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10 *CISCO SYSTEMS, INC.*

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 CAPELLA PHOTONICS, INC.,

15 Plaintiff,

16 v.

17 CISCO SYSTEMS, INC.,

18 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  
IPR2015-00727

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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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