UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Case Nos. PGR2019-00037 and PGR2019-00042

Patent 10,003,553 B2

FLEX LOGIX TECHNOLOGIES, INC.,	
Petitioner,	
vs.	
VENKAT KONDA,	
Patent Owner.	

TELEPHONE CONFERENCE

May 27, 2020

BEFORE: PATRICK M. BOUCHER, CHARLES J. BOUDREAU, and NORMAN H. BEAMER, Administrative Patent Judges

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR

JOB NO. 180282

A P P E A R A N C E S (Telephonic):

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VENKAT KONDA
Pro Se Patent Owner

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JUDGE BOUCHER: This is Patrick Boucher. We are here for a conference in PGR2019-00037 and PGR2019-00042.

Who do we have on the line?

MR. MODI: Good afternoon, your Honor. This is Naveen Modi from Paul Hastings on behalf of Petitioner, Flex Logix.

I also have on the phone my colleague Paul Anderson. And also, your Honor, we let the board know as well, we do believe there is a court reporter on the line.

Bonnie, are you on?

THE REPORTER: Yes, I am here.

JUDGE BOUCHER: Okay. And who is on the line for the Patent Owner, please?

DR. KONDA: Good afternoon, your Honor. This is Venkat Konda, pro se Patent Owner.

JUDGE BOUCHER: Okay. Also on the line with me are Judges Boudreau and Beamer.

Because we have a court reporter on

the line, I would ask you to try to be conscious of the fact that the reporter is taking down the conversation, and try to introduce yourself before you speak, just so we have some clarity on the record and the court reporter doesn't need to interrupt.

Mr. Modi, since you are the one who retained the court reporter, can you arrange, after the conclusion of the call, for a transcript of the call to be filed as an exhibit in the proceeding, in both proceedings?

MR. MODI: Yes, your Honor, we will take care of that.

JUDGE BOUCHER: Okay. So, let me begin with you, Mr. Modi. I think you are the one who initiated the topics for today.

My guess is that the first topic regarding the schedule is moot, but if you have any issues to raise about that, maybe you could do that first now, please.

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MR. MODI: Your Honor, from our perspective, we don't have anything further on the schedule. We appreciate the Board entering the revised scheduling order.

JUDGE BOUCHER: Okay. Mr. Konda, do you have any issues to raise about the schedule in light of the orders that were entered this week?

DR. KONDA: I'm fine with that, your Honor.

JUDGE BOUCHER: So, Mr. Modi, let's turn to the more substantive issue then, which is the Patent Owner's motions to exclude and your request to file motions to expunge those motions. If you can kind of lay the framework for us to start, I would appreciate that.

MR. MODI: Sure, your Honor. Happy to do so.

So, Petitioner requests leave to move to expunge the motions to exclude and associated exhibits that Patent Owner filed in these proceedings on May 20th.

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Patent Owner's motions seek to exclude the testimony of Dr. Baker, Petitioner's expert in these proceedings, and really, if you look at the motions, they exclude -- they are based on -- they are moving to exclude -- Patent Owner is moving to exclude Petitioner's expert's testimony based on his qualifications, and we're talking about Exhibit 1002, the direct testimony of Dr. Baker.

Now, we believe there are two reasons why the Patent Owner motions are improper and should be expunged.

First, Patent Owner never objected to Dr. Baker's testimony within the time frame allowed by the Board's rules, that is within ten business days of the institution of trial, given Dr. Baker's declaration was served with the petition, and that's clear under Section 42.6.

Second, Patent Owner's arguments in the motions to exclude appear to be directed to the sufficiency of the evidence and not the admissibility of the

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evidence, and, as the Board has stated numerous times, including in its trial practice guide, a motion to exclude is not the proper mechanism to raise challenges to the sufficiency of the evidence. Such motions are really supposed to go towards the admissibility of the evidence.

