

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CAPELLA PHOTONICS, INC.,

CASE NO.: 1:14-CV-20531-PAS

Plaintiff,

v.

FUJITSU NETWORK COMMUNICATIONS,
INC.

Defendant.

**DEFENDANT FUJITSU NETWORK COMMUNICATIONS, INC.'S
PRELIMINARY INVALIDITY CONTENTIONS**

Pursuant to the Court's Scheduling Order dated March 20, 2014 (Dkt. 14) and the Court's Order Extending Deadlines dated April 22, 2014 (Dkt. 36), Defendant Fujitsu Network Communications, Inc. ("FNC") hereby submits its Preliminary Invalidity Contentions with respect to the U.S. Patent Nos. RE42,678 and RE42,368 (collectively, "the Patents-in-Suit").

I. RESERVATION OF RIGHTS

FNC expressly reserves the right to amend or supplement these Preliminary Invalidity Contentions based on any subsequent information received from Plaintiff relating to its theory of infringement (including amendments or supplements to its Infringement Contentions dated April 18, 2014), and/or positions that Plaintiff or its expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues.¹

FNC further reserves the right to modify these Preliminary Invalidity Contentions to take into account any of the Court's rulings, including the Court's claim constructions and any

¹ FNC expressly reserves the right to continue to assert any and all additional grounds for invalidity not expressly required to be set forth herein by the Court's order dated March 20, 2014, including those defenses arising under 35 U.S.C. § 251 (e.g., violation of the "original patent" requirement, submission of an improper reissue declaration and violations of the prohibitions on recapture, the addition of new matter, and the broadening of claims).

findings as to the priority date of the asserted claims.

Further, because discovery has not yet begun, FNC reserves the right to amend or supplement these Preliminary Invalidity Contentions, including identifying and relying on additional references, should FNC's further investigation and analysis yield additional information or references, consistent with the Federal Rules of Civil Procedure. Such further investigation and analysis may be based on information received from Plaintiff or third parties during discovery.

FNC further notes that there are four co-pending litigations before this Court involving the Patents-in-Suit. See *Capella Photonics, Inc. v. Cisco Systems, Inc.*, No. 14-20529-CIV-SEITZ; *Capella Photonics, Inc. v. Fujitsu Network Communications, Inc.*, 14-20531-CIV-SEITZ; *Capella Photonics, Inc. v. Ciena Corporation*, 14-20530-CIV-SEITZ; *Capella Photonics v. Tellabs, Inc. et al.*, 14-60350-CIV-SEITZ. FNC reserves the right to supplement and/or amend these Preliminary Invalidity Contentions to rely on defenses and information revealed through those co-pending litigations, or any other related case or proceeding (including later-filed cases).

Prior art not included in this disclosure, whether known or not known to FNC, may become relevant. In particular, FNC is currently unaware of the extent, if any, to which Plaintiff will contend that limitations of the asserted claims are not disclosed in the prior art identified by FNC. To the extent that such an issue arises, FNC reserves the right to identify other well-known components or references that, *inter alia*, would have made the addition of the allegedly missing limitation to the disclosed device or method obvious.

Plaintiff's Infringement Contentions are based on an apparent construction of the claim terms. FNC disagrees with these apparent constructions. Nothing stated herein shall be treated as an admission or suggestion that FNC agrees with Plaintiff regarding either the scope of any of the asserted claims or the claim constructions advanced by Plaintiff in their Infringement Contentions or anywhere else, or that any of FNC's accused technology meets any limitations of the claims. Nothing stated herein shall be construed as an admission or a waiver of any particular construction of any claim term.

II. IDENTITY OF PRIOR ART THAT ALLEGEDLY ANTICIPATES EACH CLAIM OR RENDERS IT OBVIOUS

Pursuant to the Court's Scheduling Order, and subject to FNC's reservation of rights, FNC identifies each item of prior art that anticipates or renders obvious one or more of the asserted claims in tables 1 and 2 below. (Dkt. 14, p. 2, ¶ 2(A)(ii)(a)). Table 1 provides the identity of each prior art patent, patent application or patent publication, by its corresponding patent, application or publication number.² Table 2 provides the identity of each non-patent prior art publication including, where possible, its title, latest date of publication, and author and publisher.

