

Filed on behalf of Petitioners

By: Todd R. Walters, Esq.

Roger H. Lee, Esq.

Jonathan R. Bowser, Esq.

Kyle K. Tsui, Esq.

BUCHANAN INGERSOLL & ROONEY PC

1737 King Street, Suite 500

Alexandria, Virginia 22314-2727

Telephone (703) 836-6620

Facsimile (703) 836-2021

todd.walters@bipc.com

roger.lee@bipc.com

jon.bowser@bipc.com

kyle.tsui@bipc.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Corning Optical Communications RF LLC,
Corning Incorporated, and Corning Optical Communications LLC
Petitioners,

v.

PPC Broadband, Inc.
Patent Owner

Case No. To be assigned
Patent 8,075,338

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 8,075,338 (CLAIMS 5, 6, AND 8)
UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. § 42.100**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. MANDATORY NOTICES PURSUANT TO 37 C.F.R. § 42.8 1

 A. Real Party-In-Interest 1

 B. Identification of Related Matters Under 37 CFR § 42.8(b)(2) 2

 C. Lead and Backup Counsel..... 2

 D. Service Information..... 3

III. WORD COUNT CERTIFICATION 3

IV. PAYMENT OF FEES 3

V. REQUIREMENTS UNDER 37 C.F.R. § 42.104..... 3

 A. Grounds for Standing 3

 B. Identification of Challenge and Precise Relief Requested..... 4

 1. Claims for Which *Inter Partes* Review Is Requested..... 4

 2. Specific Art and Statutory Ground on Which the
 Challenge Is Based..... 4

 3. Supporting Evidence Relied Upon to Support the
 Challenge 5

 4. Prior Art Qualification of Asserted References..... 5

 5. How the Challenged Claims Are to Be Construed 6

VI. SUMMARY OF THE ‘338 PATENT 6

 A. Technical Background..... 6

 B. The ‘338 Patent and the Prior Art 9

 1. The ‘338 Patent 9

Petition for *Inter Partes* Review of U.S. Patent No. 8,075,338

2.	The Prior Art	11
C.	Summary of Examination History of the ‘338 Patent.....	14
1.	The ‘503 application was allowed because the Examiner found that Bence would not have been combined with Spencer.....	15
2.	The Petition relies on prior art disclosures which were not relied upon by the Examiner during <i>ex parte</i> prosecution	17
3.	The rejection during <i>ex parte</i> prosecution does not provide grounds for denying institution under 35 U.S.C. § 325(d).....	19
VII.	HOW THE CHALLENGED CLAIMS ARE TO BE CONSTRUED	20
A.	Claim Construction Standard	20
B.	PPC’s Infringement Allegations in the Related Litigation	20
C.	Claim Constructions	23
1.	Construction of “post”	24
2.	Construction of “a plurality of engagement fingers”	25
3.	Construction of “biased into a position of interference”	27
4.	Construction of “physical and electrical continuity”	27
5.	Construction of “axially aligned slots”	28
6.	Construction of “on”	29
VIII.	PETITIONERS HAVE A REASONABLE LIKELIHOOD OF PREVAILING	30
A.	Claims 5, 6, and 8 Are Obvious over Matthews in View of Aujla and Bence	31

Petition for *Inter Partes* Review of U.S. Patent No. 8,075,338

1.	Reference to Where the Elements of Claims 5, 6, and 8 Are Found in the Prior Art.....	32
2.	Explanation of Why Claims 5, 6, and 8 Would Have Been Obvious.....	60
a.	Matthews discloses virtually all of the features recited in claim 5 of the ‘338 Patent.....	61
b.	The spring projections disclosed by Aujla constitute a plurality of engagement fingers that are spaced apart by axially aligned slots	62
c.	It would have been obvious to modify Matthews to have an axially slotted post with engagement fingers in view of Aujla and Bence	65
B.	Any Purported Secondary Considerations Evidence Does Not Overcome the Strong Evidence of the Obviousness	79
IX.	CONCLUSION.....	79
APPENDIX 1 - LIST OF EXHIBITS		

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>AFG Industries, Inc. v. Cardinal IG Co., Inc.</i> , 239 F.3d 1239 (Fed. Cir. 2001)	30
<i>In re Bond</i> , 910 F.2d 831 (Fed. Cir. 1990)	30
<i>Chimei Innolux Corp. v. Semiconductor Energy Lab. Co., Ltd.</i> , IPR2013-00066, Paper 10 (PTAB Apr. 24, 2013)	20
<i>Cuozzo Speed Techs., LLC v. Lee</i> , No. 15-446, 579 U.S. ____ (2016)	20
<i>Graham v. John Deere Co.</i> , 383 U.S. 1, 148 U.S.P.Q. 459 (1966)	31
<i>Liebel-Flarsheim Co. v. Medrad, Inc.</i> , 358 F.3d 898 (Fed. Cir. 2004)	26
<i>Munchkin, Inc. v. Skip Hop, Inc.</i> , IPR2016-00536, Paper 12 (PTAB Jul. 21, 2016).....	19
<i>Thorner v. Sony Comput. Entm't Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012)	26
<i>Trustees of Boston Univ. v. Everlight Elec. Co., Ltd., et al.</i> , 2016 WL 3976617 (D. Mass. Jul. 22, 2016)	30
<i>Verdegaal Bros. v. Union Oil Co. of California</i> , 814 F.2d 628 (Fed. Cir. 1987)	30

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.