And to be clear, Petitioner does not believe the motions have any merit. For instance, Patent Owner appears to be relying on one paragraph of Dr. Baker's declaration, namely paragraph two, and characterizes what Patent Owner believes is an admission by Dr. Baker regarding his experience. Patent Owner is simply wrong, if you review Dr. Baker's declaration and experience, and certainly ignores the rest of the declaration, for example, paragraphs seven through nine of Exhibit 1002.

But again, you know, from our perspective, the motions are improper, and the Board should expunge them.

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Petitioner met and conferred with Patent Owner to see if he would be willing to withdraw the motions so we would not have to bother the Board with this call and this request. Patent Owner refused. So, at this point, we would seek leave to file motions to expunge the motions to exclude and associated exhibits.

So, let me stop there, your Honor, and I am happy to answer any questions, but that's our request.

JUDGE BOUCHER: I do have a couple of questions before we turn to Dr. Konda.

So, why, why -- assuming that you are correct and the motions are either untimely or non-meritorious, why isn't the better action simply to deny the motions? What is achieved by expunging them?

MR. MODI: So, your Honor, from our perspective, we should not have -- you know, obviously, the rules are made so that everyone has to play by the rules, and here the motions are facially

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defective, and really what he is doing, Dr. Konda, the Patent Owner, is trying to attack, again, the sufficiency of the evidence, and really motions to exclude are not proper.

So, we think it's really a waste of the parties' resources. Certainly our client has spent a lot of time and effort to initiate these proceedings, and we feel it would be prejudicial and wasteful of the resources, not only ours, certainly the Board's also, to deal with motions that, you know, are sort of defective on their face.

We are certainly happy to respond, your Honor, if that's what the Board wants us to do, but we feel, obviously, the rules are made so that, you know, folks follow them, and we think Patent Owner here should -- should be required to follow the rules.

JUDGE BOUCHER: Okay. Why don't we turn to Dr. Konda. I do have a couple of questions, but if you have something to

say with respect to the motions, I would appreciate that.

I guess one of the principal questions is to wonder why this wasn't filed within the ten-day window after institution, as the rules provide.

DR. KONDA: Thank you, your Honor.

The basic question that I am raising here is Dr. Baker is unqualified as a person of ordinary skill in the art, let alone -- let alone a qualified expert witness. Petitioner should have known, they should have known that Dr. Baker is not qualified when they filed the petition, according to their own definition.

I clearly mentioned that in the motion to exclude, under the penalty of perjury, Dr. Baker gave a declaration that his expertise is integrated circuits and memory devices, particularly memory devices.

Petitioner should have known that before submitting it in the petition he

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does not have background in integrated circuits and networks, with particularly the networks. That's how they defined a POSITA. At that time, I did not -- I was not aware, I did not even define a POSITA.

Now, with the revised -- my second point is, now with the revised motion to amend, POSITA is required to have a background in interconnection networks and FPGAs. Networks and interconnection networks are totally different fields. So, even their POSITA definition I am objecting, that is the second point, now that we are at the revised motion to amend stage. Dr. Baker by his own declaration doesn't qualify in the petition itself as a -- as a POSITA.

That -- those are the two main points, your Honor.

I submitted motion to -- revised motion to amend, and I am not sure when and where I should define a person of ordinary skill in the art, and this is

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very relevant at this moment, because -- I want to touch upon what was in the original claims when it was instituted and what is the motion to amend right now and the claims.

Of particular importance here is, your Honor, I feel the petition was instituted particularly because of one word, that is "flip-flop," and it's a very key thing. I admitted that that was not in the specification, and it came into the claims. So, I saw that as the main tipping point for the institution of the PDRs.

Now, "memory devices" is one of the key words where Dr. Baker said his expertise under the penalty of perjury in his declaration, whereas Petitioner defined POSITA as networks background, and he did not clearly meet. Petitioner should have known at the time when he presented this.

Now, I -- obviously, I didn't raise within ten days. I wasn't aware. This

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is the first time I was a patent owner and a pro se patent owner for any PDR or IPR on any of my patents. So, I am learning this.

