

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

[CIENA CORPORATION](#)

[CORIANT OPERATIONS, INC., and](#)

~~[FUJITSU NETWORK COMMUNICATIONS,](#)~~ [CORIANT \(USA\) INC.,](#)
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Inter Partes Review Case No. ~~IPR2015-~~
~~00726~~ [Unassigned](#)
Patent No. RE42,368

~~CORRECTED~~ PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. RE42,368 UNDER 35 U.S.C. §§ 311-319 AND
37 C.F.R. §§ 42.1-.80, 42.100-.123

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I. INTRODUCTION

Petitioner ~~Fujitsu Network Communications, Inc. (“FNC” or Ciena Corp., Coriant Operations, Inc., and Coriant (USA) Inc.,~~ (“Petitioner”) requests *inter partes* review of claims 1-6, 9-12, and 15-22 (“Petitioned Claims”) of U.S. Patent No. RE42,368 (“the ‘368 patent”) (Ex. 1001), assigned on its face to Capella Photonics, Inc. (“Capella”).

This Petition relies on ~~two~~one primary ~~references: U.S. Patent No. 6,798,941 (“Smith”) (Ex. 1009) and~~reference, U.S. Patent No. 6,498,872 (“Bouevitch”) (Ex. 1002).

~~Smith, which was not before the Patent Office, renders all of the Petitioned Claims anticipated or obvious in combination with U.S. Patent Publication No. 2002/0081070 (“Tew”) (Ex. 1007). Notably, Smith discloses the precise features that Capella relied upon to distinguish over the prior art it identified in its reissue application.~~

Bouevitch was before the Patent Office during the reissue prosecution, but Capella admitted that its original claims were overbroad and invalid over Bouevitch in view of one or more of three additional references. Although Capella amended its claims to purportedly overcome their deficiency, the amended claims fail to distinguish over the prior art references identified herein as Bouevitch in combination with U.S. Patent No. 6,442,307 (“Carr”) (Ex. 1005) or U.S. Patent

No. 6,625,340 (“Sparks”) (Ex. 1006) ~~and optionally Tew~~ render all of the
Petitioned Claims obvious.

The Petitioned Claims are currently being challenged in view of the
combination of Bouevitch and Smith in IPR2014-01166 and Bouevitch, Sparks,
and Lin in IPR2015-00731. This Petition presents different grounds and prior art
references than those addressed in ~~that challenge~~. those challenges. This petition
presents the same grounds as those instituted in IPR2015-00726, and
Petitioner seeks to join IPR2015-00726.

Inter partes review of the Petitioned Claims should be instituted because this
petition shows that there is a reasonable likelihood that Petitioner will prevail on
the Petitioned Claims. Each limitation of each Petitioned Claim is disclosed by
and/or obvious to a person having ordinary skill in the art (“PHOSITA”) in light of
the prior art discussed herein. Claims 1-6, 9-12, and 15-22 of the ‘368 patent
should be found unpatentable and canceled.

II. MANDATORY NOTICES AND FEES

Real Parties-in-Interest: Petitioner ~~Fujitsu Network Communications,
Inc. and Fujitsu Limited~~ Ciena Corporation, Coriant Operations, Inc.
(“COI”), Coriant (USA) Inc. (“CUSA”), are the real parties-in-interest in this
petition. Tellabs, Inc., a parent holding company of COI, was accused in
litigation identified herein of infringing the ‘368 Patent. Even though Tellabs,

[Inc. was dismissed on jurisdictional grounds, Tellabs, Inc., and CUSA's corresponding parent holding company, Coriant International Group LLC \(formerly Blackhawk Holding Vehicle LLC\), are also identified in this section out of an abundance of caution.](#)

Related Matters: Capella has asserted the '368 patent in the following actions: *Capella Photonics, Inc. v. Cisco Systems, Inc.*, No. 3:14-cv-03348; *Capella Photonics, Inc. v. Fujitsu Network Communications, Inc.*, No. 3:14-cv-03349; *Capella Photonics, Inc. v. Tellabs Operations, Inc.*, No. 3:14-cv-03350; *Capella Photonics, Inc. v. Ciena Corporation*, No. 3:14-cv-03351 (collectively, "Capella Litigation"). Claims 1-6, 9-12, and 15-22 of the '368 patent are asserted in the Capella Litigation. Petitioner is also filing a petition for *inter partes* review against U.S. Patent No. RE42,678, which is the other patent asserted in the Capella Litigation and is related to the '368 patent. [This Petition is filed with a motion seeking to join](#) *Inter partes* review No. [2015-00726](#). *Inter partes* review Nos. 2014-01166 ~~is~~, [2015-00726, 2015-00731, and 2015-00816 \(joined with 2014-01166\)](#) [are](#) directed to the '368 Patent, and *inter partes* review ~~No~~[Nos.](#) 2014-01276 ~~is~~, [2015-00727, 2015-00739, and 2015-00894 \(joined with 2014-01276\)](#) [are](#) directed to U.S. Patent No. RE42,678.

Counsel: Lead counsel in this case is ~~Christopher E. Chalsen~~[Matthew J. Moore](#) (PTO Reg. No. ~~30,936~~[42,012](#)); backup counsel is ~~Lawrence T. Kass~~

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