

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 42,678

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

Inter Partes Review No. 2015-00739

**PETITIONER'S OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner¹ hereby objects to the following evidence submitted by Patent Owner Capella Photonics, Inc. with its Patent Owner Response (Paper No. 16):

1. **Exhibit 2005** is objected to as hearsay under FRE 801-807, and under Federal Rule of Civil Procedure 32. Exhibit 2005 is a deposition transcript from different IPR proceedings not involving Petitioner (IPR2014-01166 and IPR2014-01276). Petitioner is not a party to those proceedings, and Petitioner was not present or represented at the deposition. Accordingly, Exhibit 2005 is not admissible under Federal Rule 32, and does not fall within any exception to the rule against the admissibility of hearsay.²

Petitioner further objects on the same bases to use of the deposition testimony in Exhibit 2005 to support portions of Patent Owner's Response, including at pages 19, 21, 45, 52 and 53.

¹ As a result of a reorganization involving original Petitioner JDS Uniphase Corporation, the real parties-in-interest for Petitioner in this proceeding are now Lumentum Holdings Inc., Lumentum Inc., and Lumentum Operations LLC. *See* IPR2015-00739, Updated Mandatory Notice, Paper 10.

² Exhibit 2005 was first submitted with Patent Owner's Preliminary Response in violation of 37 C.F.R. §107(c). Accordingly, the Board excluded that evidence from consideration. (Paper 7 at 14-15 n. 5.)

2. **Exhibit 2021** is objected to under FRE 401-403, 801-807, and 901 as it lacks foundation and relevance, including because the only date on the document is a purported copyright date of 2013.

3. **Exhibit 2025** is objected to under FRE 401-403, 901, and 1002 as it lacks foundation and does not identify the date of the document. The Exhibit appears to be an abstract of a presentation, yet excludes foundational information regarding the purported presentation.

4. **Exhibits 2016 and 2020** are objected to under FRE 901 and 1002, and 37 C.F.R. §42.54 because they are incomplete excerpts of documents. *See* 37 C.F.R. §42.54(b)(1) (“Unless previously served or otherwise by agreement of the parties, any exhibit cited in a paper or in testimony must be served with the citing paper or testimony.”); *c.f. Apotex Inc. v. Wyeth LLC*, IPR2014-00115, Paper 19 at 3 (May 29, 2014) (“[I]f deposition testimony is submitted as an exhibit, the parties should file the full transcript of the deposition rather than excerpts of only those portions being cited by the parties.”). In addition, the omitted portions may contain inconsistent information under 37 C.F.R. §54(b)(1)(iii), and Petitioner

must be afforded an opportunity to review the entire documents, not isolated excerpts presented by Patent Owner.

Dated: December 8, 2015

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Petitioner's Objections to Evidence Pursuant to 37 C.F.R. § 42.64(b)(1) to be electronically served by email on the following:

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