Now, I think during the conference call on December 3rd, Board directed me to look at the electronics, I think when I am presenting the motions to amend, and in the section eight, there was a duty of candor. So, I am bringing that also.

But I want to touch upon, one very important point is, as I already said, during the petition time, "flip-flop" was the tipping point, just a simple word, and there were a lot of issues, like different issues, antecedent issues, written spec, usually an art clause, particularly for anticipation of the obviousness of the prior art.

And then I -- I prosecuted this patent, original patent. I was the one who wrote the claims, and I also used terms both from the '553 spec as well as the prior incorporated by reference

patents and applications, so, that was another issue that was raised.

And I used optional terms, may or may not, which are used for anticipation and obviousness by Dr. Baker and the Petitioner, and then some other terms that were used in the industry which I thought were trivial, and the trivial things like rings with single stage, et cetera.

At that time, Dr. Baker's expertise, he is very much at a superficial level. He doesn't need to know much about the depth of the interconnection networks, of the -- of whatever is presented in '553. So, I did not see an issue with what Dr. Baker presented at the time.

But now with the revised motion to amend, the claims went into that subject, the interconnection networks. So, now, I removed all the indefinite issues and different issues. "Flip-flop," the term was deleted. Claims are used with the

terms defined only in the two pre-area applications. So, I removed all the terms that were in the patents and patent applications that were referenced, incorporated by reference.

And while preparing the Patent Owner's preliminary response for an IPR, and a later IPR on Patent Owner's patent by the same Petitioner, they submitted the same Dr. Baker as an expert witness, and then I discovered many, many errors, and this patent was much prior to the '553 patent, much prior to the '553 patent, and there I discovered Dr. Baker has no expertise in interconnection networks and field programmable gate arrays, where both the '553 and the other patent that I was referring to are the subject matters about.

So, he does not --

JUDGE BOUCHER: Let me -- I just want to interrupt you, if I may, Dr. Konda. I think you may be getting into more detail than we need for this

call. If that's not the case, then I will give you an opportunity to say more, but I just want to try to focus on a couple of things.

So, with respect to the timing issue and the failure to have objected to Dr. Baker's testimony within ten days, my understanding, and I would like you to confirm whether or not this is a fair characterization of what you're saying, is that you would like that time period to be excused because of some degree of unfamiliarity with regulations and because the circumstances and posture of the proceedings have evolved as a result of the motion to amend and the preliminary guidance that the Board already gave.

Is that an accurate statement of your position, at least with respect to the timing of filing of certainly the objections to Dr. Baker's testimony?

DR. KONDA: Yes, your Honor. I am not sure if I completely understood, your

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Honor, what you said, but I believe -- I believe I agree with that.

JUDGE BOUCHER: Okay. And with respect to the other issues, one preliminary question I had is, have you cross-examined Dr. Baker yet? Has he been deposed?

DR. KONDA: No, your Honor. I haven't deposed, I haven't cross-examined Dr. Baker.

JUDGE BOUCHER: Okay. So, the immediate question that comes to mind is, why -- why isn't the Petitioner correct that these are not issues related to the qualifications of -- not qualifications, but why are these not issues directed more to the sufficiency of Dr. Baker's testimony and its persuasiveness that you could explore on cross-examination? Because I don't think there is any specific requirement that an expert needs to meet all the qualifications of one of ordinary skill in the art, and it appears to me that it would be an opportunity on

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cross-examination to probe those areas in which you think Dr. Baker's qualifications are weak, and to see how that bears on the opinions he provides in his testimony.

So, I would like your reaction to that question, please.

DR. KONDA: That is great advice, your Honor. I can do that.

Now, going forward with the opposition that Petitioner might file for the revised motion to amend, is Dr. Baker qualified as of now, that's -- that I am objecting. That's one thing.

And also, on the revised motion to amend, I think I did not define what a POSITA is, and can I submit that now, or what are the rules here, your Honor?

