

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLEX LOGIX TECHNOLOGIES INC.,

Petitioner

V.

VENKAT KONDA,

Patent Owner

Case PGR2019-00037

Patent 10,003,553 B2

**PATENT OWNER'S REPLY TO PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64**

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PATENT OWNER'S EXHIBIT LIST 1

Exhibit No.	Description	Previously Submitted
Ex. 2001	CMOS Circuit Design Layout and Simulation, 3 rd Edition	X
Ex. 2002	PGR2019-00037 Petition – Paper 1	X
Ex. 2003	PGR2019-00042 Petition – Paper 1	X
Ex. 2004	Venkat Konda Declaration in support of Revised Motion to Amend	X
Ex. 2005	IPR2020-00260 Petition – Paper 1	X
Ex. 2006	Dr. Baker's Declaration in support of the Petition IPR2020-00260 – Ex. 1002	X
Ex. 2007	Dr. Baker's CV in support of the Petition IPR2020-00260 – Ex. 1003	X
Ex. 2008	IPR2020-00260 Patent Owner's Preliminary Response – Paper 8	X
Ex. 2009	Venkat Konda Declaration in Support of Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Revised Motion to Amend	X
Ex. 2010	PGR2019-00040 Petition – Paper 1	X
Ex. 2011	Venkat Konda Declaration in Support of Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude	

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I. INTRODUCTION

Patent Owner Venkat Konda (“PO”) submitted his Motion to exclude the purported evidence based on Dr. Baker’s declaration served with the Petition for Post Grant Review (“PGR”) PGR2019-00037¹ filed by Flex Logix Technologies Inc. (“Flex Logix” or “Petitioner”) on May 20, 2020 (“Motion” or Paper 27). In response, Petitioner conferred with PO and requested to expunge the Motion to exclude, and PO disagreed. In the ensuing conference call with the Board on May 27, 2020, the Board denied Petitioner’s request for leave to file a Motion to Expunge Patent Owner’s Motion to exclude and ordered Petitioner to file its Opposition to Patent Owner’s Motion (Exhibit 1043). Petitioner filed its Opposition to PO’s Motion on July 30, 2020 (“Opposition” or Paper 34). PO submits this reply to Petitioner’s Opposition and the declaration of Venkat Konda in support, who holds a Ph.D. degree in Computer Science and engineering and, unlike Dr. Baker, has extensive experience in designing, developing, researching, and teaching interconnection networks, for over two decades at the time of the effective priority date of the ‘553 Patent. *See* Ex. 2011.

¹ In addition to this PGR, Petitioner submitted the same declaration of Dr. Baker in another PGR2019-00042 filed by the same Petitioner concurrently on U.S. Patent No. 10,003,553 (“the ‘553 Patent”).

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II. PRIOR TO FILING THE PETITIONS, PETITIONER SHOULD HAVE KNOWN THAT DR. BAKER IS NOT QUALIFIED AS A PERSON OF ORDINARY SKILL IN THE ART ("POSITA") ACCORDING TO ITS OWN DEFINITION; PETITIONER SHOULD NOT HAVE FILED DR. BAKER'S DECLARATION UNDER THE PENALTY OF PERJURY; TILL DATE PETITIONER DID NOT PROVIDE ANY EXPERT WITNESS IN SUPPORT OF DR. BAKER'S DECLARATION AND INSTEAD CONTINUES TO WASTE THE BOARD'S AND PATENT OWNER'S ("PO's") RESOURCES

PO submitted his Motion to exclude pursuant to 37 C.F.R. § 42.64, 37 C.F.R. § 42.11, and 37 C.F.R. § 42.51(b)(iii) and requested the Board to exclude Ex. 1002, Ex. 1003 and all the alleged support presented in the Petition based on Ex. 1002 and Ex. 1003. The Board during the May 27, 2020 conference call ordered Petitioner to file an opposition despite Petitioner's arguments of timeliness of the Motion.

In the Motion, PO contended that Dr. Baker is not qualified as a POSITA according to Petitioner's own definition, let alone as expert witness which is very fundamental to the filing of its Petition. PO's contention is not about the sufficiency or the weight of Dr. Baker's declaration. PO's contention is about the admissibility of Dr. Baker's declaration that Dr. Baker is not even qualified as POSITA in view of Petitioner's own definition of POSITA, let alone PO's definition of POSITA. Notably, Dr. Baker is the only supposed witness in support of the Petition.

