

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.
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Case IPR2015-00739¹
Patent No. RE42,678

PATENT OWNER CAPELLA PHOTONICS INC.'S NOTICE OF APPEAL

via PTAB E2E
Patent Trial and Appeal Board

via Hand Carry
Director of the United States Patent and Trademark Office
c/o Office of the General Counsel, 10B20
Madison Building East
600 Dulany Street
Alexandria, VA 22314

via CM/ECF
United States Court of Appeals for the Federal Circuit

¹ Case IPR2015-01971 has been joined with this proceeding.

INTRODUCTION

Capella Photonics, Inc.’s appeal stems from the Patent Trial and Appeal Board’s Final Written Decision entered on October 14, 2016 (Paper 50) (the “Final Written Decision”) in the above-captioned *inter partes* review of United States Patent No. RE42,678. This notice is timely filed within 63 days of the Final Written Decision. 37 C.F.R. § 90.3(b)(1).

CAPELLA PHOTONICS, INC.’S APPEAL

Please take notice that under 35 U.S.C. §§ 141(c), 142, 319; 37 C.F.R. §§ 90.2(a), 90.3(a), and Federal Rules of Appellate Procedure/Federal Circuit Rule 4(3)(a), Patent Owner Capella Photonics, Inc. hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision based on the “Decision, Institution of *Inter Partes* Review” entered on August 25, 2015 (Paper 7) (the “Institution Decision”).

CAPELLA PHOTONICS, INC.’S ISSUES ON APPEAL

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Capella Photonics, Inc.’s issues on appeal include at least: (i) the Board’s finding that claims 1–4, 9, 10, 13, 19–23, 27, 44–46, and 61–65 would have been obvious over Bouevitch, Sparks, and Lin; (ii) the Board’s finding that claims 17, 29, and 53 would have been obvious over Bouevitch, Sparks, Lin, and Dueck; (iii) the Board’s claim construction; and (iv) any findings or determinations supporting or related to the

aforementioned issues as well as all other issues decided adversely to Capella Photonics, Inc. in any orders, decisions, rulings, phone conference decisions, and/or opinions.

Simultaneously with this submission, Capella Photonics, Inc. is filing a true and correct copy of this Notice of Appeal with the Director of the United States Patent and Trademark Office and a true and correct copy of the same, along with the required docketing fee, with the Clerk of the United States Court of Appeals for the Federal Circuit as set forth in the accompanying Certificate of Filing.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

/Jason D. Eisenberg/

Robert Greene Sterne (Reg. No. 28,912)
Jason D. Eisenberg (Reg. No. 43,447)
Attorneys for Patent Owner

Date: October 24, 2016
1100 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-2600

CERTIFICATE OF FILING

The undersigned hereby certifies that, in addition to being electronically filed through PTAB E2E, a true and correct copy of the above-captioned **PATENT OWNER CAPELLA PHOTONICS, INC.'S NOTICE OF APPEAL** is being filed by hand with the Director on October 24, 2016, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel, 10B20
Madison Building East
600 Dulany Street
Alexandria, VA 22314

The undersigned also hereby certifies that a true and correct copy of the above-captioned **PATENT OWNER CAPELLA PHOTONICS, INC.'S NOTICE OF APPEAL** and the filing fee is being filed via CM/ECF with the Clerk's Office of the United States Court of Appeals for the Federal Circuit on October 24, 2016.

Respectfully submitted,

Date: October 24, 2016

/Jason D. Eisenberg/

Jason D. Eisenberg (Reg. No. 43,447)
Attorney for Patent Owner

CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER**
CAPELLA PHOTONICS, INC.'S NOTICE OF APPEAL was served
electronically via e-mail on October 24, 2016, in its entirety on the following
counsel for Petitioner:

Walter C. Linder
Kenneth Liebman
Paul Sherburne
J. Pieter van Es
Thomas K. Pratt
Jordan N. Bodner
Michael S. Cuviallo
Matthew J. Moore
Robert Steinberg
Wayne O. Stacy
Christopher E. Chalsen
Lawrence T. Kass
Nathaniel T. Browand
Suraj K. Balusu

walter.linder@FaegreBD.com
ken.liebman@FaegreBD.com
paul.sherburne@FaegreBD.com
PvanEs@bannerwitcoff.com
TPratt@bannerwitcoff.com
JBodner@bannerwitcoff.com
MCuviello@bannerwitcoff.com
Matthew.Moore@lw.com
Bob.Steinberg@lw.com
WStacy@cooley.com
CChalsen@milbank.com
LKass@milbank.com
NBrowand@milbank.com
SBalusu@milbank.com
cienacapellaipr.lwteam@lw.com
Banner-Tellabs@bannerwitcoff.com

Respectfully submitted,

Date: October 24, 2016

/Jason D. Eisenberg/

Jason D. Eisenberg (Reg. No. 43,447)
Attorney for Patent Owner

4840387_1.docx