MR. MODI: Your Honor, this is Naveen Modi. Can I just interject? I apologize, but I just want to make sure the Board is aware of a couple of key facts here.

JUDGE BOUCHER: Actually, before

you do that, especially because we have a court reporter on the line, I just want to clarify for the record that I was not offering advice to Dr. Konda as to how he should conduct the proceeding. I was merely asking a question about what I thought was the most natural approach to the issue that exists here. So, I want that to be unambiguous on the record.

It's fine, Mr. Konda. I just wanted to make sure that it's clear on the record.

Mr. Modi, what was it you wanted to say?

MR. MODI: Your Honor, in terms of the cross-examination of Dr. Baker, we believe that time has sort of came and has gone, because he -- as you may recall, Dr. Konda never filed even a Patent Owner response to the petition. The only thing he did was file the motion to amend. So, from our perspective, the cross-examination window is closed. He chose not to cross-examine him.

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And the other thing I do want to point out is that I -- I really find it extremely offensive that he would suggest that Dr. Baker did not follow his duty of candor or the Petitioner has not. I don't know if you've seen some of the communications that Dr. Konda has been sending, and we find them extremely, extremely offensive.

We are before the Board all the time, and I want to make sure for the record that to the extent the Board wants us to respond, I'm happy to respond to the allegations made by Dr. Konda regarding Dr. Baker, but I find it extremely, extremely offensive.

I apologize, but I had to make sure that -- you know, I wanted to put that on the record, since we do have a court reporter.

JUDGE BOUCHER: Is there anything in the record regarding an allegation that Dr. Baker has not complied with the duty of candor other than the discussion

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on this call? I don't recall seeing that in the Patent Owner's motion. I just want to confirm what the status of the record is.

MR. MODI: Yeah, your Honor. So, I think in his motions to exclude, he may have made a couple of statements to suggest that, you know, that sort of go to that, and certainly on this call he's made statements.

And I think on the duty of candor point, he's actually accused Petitioner's counsel, Mr. Anderson, of basically not sort of following, you know, good faith, and then I can try to find an e-mail for you, and I believe he said that to the Board last week.

So, I just -- you know, again, I sort of -- certainly have not been ever accused of unethical conduct before the Board, and neither have my colleagues like Mr. Anderson. I just find that very, very offensive. So, you know, to the extent that e-mail is going to be

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made part of the record, I just want to make sure we are heard, but he did send that e-mail to the board last week.

DR. KONDA: Your Honor, can I say one thing?

JUDGE BOUCHER: Go ahead, Dr. Konda.

DR. KONDA: Your Honor, I completely disagree. Mr. Modi is taking it in a wrong way right now, off the point. I completely disagree with whatever allegations he is making.

JUDGE BOUCHER: Okay. Was Dr. -- sorry. Was Mr. Modi correct, as far as you understand, that the time for cross-examining Dr. Baker has passed?

DR. KONDA: Is that question to me, your Honor?

JUDGE BOUCHER: Yes, for you, Dr. Konda.

DR. KONDA: Your Honor, I am not aware. I need to go check what is the time frame for the cross-examination, but the point of cross-examination I heard

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just now on this call from your Honor, so I need to go check the times.

But I am certainly raising the duty of candor and the fairness here. So, as far as cross-examination, I don't know the time frame, your Honor. I need to go check that.

JUDGE BOUCHER: Okay. I believe Mr. Modi is correct that the time for cross-examining Dr. Baker has in fact passed, but I am not certain. I would have to take the time just to double-check myself the record.

Is there anything else you want to say before the panel confers, Dr. Konda?

DR. KONDA: I basically -- yeah. I mean, even when I went a little -- you know, I tried to tell everything, I am left with two more points, but I hit my major points, your Honor. So, I'm basically -- I submitted everything, what I have.

JUDGE BOUCHER: Okay. Mr. Modi, is there any other point you would like to

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make before the panel confer?

