION AND
MEMORANDUM IN SUPPORT
OF MOTION FOR STAYS PENDING
FINAL DETERMINATIONS
OF VALIDITY
BY THE PATENT OFFICE**

Hearing Date: March 26, 2015

Time: 1:30 p.m.

Place: Courtroom 5, 17th Floor

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Capella 2004
Fujitsu v. Capella
IPR2015-00726

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1 Defendant Cisco notices this Motion for hearing on March 26, 2015, at 1:30 p.m.

2 Cisco renews its Motion for Stay pending a final decision on validity of the Patents-in-
3 Suit by the Patent Office. This renewed motion is based on the Patent Office's January 30, 2015,
4 institution of *inter partes* review ("IPR") on every one of the asserted claims of U.S. Patent
5 No. RE42,368.

6 **I. INTRODUCTION**

7 This Court indicated that it would consider a renewed motion to stay once the Patent
8 Office instituted IPR proceedings with respect to either of the Patents-in-Suit. (Dkt. 131 at 3
9 (denying Cisco's pre-institution Motion to Stay Pending Initial and Final Determinations of
10 Validity).) The Patent Trial and Appeal Board (PTAB) instituted IPR proceedings for the '368
11 patent on January 30, 2015. The PTAB determined that, for every claim for which Cisco
12 requested review, "there is a reasonable likelihood that Petitioner would prevail in
13 showing...unpatentability." (Leary Decl. Ex. A at 2.) The PTAB dismissed Capella's main
14 argument for validity, and characterized another of Capella's arguments as a misrepresentation.
15 (*Id.* at 13, 16.) Cisco thus renews its motion to stay the litigation pending a final determination of
16 validity by the Patent Office. Because the challenged claims of the other Patent-in-Suit
17 (RE42,678) are very similar to the instituted claims of the '368, there is a high probability that the
18 Patent Office will also institute IPR proceedings on the '678 patent. That decision should issue
19 by February 24—before this motion is fully briefed and before the case management conference
20 scheduled for March 10.

21 As this Court has noted, Congress designed the IPR process to "establish a more efficient
22 and streamlined patent system that will improve patent quality and limit unnecessary and
23 counterproductive litigation costs." *Robert Bosch Healthcare Sys., v. Cardiocom, LLC*, C-14-
24 1575 EMC, 2014 WL 3107447 at *2 (N.D. Cal. Jul. 3, 2014) (Chen, J.) These goals will be
25 achieved through a stay pending the Patent Office's final decisions. The Court should grant these
26 stays based on both the traditional three stay factors and on the unique character of the Patents-in-
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