

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JDS UNIPHASE CORPORATION
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Patent No. RE 42,368

Title: RECONFIGURABLE OPTICAL ADD-DROP
MULTIPLEXERS WITH SERVO CONTROL AND DYNAMIC
SPECTRAL POWER MANAGEMENT CAPABILITIES

Inter Partes Review No. 2015-00731

**PETITIONER'S MOTION
TO RE-CAPTION THE PROCEEDING**

This Petitioner's Motion to Re-Caption The Proceeding ("Motion") is submitted pursuant to the Board's authorization during the January 15, 2016, teleconference. Petitioner hereby requests that the party identified as the Petitioner in the caption of this proceeding be changed from JDS Uniphase Corporation to Lumentum Holdings Inc., Lumentum Inc., and Lumentum Operations LLC.

A. Background

1. This proceeding was initiated by JDS Uniphase Corporation ("JDSU"). (*See* Paper 1 (identifying JDSU as Petitioner and Real Party-In-Interest).) As described further in Section B below, in late July and early August 2015, JDSU underwent a reorganization whereby the business segment related to this proceeding became held by Lumentum Operations LLC, which is owned by Lumentum Inc., a subsidiary of Lumentum Holdings Inc. As a result of this reorganization, JDSU, as then constituted, ceased to exist.

2. On September 15, 2015, Petitioner filed updated mandatory notices ("Updated Notices") stating that, "[a]s a result of a reorganization involving original Petitioner JDS Uniphase Corporation, the real parties-in-interest in this proceeding are now: Lumentum Holdings Inc., Lumentum Inc. and Lumentum Operations LLC." (Paper 11.)

3. On January 8, 2016, the Petitioner sent an email request to the Board, asking if it is possible to change the caption of this proceeding to refer to

Lumentum Holdings Inc., Lumentum Inc. and Lumentum Operations LLC (“the Lumentum Entities”) as the petitioner, to accurately reflect the parties as a result of the JDSU reorganization.

4. On January 11, 2016, the Board requested a teleconference to discuss the reorganization and identification of the real parties-in-interest (“RPI”). The teleconference was held on January 16, 2016, among Judges Tartal and Cocks and representatives from Petitioner and Patent Owner.

5. During the teleconference, Petitioner's counsel summarized the reorganization. Briefly, Petitioner explained that the Lumentum Entities were created as separate companies owned by JDSU, and the assets and liabilities of certain laser and telecom equipment businesses of JDSU, including the responsibility for this proceeding, were assigned to the Lumentum Entities pursuant to a Contribution Agreement dated July 31, 2015.

6. Petitioner also explained that remaining with JDSU following the “spin out” were several businesses unrelated to the instant proceeding, including those related to test and measurement. In connection with the reorganization, these remaining entities (JDSU) were renamed Viavi Solutions Inc. (“Viavi”). Viavi owns approximately 20% of the shares of Lumentum Holdings Inc.

7. Along with its authorization for this Motion, the Board requested that the Petitioner describe for the record the nature and dates of the reorganization, and

explain why Viavi was not identified as an RPI in the Updated Notices.

B. Description of the Reorganization¹

Prior to the reorganization, JDSU had a number of business segments. One was communications and commercial optical products ("CCOP"), which included businesses related to optical telecom equipment and lasers. Others were network enablement ("NE"), service enablement ("SE") and optical security and performance products ("OSP"). (Ex. 1037, p. 344 - 45.) By the reorganization, the CCOP businesses were spun out to the Lumentum Entities, and the NE, SE and OSP businesses remained with JDSU, which was renamed Viavi. *Id.* at p. 345.

To achieve this result, JDSU formed three wholly owned subsidiaries: Lumentum Holdings Inc., Lumentum Inc. and Lumentum Operations LLC. By the Contribution Agreement, Lumentum Operations LLC assumed responsibility of "Assumed Actions," including this proceeding. (Ex. 1037, p. 59.)²

¹ Attached as Exhibit 1037 is a copy of the publicly available SEC Form 8-K filed by Lumentum Holdings Inc. on August 6, 2015. Although most of the description of the reorganization herein is supported by the Form 8-K and documents therein, certain portions of this description are not public information. (*See* footnote 2.)

This Motion is therefore presented under seal with a request that it be made subject to the protective order in this proceeding (Paper 18, Ex. A).

Upon the completion of the reorganization on August 1, 2015: (1) the entire ownership interest of Lumentum Operations LLC was transferred to Lumentum Inc.; (2) most all shares of Lumentum Inc. were transferred to Lumentum Holdings Inc. (certain preferred stock representing approximately 3% of Lumentum Holdings Inc.'s equity value was transferred to third party Amada Holdings, Co. Ltd. ("Amada")); (3) 80.1% of the stock of Lumentum Holdings Inc. was distributed to the shareholders of record of JDSU; and (4) JDSU was renamed Viavi. (Ex. 1037, pp. 344, 388-93.)

As a result of this reorganization, Lumentum Operations LLC is the entity responsible for this proceeding and is owned by Lumentum Inc. Amada holds a 3% minority interest in Lumentum Inc. The remaining 97% of Lumentum Inc. is owned by the publicly traded entity Lumentum Holdings Inc. Viavi owns a 19.9% minority interest in Lumentum Holdings Inc.

C. Identification of the Real Parties-In-Interest

The relevant business unit of JDSU was "spun out" to the Lumentum Entities, which assumed responsibilities for the actions relating to this proceeding, and are distinct from Viavi and Amada. Accordingly, neither Viavi nor Amada has

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[REDACTED]

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