

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. IPR2015-00727
Patent No. RE42,678

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. RE42,678 UNDER 35 U.S.C. §§ 311-319 AND
37 C.F.R. §§ 42.1-.80, 42.100-.123**

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I. INTRODUCTION

Petitioner Fujitsu Network Communications, Inc. (“FNC” or “Petitioner”) requests *inter partes* review of claims 1-4, 9, 10, 13, 17, 19-23, 27, 29, 44-46, 53 and 61-65 (“Petitioned Claims”) of U.S. Patent No. RE42,678 (“the ‘678 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 additional reference U.S. Patent No. 6,442,307 (“Carr”) (Ex. 1005) and optionally 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 Carr 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 IPR2014-01276. 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 1-4, 9, 10, 13, 17, 19-23, 27, 29, 44-46, 53 and 61-65 of the ‘678 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 ‘678 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 1-4, 9, 10, 13, 17, 19-23, 27, 29, 44-46, 53 and 61-65 of the ‘678 patent are asserted in the Capella Litigation. Petitioner is also filing a petition for *inter partes* review against U.S. Patent No. RE42,368, which is the

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