

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LUMENTUM HOLDINGS, INC., LUMENTUM, INC.,
LUMENTUM OPERATIONS, LLC, CORIANT OPERATIONS, INC.,
CORIANT (USA) INC., CIENA CORPORATION, CISCO SYSTEMS, INC., and
FUJITSU NETWORK COMMUNICATIONS, INC.

Petitioners

v.

CAPELLA PHOTONICS, INC.

Patent Owner

Case No. IPR2015-00731¹ Patent No. RE 42,368
Case No. IPR2015-00739² Patent No. RE 42,678³

**PETITIONERS' OBJECTIONS
TO PATENT OWNER'S ORAL HEARING DEMONSTRATIVES**

¹ Case IPR2015-01969 has been joined to this proceeding. This paper is a consolidated filing.

² Case IPR2015-01971 has been joined to this proceeding. This paper is a consolidated filing.

³ The word-for-word identical paper is being filed in each proceeding identified in the heading.

Pursuant to the Board's Order, *Requests for Oral Argument*, entered on April 28, 2016 in the above-identified proceedings (IPR2015-00731, Paper 45; IPR2015-00739, Paper 44), Petitioners make the following objections to the Patent Owner's demonstrative exhibits served on May 13, 2016.⁴

Petitioners advised Patent Owner's counsel of these objections by email on May 19, 2016, and offered to meet and confer on this topic in an attempt to resolve the matter before bringing it to the Board's attention. Patent Owner responded by email that day saying it disagreed with the Petitioners' objections, and that it "had no intention of removing the identified slides or the allegedly objectionable material."⁵

⁴ A copy of the demonstrative exhibits as served on Petitioners is attached hereto (Ex. 1044 in IPR2015-00731 and Ex. 1055 in IPR2015-00739).

⁵ Patent Owner also raised a number of objections to Petitioners' demonstratives. Petitioners believe these objections are without merit. Nonetheless, in an effort to compromise, Petitioners agreed to remove one slide and modify two other slides. Based on these changes made by Petitioners, Patent Owner withdrew its remaining objections to Petitioners' demonstratives. However, Patent Owner again confirmed that it had no intention of making any changes to its own demonstratives objected to by Petitioners, necessitating the filing of these objections.

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As described below, certain demonstrative exhibits of Patent Owner are in violation of the Office Patent Trial Practice Guide section 1.M., that states “[n]o new evidence or arguments may be presented at the oral argument,” and the associated guidance provided in the Board’s decision in *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-0041(January 27, 2015) (Paper 65). In particular, Petitioners object to the following demonstrative exhibits for the following reasons:

- Slide 7: The *In re: Gurley* case was not previously cited and is new argument.
- Slide 19: The argument based on the McLaughlin patent (Ex. 2030) alleging that JDSU was focusing on LC (liquid crystal) devices rather than MEMS mirrors was not previously presented and is new.
- Slide 24: The displayed passage from the challenged patent was not previously presented and is new evidence and argument.
- Slide 25: The displayed passage from the challenged patent was not previously presented and is new evidence and argument.
- Slide 26: The displayed passage from the McLaughlin patent was not previously presented, and is new evidence and argument.

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Slide 27: The displayed Sergienko Declaration testimony was not previously presented in support of a hindsight argument, and is new evidence and argument.

Slide 31: The displayed passage and drawing figure from the challenged patent were not previously presented, and are new evidence and argument.

Slide 38: The *Pacing Techs., LLC v. Garmin Int'l. Inc.* case was not previously cited and is new argument.

Petitioners request that the Board require Patent Owner to remove the objectionable subject matter from its oral hearing demonstratives.

Dated: May 20, 2016

Respectfully submitted,

Faegre Baker Daniels LLP

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Petitioners' Objections to Patent Owner's Oral Hearing Demonstratives to be served by email on the following:

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Dated: May 20, 2016

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