For each reference, FNC identifies specific examples of the subject matter disclosed in that reference. These areas of subject matter disclosure are categorized for convenience into the disclosure groups listed below. The list of groups is not exhaustive. For each prior art reference included in these contentions, FNC identifies by number(s) the exemplary groups of subject matter disclosed by the reference. The fact that a reference may not identify a group of disclosure is not an admission that the reference does not disclose subject matter in that group. FNC reserves all rights to assert that any of the references disclose additional subject matter, regardless of the identified group(s) of disclosure. The groups of disclosure are as follows:

Disclosure Group	Description of representative disclosures
0.	Subject matter related to or relevant to optical switching
1.	Two-axis deflecting elements
2.	Power control, including control using deflecting elements
3.	Reconfigurable optical add/drop multiplexers (ROADMs), and/or optical cross-connect (OXC) functionality or related optical switching disclosure
4.	Wavelength separation, including specific diffraction gratings, prisms, and beam-focusers
5.	Continuous tilting of deflecting elements
6.	Control features, including control units, servo controls and spectral monitors
7.	Predetermined power values or related settings
8.	Specific types of deflecting elements, including reflective membranes

² All of the patent documents referenced in Table 1 are to be construed as incorporating by reference all related applications, including provisional applications, parent applications, PCT applications, foreign counterparts, etc.

Table 1 – Patent Publications:

Patent / Publication / Application No.	Disclosure Groups	Patent / Publication / Application No.	Disclosure Groups
60/206744	0, 2, 3, 4, 5, 6, 7	US 6,300,619 B1	0, 1, 5
60/211239	0, 1, 2, 3, 4, 5, 6, 7	US 6,307,657 B1	0, 2, 3, 4, 6, 7
60/241269	0, 1, 2, 3, 4, 5, 6, 7	US 6,337,753 B1	0, 2, 6, 7
US 6,744,550	0, 1, 2, 6	US 6,374,008 B2	0, 1, 3, 4, 5, 6, 7
US 2002/0081070	0, 4, 5, 6, 7	US 6,392,220 B1	0, 2, 4, 5, 6, 7
US 2002/0092963 A1	0, 1, 2, 3, 4, 5, 6, 7	US 6,418,250	0, 4
US 2002/0131691 A1	0, 1, 2, 3, 4, 5, 6, 7	US 6,424,757 B1	0, 1, 2, 3, 4, 5, 6, 7
US 2003/0043471 A1	0, 1, 2, 3, 4, 6, 7	US 6,442,307 B1	0, 1, 2, 3, 4, 5, 6, 7
US 2003/0053232	0, 1, 2, 5, 6, 7	US 6,445,844	0, 1, 2, 4, 6, 7
US 2003/0223726	0, 1, 2, 3, 4, 5, 6, 7	US 6,498,872 B2	0, 2, 3, 4, 6, 8
US 4,844,617	0, 4	US 6,501,877	0, 2, 3, 4, 5
US 5,076,692	0, 4	US 6,507,421	0, 1, 2, 4, 5, 6, 7
US 5,276,498	0, 4	US 6,538,816	0, 2, 4, 5, 6, 7
US 5,345,521	0, 2, 6, 7	US 6,567,574 B1	0, 1, 2, 3, 4, 5, 6, 7
US 5,414,540	0, 3, 4	US 6,600,849	0, 2, 3, 4, 5, 6, 7
US 5,450,512	0, 3, 4, 6, 7	US 6,600,851	0, 1, 3, 5
US 5,526,155	0, 4	US 6,629,461	0, 1
US 5,629,790	0, 1, 4	US 6,631,222 B1	0, 1, 2, 3, 4, 5, 6, 7
US 5,661,591	0, 2, 5, 6, 7	US 6,634,810 B1	0, 3, 4
US 5,745,271	0, 2, 3, 4, 6, 7	US 6,668,108	0, 1, 2, 3, 4, 5, 6, 7
US 5,774,244	0, 2, 3, 4, 6, 7	US 6,687,430 B2	0, 1, 2, 4, 5, 6
US 5,835,458	0, 2, 3, 4, 6, 7	US 6,690,885 B1	0, 1, 3, 5
US 5,872,880	0, 1, 6, 7	US 6,694,072	0, 1, 2, 4, 6, 7
US 5,936,752	0, 4, 6, 7, 8	US 6,744,173	0
US 5,960,133	0, 3, 4, 5	US 6,778,739	0, 2, 3, 4, 6, 7
US 5,974,207	0, 3, 4	US 6,792,174 B1	0, 1, 2, 3, 4, 5, 6, 7
US 5,999,306	0, 4, 6, 7	US 6,795,602	0, 1, 2, 4, 6, 7
US 6,028,689	0, 1, 2, 5, 6, 7	US 6,798,941	0, 1, 2, 3, 4, 5, 6, 7
US 6,044,705	0, 1, 5	US 6,798,992	0, 1, 2, 4, 5, 6, 7
US 6,097,859	0, 1, 2, 3, 4, 5, 6, 7	US 6,810,169 B2	0, 2, 3, 4, 6
US 6,134,042	0, 1, 5, 6, 7	US 6,898,348 B2	0, 2, 4, 5, 6, 7
US 6,137,606	0, 3, 4, 6, 7	US 6,912,078 B2	0, 1, 5, 6, 7
US 6,204,946 B1	0, 3, 4	US 6,961,506	0, 1, 2, 3, 4, 5, 6

