

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLEX LOGIX TECHNOLOGIES INC,

Petitioner,

v.

VENKAT KONDA,

Patent Owner.

Case IPR2020-00262

Patent 8,269,523 B2

**PATENT OWNER'S RESPONSE TO PETITIONER'S NOTICE IN
RESPONSE TO MAY 28, 2020 BOARD ORDER REGARDING MULTIPLE
PETITIONS**

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I. INTRODUCTION

Pursuant to the Board's Order dated May 28, 2020 regarding Multiple Petitions ("Board's Order"), PO hereby submits this response to Petitioner's Notice in Response to May 28, 2020 Board's Order in all the three proceedings for *inter partes* Review ("IPR") of U.S. Patent No. 8,269,523 ("the '523 Patent") filed by Petitioner Flex Logix Technologies Inc. ("Petitioner") on December 16, 2019, namely, IPR2020-00260 (Paper 1, "Petition 1"), IPR2020-00261 (Paper 1, "Petition 2"), and IPR2020-00262 (Paper 1, "Petition 3") (collectively the "three Petitions"). In the present case, the sole inventor, Venkat Konda Ph.D., also submits his attached declaration in support of this PO's Response (*See*, Ex. 2013).

II. ALL THREE IPR PETITIONS SHOULD BE DENIED SINCE PETITIONER'S FILING MULTIPLE PETITIONS IN THIS CASE, AFTER ALSO FILING MULTIPLE PGRS, IS WITHOUT ANY MERIT AND CONSTITUTES HARASSMENT OF PATENT OWNER ("PO")

Claim 1 is the only independent claim in the '523 Patent. The Examiner comprehensively considered all the prior art asserted in the three Petitions by Petitioner using an unqualified POSITA as an expert witness (*See*, Paper 6).

The Examiner initially rejected all the claims in the application for the '523 Patent. Following an interview and amendment of claim 1, the Examiner addressed all the issues raised in the Petitions regarding the Claim 1 and allowed the application for the '523 Patent. Accordingly PO requests the Board to deny all

three petitions. *It is evident that Petitioner is using the AIA's procedures as tools for harassment. (See, H.R. Rep. No. 112-98, pt. 1, at 48 (2011)).*

A. One IPR Petition is sufficient to cover all the grounds in the three Petitions

Three petitions are absolutely not needed, and extremely inefficient and costly and should be avoided for the reasons at the core of the Board's May 28, 2020 Order. PO asserts that all the grounds should have been consolidated in one Petition by Petitioner as described below.

Petitioner itself conceded that Petitions 1 and 2 are based on the *same* grounds. Petition 1 at 1-25 and Petition 2 at 1-26 are essentially the same, i.e., replicas, and in those pages Petitioner **disingenuously** attempts to establish that U.S. Provisional Patent Application Serial No. 60/940,394 ("394 provisional"), to which the '523 Patent claims priority, is prior art to the '523 patent. Notably, Petition 1 at 25-92 and Petition 2 at 25-90 are not needed at all since Petitioner **disingenuously** asserting the same subject matter in '394 provisional as prior art.

In Petition 3 at 10-106, Petitioner wrongly argues that the Column-based layout (or Column floorplan) disclosed U.S. Patent No. 6,940,308 ("Wong") is prior art. Any POSITA would immediately recognize that the Column-based layout in Wong is impractical and has no industrial applicability. In Petition 3 at 10-106, at several places there is a repetition of examples of diagrams FIG. 13A and FIG. 13B (for example, at 17 and 18, at 19 and 20, at 24 and 25, at 28 and 29, at 41 and

43, at 44 and 46, at 48 and 50, at 52 and 54, at 55 and 57, at 58 and 60, at 68 and 69, at 80 and 81, and at 82 and 83), and a replication of stages of examples of diagrams FIG. 13A (for example, at 32, 33, and 34). If this repetition were avoided, further pages would have been unnecessary.

In summary, Petition 1 at 1-25 and Petition 3 at 10-106 (by eliminating the repetition of examples as described above), Petitioner could have asserted all its disingenuous grounds & arguments in one Petition within the IPR word count limit regardless of the length of the claims in the '523 Patent. So, PO requests the Board to read those pages only without a need to rank them, to deny all three Petitions.

