

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

CAPELLA PHOTONICS, INC.  
Patent Owner

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Case IPR2015-00726<sup>1</sup>  
Patent No. RE42,368

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**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

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<sup>1</sup> Case IPR2015-01958 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 September 28, 2016 (Paper 38) (the “Final Written 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 Final Written 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 based on the “Decision, Institution of *Inter Partes* Review” entered on August 24, 2015 (Paper 11) (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, 2, 5, 6, 9–12, and 15–21 would have been obvious over Bouevitch and Carr; (ii) the Board’s finding that claims 1–4, 17, and 22 would have been obvious over Bouevitch and Sparks; (iii) the Board’s claim construction; and (iv) 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: October 24, 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 October 24, 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 October 24, 2016.

Respectfully submitted,

Date: October 24, 2016

/Jason D. Eisenberg/

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

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that the foregoing **PATENT OWNER**  
**CAPELLA PHOTONICS, INC.'S NOTICE OF APPEAL** was served  
electronically via e-mail on October 24, 2016, in its entirety on the following  
counsel for Petitioner:

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Respectfully submitted,

Date: October 24, 2016

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