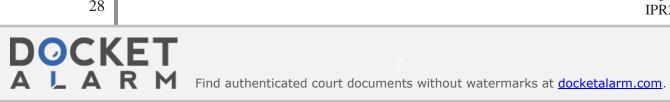
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| 1<br>2<br>3<br>4<br>5<br>6<br>7 | COOLEY LLP WAYNE O. STACY (pro hac vice) SARAH J. GUSKE (SBN 232467) MATTHEW J. LEARY (pro hac vice) 380 Interlocken Crescent, Suite 900 Broomfield, CO 80021 Telephone: (720) 566-4000 Facsimile: (720) 566-4099  Attorneys for Defendant CISCO SYSTEMS, INC. |   |  |  |  |
|---------------------------------|--|---|--|--|--|
| 8                               | UNITED STATES  | S DISTRICT COURT                                    |  |  |  |
| 9                               | NORTHERN DISTRICT OF CALIFORNIA  |   |  |  |  |
| 10<br>11                        | SAN FRANCISCO DIVISION   |   |  |  |  |
| 12                              |  |   |  |  |  |
| 13                              | CAPELLA PHOTONICS, INC.,   | Case No. C 14-03348-EMC                             |  |  |  |
| 14                              | Plaintiff,   | CISCO'S RENEWED MOTION AND<br>MEMORANDUM IN SUPPORT |  |  |  |
| 15                              | V.   | OF MOTION FOR STAYS PENDING<br>FINAL DETERMINATIONS |  |  |  |
| 16                              | CISCO SYSTEMS, INC.,   | OF VALIDITY BY THE PATENT OFFICE                    |  |  |  |
| 17                              | Defendant  | Hearing Date: March 26, 2015                        |  |  |  |
| 18                              |  | Time: 1:30 p.m. Place: Courtroom 5, 17th Floor      |  |  |  |
| 19                              |  | Tidee. Courtionin 3, 17th Floor                     |  |  |  |
| 20                              |  |   |  |  |  |
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| 24                              |  |   |  |  |  |
| 25                              |  |   |  |  |  |
| 26                              |  |   |  |  |  |
| 27                              |  | Capella 2004<br>Fujitsu v. Capella                  |  |  |  |
| 28                              | 1  | IDD 2015 00726                                      |  |  |  |



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| II.  | FAC | TUAL AND PROCEDURAL BACKGROUND  |           |
|      | A.  | The Patent Office has instituted review of every challenged claim of the '368 patent – including each of those claims that Capella asserts in this case   |           |
|      | В.  | Inter partes review resolves validity disputes quickly and efficiently: The Patent Office's final decision is binding on this court after appeal, will occur within 12 months of institution, and is very likely to mirror the initial decision |           |
|      | C.  | The PTAB is likely to institute IPR of the very similar '678 patent   |           |
|      | D.  | Capella is a non-practicing entity  |           |
|      | E.  | The lawsuit is in its early stages  |           |
|      | F.  | Cisco has been diligent in filing its IPRs and its requests to stay the case  |           |
| III. | LEG | GAL STANDARD  |           |
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|      | A.  | The early stage of this case favors a post-institution stay because substantive discovery has not begun, and there is no trial date   |           |
|      | B.  | Capella will not be prejudiced by staying the case  | • • • • • |
|      |     | 1. Sub-factor (a) – timing of the IPR request – Cisco promptly filed its IPR petitions  |           |
|      |     | 2. Sub-factor (b) – timing of the stay request – Cisco promptly filed both its pre- and post-institution stay motions   |           |
|      |     | 3. Sub-factor (c) – the status of the Patent Office proceedings weighs in favor of a stay   |           |
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|      |     | 5. Capella has not provided any reason to deny a stay   |           |
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|      |     |   |           |
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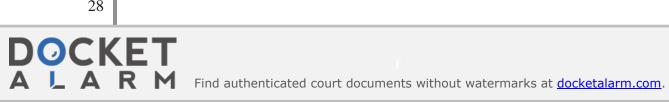
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| 6                               | Apple Inc. v. Samsung Elecs. Co.,         678 F.3d. 1314 (Fed. Cir. 2012)  |  |
| 7<br>8                          | Coho Licensing LLC v. Glam Media,<br>C 14-01576 JSW, slip op. (N.D. Cal. Sept. 17, 2014)                           |  |
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| <ul><li>25</li><li>26</li></ul> | ResQNet.com, Inc. v. Lansa, Inc.,<br>594 F.3d 860 (Fed. Cir. 2010)   |  |
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Defendant Cisco notices this Motion for hearing on March 26, 2015, at 1:30 p.m.

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

#### I. INTRODUCTION

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

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

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