

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CIENA CORPORATION

CORIAN OPERATIONS, INC., and

~~FUJITSU NETWORK COMMUNICATIONS,~~ CORIAN (USA) INC.,
Petitioner

v.

CAPELLA PHOTONICS, INC.
Patent Owner

Inter Partes Review Case No. IPR2015-
~~00727~~01961
Patent No. RE42,678

CORRECTED PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. RE42,678 UNDER 35 U.S.C. §§ 311-319 AND
37 C.F.R. §§ 42.1-.80, 42.100-.123

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ATTACHMENT A:6157

ATTACHMENT B: APPENDIX OF EXHIBITS6258

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 1-4, 9, 10, 13, 17, 19-23, 27, 29, 44-46, 53 and 61-65 (“Petitioned Claims”) of U.S. Patent No. RE42,678 (“the ‘678 patent”) (Ex. 1001), assigned on its face to Capella Photonics, Inc. (“Capella”).

This corrected¹ Petition relies on ~~two~~one primary ~~references: U.S. Patent~~

¹ This corrected Petition is filed pursuant to the Board’s Order at Paper No. 6, which held that the original Petition, Paper No. 4, contained an unspecified 37 C.F.R. § 42.6(a)(B)(iv)(3) defect. Petitioner corresponded with the Board’s trial paralegals and understands that the defect was with Petitioner’s use of internal cross-citations in the claim charts of the declaration to other portions of the same document. To address this, Petitioner has replaced all such internal cross-citations in the declaration with the language referenced elsewhere in the same document. Petitioner corrected both the declaration (Ex. 1039) and this corrected Petition, since the Petition includes this same defect. For this reason only, the claim charts in the declaration (Ex. 1039) and this Petition have lengthened. Otherwise, the corrected Petition and declaration include the same information as originally filed and the same information as the instituted grounds of the petition and declaration in IPR2015-00727, which Petitioner seeks to join. The corrected declaration is left intentionally unsigned as advised by the PTAB clerk. No substantive

~~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 additional
reference U.S. Patent No. 6,442,307 (“Carr”) (Ex. 1005) and optionally 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 Carr 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 IPR2014-01276 and Bouevitch, Sparks,
and Lin in IPR2015-00739. This Petition presents different grounds and prior art

changes were made to the declaration, but Dr. Timothy Drabik was
hospitalized on Thursday Oct. 1, 2015 and is not available to review or sign
the updated declaration.

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