MR. MODI: Yes, your Honor, just a couple of points.

I actually did find the e-mail that Dr. Konda sent to the Board, so, this was sent on Friday, May 22nd, to Trials at 12:54 p.m., and for the record, I would like to -- you wanted me to point out where he said or accused us of improper conduct.

So, in this e-mail, you will see this is a chain he forwarded to the Board, and here is what he said. I'm just quoting part of it.

He said: "Your e-mail is evidence of your obvious unethical conduct (including knowing fully well about Dr. Baker's declaration you submitted in the respective petitions) or incompetence or both, which I can assure you will be brought to the attention of the Board at the appropriate time."

And, you know, again, we think that is highly inappropriate. I understand

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Dr. Konda is pro se, but that doesn't entitle him to make allegations like that in a written correspondence to the Board or on a call like this.

And then second, you know, I would just like to reiterate that we think the appropriate course of action here is for the Board to expunge the motions. As you can tell, this is really -- he is creating busy work for everyone, and we just don't think it's fair, and it's highly prejudicial to the Petitioner for having to go with all of this, in all of these shenanigans, if you will.

So, I will pause there, see if you have any questions, and again, I apologize, your Honors, but I find this, sort of Dr. Konda's conduct, to be highly, highly offensive.

DR. KONDA: Your Honor, I want to answer.

JUDGE BOUCHER: I don't have any questions at this point, but I do want to give Dr. Konda an opportunity to comment

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before the panel confers.

DR. KONDA: Thank you, your Honor. Sorry, interrupting.

Your Honor, the first point, I clearly mentioned that this should have been known to the Petitioner when they submitted Dr. Baker's, Dr. Baker's declaration, because this is always tilting on a simple word like "flip-flop," and now he's raised memory devices, your Honor, and Petitioner should have known that in the beginning itself. That's the answer to the first question that he is raising, and that was there clearly in the e-mail, your Honor, what, Mr. Modi read just now.

And on the second thing, I completely disagree that I am creating work. In fact, they filed three PGRs, which is unnecessary, and again, in that -- in that three PGRs, they said that they were not aware of, I believe, the sometime in August 2019 order that there should not be more than one,

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particularly, if at all, two, something like that in that. I responded very fairly.

Again, they filed three IPRs knowing that, post that conversation last year, and they filed three IPRs on a different patent of mine, which I was referring to where I found Dr. Baker made several mistakes, and created so much work for the Patent Owner, for the Board.

So, my -- I am responding to that question that I am creating work for the Board out of creating all these issues. He's absolutely wrong. Instead, Petitioner is the one who is doing it.

Thank you, your Honor.

JUDGE BOUCHER: Okay. I am going to take a pause for a moment, and I will return in just a few moments. Thank you.

(Recess from 3:25 to 3:27 p.m.)

JUDGE BOUCHER: Mr. Modi.

MR. MODI: Yes, your Honor, I'm here.

JUDGE BOUCHER: So, the panel has

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conferred, and with respect to the issue that is immediately before us, which is Petitioner's request for authorization to file a motion to expunge the Patent Owner's motions to exclude, we are denying that authorization. The Petitioner can proceed with filing an opposition to the motion, and we will rule on the motion in light of the opposition.

Any questions about that decision, Mr. Modi?

MR. MODI: No, your Honor.

JUDGE BOUCHER: Dr. Konda, any questions about that decision?

DR. KONDA: No questions, your Honor. Thank you.

JUDGE BOUCHER: In that case, we are adjourned. Thank you.

MR. MODI: Thank you, your Honor.

DR. KONDA: Thank you.

(Time noted: 3:28 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)
: SS.
COUNTY OF NEW YORK)

I, BONNIE PRUSZYNSKI, a Notary Public with and for the State of New York, do hereby certify:

That I reported stenographically the proceedings in the above-referenced matter that the transcript herein is a full and complete record.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th of June, 2020.

Bonnie A Pruszynski

Bonnie Pruszynski