B. Petitioner brazenly filed three petitions for the 2nd time to harass the PO

On March 18, 2019, Petitioner simultaneously filed three Post Grant Reviews, namely, PGR2019-0037, 40 & 42 (the “three PGRs”) directed to PO’s U.S. Patent No. 10,003,553. As stated in the Trial Practice Guide Update (July 2019), 26–27, the Board issued an order on August 19, 2019 to rank the three PGRs (*See*, Ex. 2014). In its response to the Board’s Order to rank the three PGRs, Petitioner stated: “Given that Petitioner did not have notice before filing that ranking its petitions would be required, both the Administrative Procedures Act and due process weigh against denying institution of any one of these petitions under 35 U.S.C. §§ 314(a) or 325(d)” (*See*, Ex. 2015 at 5). Subsequently, PO submitted his response (*See*, Ex. 2016). On September 19, 2019, the Board in its decision

mentioned that: “We have considered, but are not persuaded by, Petitioner’s argument that it had insufficient ‘notice before filing that ranking its petitions would be required.’ Paper 10, 5. As noted above, the Director has always possessed statutory discretion whether to institute an *inter partes* based on a petition, both before and after promulgation of the Trial Practice Guide Update cited in our Order (Paper 9). *See* 35 U.S.C. § 314(a).” (*See*, Ex. 2017 at 13.)

So, although Petitioner had sufficient notice based on the Board’s decision, approximately three months later, i.e., on December 16, 2019, **again** filed three petitions. In the three PGRs, one of them, i.e., PGR2019-0037 is exclusively on § 112 issues, whereas in the present Petitions 1-3 all three of them are on § 102 and § 103 grounds, so there is no reason for Petitioner to have filed three Petitions. As noted in the Board’s Order: “During the call, Petitioner confirmed that it did not provide this information in either the Petitions or in a separate paper filed with the Petitions.”, Petitioner’s harassment of PO is clear as PO had to excruciatingly read all three Petitions, prior to filing PO’s Preliminary Response on May 6, 2020.

In Petitioner’s Notice in Response to May 28, 2020 Board’s Order, Petitioner does not directly mention, much less address, the guidelines of the Trial Practice Guide Update (July 2019), 26–27 and hence abrogated those guidelines. Accordingly, all three Petitions must be denied for this reason alone.

C. In the three Petitions and the three PGRs, Dr. Baker does not qualify per Petitioner's own definition of Person of Ordinary Skill In The Art ("POSITA") let alone as an Expert Witness

Petitioner relied on the same unqualified POSITA in the three Petitions as well as in the three PGRs. On May 20, 2020, PO filed a motion to exclude evidence ("PO's Motions to Exclude") in the PGR proceedings of PGR2019-0037 and 0042 (the "two instituted PGRs") pursuant to 37 C.F.R. § 42.64, 37 C.F.R. § 42.11, and 37 C.F.R. § 42.51(b)(iii) (*See*, Ex. 2018). The Board held a conference call on May 27, 2020, after Petitioner requested leave to file a motion to expunge PO's motions to exclude and **denied** Petitioner's leave to file a motion to expunge PO's motions. Petitioner who engaged a court reporter for the conference call delayed, till today, to file the the transcript of conference call as an exhibit. (*See*, Ex. 2019)

PO requests the Board to allow PO to submit the transcript of the conference call and Petitioner's response to PO's motions to exclude as Ex. 2020 and Ex. 2021, respectively, as soon as Petitioner files them in the two instituted PGRs. Without addressing the validity of its unqualified POSITA, Petitioner continues to side track the issues already thoroughly addressed by PO in Paper 8 (*See*, Paper 12, footnote 1 at 3 and footnote 2 at 4).

III. CONCLUSION

Petitioner's three Petitions, in spite of prior notice from the Board in three PGRs, constitutes harassment of PO. PO requests the Board to deny all three Petitions.

Date: June 11, 2020

Respectfully submitted,

/Venkat Konda/

Venkat Konda
Pro Se Counsel
6278 Grand Oak Way
San Jose, CA 95135

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and consent of the Petitioner, I certify that on June 11, 2020, a true and correct copy of the foregoing PO's Response to Petitioner's Notice in Response to Board's May 28, 2020 Order regarding Multiple Petitions and accompanying exhibits were served on counsel of record for Petitioner by email to PH-FlexLogix-Konda-IPR@paulhastings.com

Lead counsel:

Naveen Modi (Reg. No. 46,224),

Backup counsel:

1. Joseph E. Palys (Reg. No. 46,508)
2. Paul M. Anderson (Reg. No. 39,896)
3. Arvind Jairam (Reg. No. 62,759)

Service information:

Paul Hastings LLP
875 15th St. N.W.
Washington, D.C., 20005
Tel.: 202.551.1700
Fax: 202.551.1705
Email: PH-FlexLogix-Konda-IPR@paulhastings.com.

Dated: June 11, 2020

Respectfully submitted,

/Venkat Konda/

Venkat Konda
Pro Se Counsel