

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

CIENA CORPORATION, CORIANT OPERATIONS, INC., CORIANT  
(USA) INC., AND FUJITSU NETWORK COMMUNICATIONS, INC.,  
Petitioner,

v.

CAPELLA PHOTONICS, INC.,  
Patent Owner.

---

Case IPR2015-00894  
Patent RE42,678 E

---

Before JOSIAH C. COCKS, KALYAN K. DESHPANDE, and  
JAMES A. TARTAL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION  
Granting Motion for Joinder  
37 C.F.R. § 42.122(b)

## I. INTRODUCTION

Petitioner, Ciena Corporation, Coriant Operations, Inc., Coriant (USA) Inc., and Fujitsu Network Communications, Inc., (“Petitioner” or “Ciena”) filed a Motion for Joinder in connection with *inter partes* review proceeding *Cisco Systems, Inc. v. Capella Photonics, Inc.*, IPR2014-01276 (“IPR2014-01276”) pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b). Paper 6 (“Motion” or “Mot.”). Both IPR2014-01276 and this proceeding involve claims 1–4, 9, 10, 13, 17, 19–23, 27, 29, 44–46, 53, and 61–65 of U.S. Patent No. RE42,678 (“the ’678 patent”). Petitioner filed the Motion with its Petition on March 17, 2015, within thirty days of the institution of trial in IPR2014-01276 on February 18, 2015. *See* IPR2014-01276, Paper 8.

Petitioner represents that Cisco Systems, Inc. (“Cisco”), petitioner in IPR2014-01276, does not oppose the Motion. Mot. 4. Patent Owner, Capella Photonics, Inc., did not file a response to the Motion.

Petitioner’s Motion for Joinder is *granted*.

## II. DISCUSSION

The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) (“AIA”) permits joinder of like review proceedings. The Board, acting on behalf of the Director, has the discretion to join an *inter partes* review with another *inter partes* review. *See* 35 U.S.C. § 315(c).<sup>1</sup> Joinder may be authorized when warranted, but the decision to grant joinder is

---

<sup>1</sup> 35 U.S.C. § 315(c) reads:

Joinder.—If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition

discretionary. 35 U.S.C. § 315(c); 37 C.F.R. § 42.122. When exercising its discretion, the Board is mindful that patent trial regulations, including the rules for joinder, must be construed to secure the just, speedy, and inexpensive resolution of every proceeding. *See* 35 U.S.C. § 316(b); 37 C.F.R. § 42.1(b).

In our Decision on Institution of *Inter Partes* Review (Paper 11), entered concurrently with this Decision on Motion for Joinder, we instituted trial with respect to claims 1–4, 9, 10, 13, 17, 19–23, 27, 29, 44–46, 53, and 61–65 of the ’678 patent. In that regard, we determined that Petitioner has shown a reasonable likelihood of prevailing in its assertion that those claims are unpatentable over the cited prior art. The grounds of unpatentability proposed by Petitioner are the same as in IPR2014-01276. Petitioner states that “[j]oinder would not complicate or delay [IPR2014-01276] and would not adversely affect the schedule.” Mot. 3. Petitioner represents that the Petition is nearly identical to the instituted grounds in IPR2014-01276 and is supported by a declaration from the same declarant that is essentially identical to the declaration submitted in IPR2014-01276. *Id.* According to Petitioner, “[t]he Petition presents no new substantive issues relative to [IPR2014-01276] and does not seek to broaden the scope of [IPR2014-01276] or request additional discovery.” *Id.* at 6. Petitioner further agrees that Cisco’s counsel will act as lead counsel as long as Cisco remains in the proceeding, and submits that the current schedule can stay unchanged. *Id.* at 6–7. Additionally, the issues raised by Patent Owner in opposition to

---

under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.

institution of trial in IPR2015-00894 mirror the contentions Patent Owner asserts in its Patent Owner Response in IPR2014-01276. *See* Paper 10; *see also* IPR2014-01276, Paper 15.

In consideration of the foregoing, we determine that it is appropriate to grant Petitioner's Motion for Joinder.

### III. ORDER

Accordingly, it is

ORDERED that Petitioner's Motion for Joinder with IPR2014-01276 is *granted*;

FURTHER ORDERED that the instant proceeding is joined with IPR2014-01276;

FURTHER ORDERED that the grounds of unpatentability on which trial was instituted in IPR2014-01276 are unchanged, and trial will proceed on those grounds based on the record in IPR2014-01276;

FURTHER ORDERED that the parties will file all papers in IPR2014-01276, and that IPR2015-00894 is hereby terminated under 37 C.F.R. § 42.72;

FURTHER ORDERED that the joined proceeding will follow the schedule effective in IPR2014-01276 as of the date of this Decision;

FURTHER ORDERED that in IPR2014-01276, Cisco Systems, Inc., ("Cisco") and Ciena Corporation, Coriant Operations, Inc., Coriant (USA) Inc., and Fujitsu Network Communications, Inc., (collectively "Ciena") will file papers, except for motions that do not involve the other party, as consolidated filings. Cisco will identify each such filing as a consolidated filing and will be responsible for completing all consolidated filings. Ciena may file an additional paper, not to exceed five pages, which may address

only points of disagreement with contentions in Cisco's consolidated filing. Any such filing by Ciena must identify specifically and explain each point of disagreement. Ciena may not file separate arguments in support of points made in Cisco's consolidated filing;

FURTHER ORDERED that, in addition to responding to any consolidated filing, Patent Owner may respond separately to any separate Ciena filing. Any such response by Patent Owner to a Ciena filing may not exceed the number of pages in the Ciena filing, and is limited to issues raised in the Ciena filing;

FURTHER ORDERED that Cisco and Ciena will designate attorneys to conduct cross-examination of any witnesses produced by Patent Owner and redirect any witnesses produced by Cisco and Ciena within the timeframe normally allotted by the rules to one party. Cisco and Ciena will not receive any separate cross-examination or redirect time. Cisco is permitted to ask questions before Ciena at depositions if it so chooses;

FURTHER ORDERED that Cisco is permitted to present argument before Ciena at any oral argument if it so chooses;

FURTHER ORDERED that the case caption in IPR2014-01276 shall be changed to reflect the joinder with this proceeding in accordance with the attached example; and

FURTHER ORDERED that a copy of this Decision shall be entered into the file of Case IPR2014-01276.

# 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.