

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -
UNITED STATES PATENT AND TRADEMARK OFFICE
- - -
BEFORE THE PATENT TRIAL AND APPEAL BOARD
- - -
JDS UNIPHASE CORPORATION,
Petitioner.

v.

CAPELLA PHOTONICS, INC.,
Patent Owner.

- - -
CASE IPR2015-00731 - Patent RE42,368
CASE IPR2015-00739 - Patent RE42,678

- - -
Wednesday, February 24, 2016
3:30 p.m.

- - -
TELECONFERENCE IN THE ABOVE MATTER
- - -

BEFORE: JAMES A. TARTAL
JOSIAH C. COCKS
KALYAN K. DESHPANDE
Administrative Patent Judges

- - -
VERITEXT NATIONAL COURT REPORTING COMPANY
MID-ATLANTIC REGION
1250 Eye Street, NW, Suite 1201
Washington, DC 20005

Veritext Legal Solutions
215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830



1 APPEARANCES:

2
3 FAEGRE BAKER DANIELS, LLP
4 BY: WALTER C. LINDER, ESQUIRE
5 90 South 7th Street
6 Minneapolis, MN 55402
7 612-766-8801
8 walter.linder@faegrebd.com

and

9 BY: JOEL D. SAYRES, ESQUIRE
10 3200 Wells Fargo Center
11 1700 Lincoln Street
12 Denver, CO 80203
13 303-607-3589
14 joel.sayres@faegrebd.com
15 Representing the Petitioner

16
17 STERNE, KESSLER, GOLDSTEIN & FOX, P.L.L.C.
18 BY: ROBERT GREENE STERNE, ESQUIRE
19 JASON D. EISENBERG, ESQUIRE
20 NICHOLAS J. NOWAK, ESQUIRE
21 1100 New York Avenue, N.W.
22 Washington, D.C. 20005-3934
23 202-371-2600
24 rsterne-PTAB@skgf.com
25 jasone-PTAB@skgf.com
nnowak@skgf.com
Representing the Patent Owner

- - -

1 JUDGE TARTAL: Good afternoon. This
2 is Judge Tartal. With me on the call today are
3 Judges Cocks and Deshpande. This call is in
4 IPR2015-00731 and IPR2015-00739.

5 Can we begin with identifying who is
6 on the call today for Patent Owner?

7 MR. STERNE: Good afternoon, Your
8 Honor. This is Robert Sterne here on behalf of
9 Patent Owner and I have with me my colleagues, Jason
10 Eisenberg and Nicholas Nowak.

11 We also have a court reporter on the
12 line, Your Honor, and she will provide us with a
13 transcript of this Board call if you so request.

14 JUDGE TARTAL: Yes, counsel. Please
15 file as an exhibit, at the conclusion of the call
16 and once you have the transcript back, a copy of the
17 transcript of the call. That would be appreciated.

18 MR. STERNE: No problem.

19 JUDGE TARTAL: Thank you.

20 And for Petitioner who do we have on
21 the call today?

22 MR. SAYRES: Yes. Good afternoon,
23 Your Honor. My name is Joel Sayres. I am backup
24 counsel for the Petitioner. With me on the call as
25 well is lead counsel, Walt Linder.

1 JUDGE TARTAL: Okay. Thank you.

2 Patent Owner requested the call and
3 in their request they indicated that they sought
4 additional discovery of an unredacted version of
5 Schedule 5.5(A). So I will allow Patent Owner to
6 address the issue they want to raise at this time.

7 MR. STERNE: Thank you, Your Honor,
8 and good afternoon. Thank you for granting Capella
9 this call.

10 Our requested relief, Your Honor, is
11 we have requested this call to ask the Board to
12 compel Petitioner to serve under Additional
13 Discovery Rule 42.51(b)(2) an unredacted copy of
14 Schedule 5.5(A).

15 Now, a little bit of background
16 because we have been discussing this before. The
17 Petitioners used Schedule 5.5(A) to represent that
18 Lumentum is now the RPI in these proceedings. On
19 its face Schedule 5.5(A) is not about inter partes
20 review proceedings. It only lists a District Court
21 caption. In quotes it says: Capella v. JDSU
22 Customers.

23 This is supported by the language of
24 Lumentum's 8-K SEC filing defining the assumed
25 actions, as they are called, to mean, quote, those

1 actions in which any member of the JDSU group or any
2 affiliate of a member of the JDSU group is a
3 defendant or the party against whom the claim or
4 investigation is directed, closed quote. And this
5 is found at Page 59 of Exhibit 1037.

6 Petitioner asserted that Schedule
7 5.5(A) proves -- and we quote -- Lumentum
8 Operations, LLC, assumed responsibility of...this
9 proceeding, closed quote. And this is in
10 Petitioner's motion to recaption at Page 3.

11 But since the unredacted part of
12 Schedule 5.5(A) does not list an inter partes review
13 proceeding, we have a contradiction here. We have a
14 contradiction because Viavi, according to Lumentum's
15 8-K SEC filing, is JDSU's direct corporate
16 descendent. And this is found at Page 2, Page 14,
17 and Page 68 of Exhibit 1037.

18 Therefore, Viavi would retain control
19 over cases not listed, over cases not listed in
20 Schedule 5.5(A) of the Contribution Agreement, and
21 from those portions of Schedule 5.5(A) we can see
22 these inter partes review proceedings are not
23 listed, they're just not listed.

24 So from what we know, how can the
25 Lumentum entities state on the record here that they

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.