Patent / Publication / Application No.	Disclosure Groups	Patent / Publication / Application No.	Disclosure Groups
US 6,205,269	0, 4	US 6,989,921 B2	0, 1, 2, 3, 4, 5, 6, 7
US 6,222,954	0, 2, 3, 4, 5, 6, 7	US 7,183,633 B2	0, 2, 3, 4, 5, 6, 7
US 6,253,001	0, 2, 5, 6, 7	US6,263,127	0, 2, 3, 4, 5, 6, 7
US 6,256,430	0, 2, 3, 4, 5, 6, 7	US6,480,645	0, 1, 2, 3, 4, 5, 6, 7
US 6,263,123	0, 2, 4, 5, 6, 7	US6,625,340	0, 1, 2, 3, 4, 5, 6, 7
US 6,263,135 B1	0, 4	WO 01/061400 A2	0, 1, 2, 5, 6, 7
US 6,275,320	0, 2, 6	US 6,519,075	0, 1, 2, 3, 4, 5, 6, 7
US 6,289,155 B1	0, 4	US 6,697,547	0, 1, 2, 3, 4, 5, 6, 7
US 6,295,154 B1	0, 1, 4, 6, 7	US 2002/0105692	0, 3
60/234683	0, 1, 2, 3, 4, 5, 6, 7	US 6,011,884	0, 4
US 5,875,272	0, 3, 4	US 6,243,507	0, 3, 4, 7
US 6,069,719	0, 3, 6	US 6,285,500	0, 3, 4

Table 2 – Non-patent publications:

Author & Publisher ³	Title	Published at least by date:	Disclosure Groups
1. E.L. Goldstein, L.Y. Lin, J.A. Walker - Optics & Photonics News, March 2001	Lightwave micromachines for optical networks: Vast promise amid vaster promises	Mar. 2001	0, 1, 2, 3, 4, 5, 6, 7
2. J. Gruber, P. Roorda, F. LaLonde - TECHNICAL PROCEEDINGS-NATIONAL FIBER OPTIC ENGINEERS CONFERENCE	The Photonic Switch/Cross-Connect (PSX) – Its Role in Evolving Optical Networks	2000	0, 2, 3, 4, 6
3. Armand Neukermans and Rajiv Ramaswami - IEEE Communications Magazine	MEMS Technology for Optical Networking Applications	Jan. 2001	0, 1, 2, 3, 4, 5, 6, 7, 8

³ Numbering of references is intentionally non-contiguous.

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