

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JDS UNIPHASE CORPORATION
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Case IPR2015-00739
Patent RE42,678

**PATENT OWNER'S MOTION FOR *PRO HAC VICE* ADMISSION
OF NICHOLAS J. NOWAK UNDER 37 C.F.R. § 42.10(c)**

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Exhibit List

| Ex. No. | Description |
|----------------|--|
| 2001 | Defendant's Motion to Transfer Venue, Capella Photonics, Inc. v. Cisco Systems, Inc., Case Number: 1:14-cv-20529-PAS, Docket No. 19, April 4, 2014. |
| 2002 | <i>Capella Photonics Launches Dynamically Reconfigurable Wavelength Routing Subsystems, Offering Unprecedented Operating Cost Savings and Flexibility for Telecom Service Providers</i> , BUSINESS WIRE (June 2, 2003, 8:16 AM), http://www.businesswire.com/news/home/20030602005554/en/Capella-Photonics-Launches-Dynamically-Reconfigurable-Wavelength-Routing . ("Business Wire") |
| 2003 | WavePath 4500 Product Brief, Capella, http://www.capellainc.com/downloads/WavePath%204500%20Product%20Brief%20030206B.pdf . ("WavePath") |
| 2004 | U.S. Provisional Patent Application No. 60/183,155. ("155 Provisional") |
| 2005 | <i>Cisco Systems, Inc. v. Capella Photonics, Inc.</i> , IPR2014-01276, Transcript of Deposition of Dr. Dan M. Marom, Ex. 2005 (P.T.A.B. May 18, 2015). ("Marom Depo. Tr.") |
| 2006 | Benjamin B. Dingel & Achyut Dutta, <i>Photonic Add-Drop Multiplexing Perspective for Next Generation Optical Networks</i> , 4532 SPIE 394 (2001). ("Dingel") |
| 2007 | Tze-Wei Yeow, K. L. Eddie Law, & Andrew Goldenberg, <i>MEMS Optical Switches</i> , 39 IEEE Comm'n Mag. no. 11, 158 (2001). ("Yeow") |
| 2008 | Clifford Holliday, <i>Components for R-OADMs '05</i> (B & C Consulting Services & IGI Consulting Inc. 2005). ("Holliday R-OADMs") |
| 2009 | Patrick B. Chu <i>et al.</i> , <i>MEMS: the Path to Large Optical Crossconnects</i> , 40 IEEE COMM'N MAG. no. 3, 80 (2002). ("Chu") |
| 2010 | Clifford Holliday, <i>Switching the Lightwave: OXC's – The Centerpiece of All Optical Network</i> (IGI Consulting Inc. & B & C Consulting Services 2001). ("Holliday OXC") |
| 2011 | An Vu Tran <i>et al.</i> , <i>Reconfigurable Multichannel Optical Add-Drop Multiplexers Incorporating Eight-Port Optical Circulators and Fiber</i> |

| Ex. No. | Description |
|-------------|--|
| | <i>Bragg Gratings</i> , 13 Photonics Tech. Letters, IEEE, no. 10, 1100 (2001). (“Tran”) |
| 2012 | Jungho Kim & Byoungcho Lee, <i>Bidirectional Wavelength Add-Drop Multiplexer Using Multiport Optical Circulators and Fiber Bragg Gratings</i> , 12 IEEE Photonics Tech. Letters no. 5, 561 (2000). (“Kim”) |
| 2013 | U.S. Patent No. 6,984,917 (filed Jun. 6, 2002). (“Marom ’917”) |
| 2014 | U.S. Patent No. 6,657,770 (filed Aug. 31, 2001). (“Marom ’770”) |
| 2015 | Affidavit of Nicholas J. Nowak in Support of <i>Pro Hac Vice</i> Admission Under 37 C.F.R. § 42.10(c) |

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.10(c) and the Notice of Filing Date Accorded to Petition (Paper 3), Patent Owner Capella Photonics, Inc. (“Patent Owner”) respectfully requests the *pro hac vice* admission of Nicholas J. Nowak in this proceeding.

II. GOVERNING LAW, RULES, AND PRECEDENT

Section 42.10(c) states as follows:

The Board may recognize counsel *pro hac vice* during a proceeding upon a showing of good cause, subject to the condition that lead counsel be a registered practitioner and to any other conditions as the Board may impose. For example, where the lead counsel is a registered practitioner, a motion to appear *pro hac vice* by counsel who is not a registered practitioner may be granted upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.

The Board has stated that any motion for *pro hac vice* admission under 37 C.F.R. § 42.10(c) must be filed in accordance with the “Order – Authorizing Motion for *Pro Hac Vice* Admission” entered in Case IPR2013-00639 (“*Unified Patents Order*”). (See *Unified Patents Order*, p. 2.)

The *Unified Patents Order* requires that such motions (1) “[c]ontain a statement of facts showing there is good cause for the Board to recognize counsel

pro hac vice during the proceeding;” and (2) “[b]e accompanied by an affidavit or declaration of the individual seeking to appear attesting to the following”:

- i. Membership in good standing of the Bar of at least one State or the District of Columbia;
- ii. No suspensions or disbarments from practice before any court or administrative body;
- iii. No application for admission to practice before any court or administrative body ever denied;
- iv. No sanctions or contempt citations imposed by any court or administrative body;
- v. The individual seeking to appear has read and will comply with the Office Patent Trial Practice Guide and the Board’s Rules of Practice for Trials set forth in part 42 of 37 C.F.R.;
- vi. The individual will be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§ 11.101 *et seq.* and disciplinary jurisdiction under 37 C.F.R. § 11.19(a);
- vii. All other proceedings before the Office for which the individual has applied to appear *pro hac vice* in the last three (3) years; and
- viii. Familiarity with the subject matter at issue in the proceeding.

III. STATEMENT OF FACTS

Based on the following facts, and supported by the Affidavit of Mr. Nowak, submitted herewith as Ex. 2015, Patent Owner requests the *pro hac vice* admission of Nicholas J. Nowak in this proceeding:

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