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In response to the previous PTAB cases mentioned by Petitioner in its Opposition, PO submits (1) *Apple Inc. v. Achates Reference Publ'g, Inc.*, IPR2013-00080, Paper 90 at 48-49 (PTAB June 2, 2014) relates to claim construction of certain terms by the expert declarant in support of the petition and is not relevant to the present case; (2) *Laird Techs., Inc. v. GrafTech*, IPR2014-00025, Paper 45 at 42 (PTAB March 25, 2015) relates to the sufficiency and weight of the expert declarant in support of the petition and so not relevant to the present case in which Dr. Baker has no experience in the field of the invention; (3) With respect to *MindGeek, s.a.r.l. v. Skky Inc.*, IPR2014-01236, Paper 45 at 23 (PTAB January 29, 2016), the Board's final decision was that with or without the consideration of the weight of the expert witness's declaration and exhibits it did not affect the final outcome and so it is not relevant to the present case; (4) With respect to *AVX Corp. v. Greatbatch, Ltd.*, IPR2014-00697, Paper 57 at 26 (PTAB October 21, 2015), the Board's final decision was that the moving party did not dispute the declarant as a POSITA and so it is not relevant to the present case. Here, PO contends that Dr. Baker is not even qualified as a POSITA, and so PO's Motion is directed to the admissibility of Dr. Baker's testimony because he is unqualified as such.; (5) With respect to *CaptionCall, LLC v. Ultratec, Inc.*, IPR2013-00550, Paper 57 at 11-12 (PTAB March 3, 2015), the moving party disputed that the declarant was a POSITA in "telecommunications technology *for the deaf and hard of hearing*",

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whereas it conceded that the declarant was qualified in “telecommunications technology”. The moving party argued to constrict the “pertinent art,” *i.e.*, the pertinent technology, to a particular subset of individuals who use the pertinent technology, rather than the pertinent technology itself, and the Board’s final decision thus noted that the relevant inquiry was as to the sufficiency and weight of the testimony by the expert declarant. In the present case, however, as PO contends, Dr. Baker is not even qualified as a POSITA according to Petitioner’s own definition because he does not even qualify as POSITA in the “pertinent art” of **networks**.

The term “**networks**” appears *only once* in Dr. Baker’s entire CV of 34 pages. Even in that one instance “Networks” is used to refer to *Aerohive Networks*, where Aerohive Networks is the name of a company (and the technical subject matter relates to **memory**) (See Exhibit 1003 at 30.) In comparison, the term “**memory**” appears *more than 150 times* in Dr. Baker’s CV of 34 pages. (This count even excludes the terms DRAM, ROM, EPROM, EEPROM, etc. where the letter “M” stands for **memory** in these terms). Clearly, Dr. Baker’s expertise is in **memory**. He has absolutely has no qualifications in “**networks**”.

Also, the term “FPGA” appears four times in Dr. Baker’s CV of 34 pages. Three of those refer to the use an FPGA and *not* to implementation or design an

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FPGA or the interconnection network for an FPGA (An analogy is that a person who can drive an automobile is not a POSITA in the design of an automobile or the drivetrain to connect to an internal combustion engine). (See, Exhibit 1003 at 1, 3 & 66.) The fourth reference in Dr. Baker's CV of 34 pages is to implement **memory** for an FPGA, which is independent of networks. The term "fiber optics" is used three times in Dr. Baker's CV of 34 pages (See, Exhibit 1003 at 2 twice & 16), and all three of them refer to **fiber optic devices** which have got nothing to do with "networks". The term "communications" is used five times in Dr. Baker's CV of 34 pages (See, Exhibit 1003 at 2, 6 twice, 22, & 25) and all five of them have nothing to do with "networks". Accordingly, in the entire section II.C of the Opposition, it is apparent that Petitioner grossly misrepresented that Dr. Baker is qualified as a POSITA. Notably, Petitioner neither provided expert witness evidence in support of section II.C of the Opposition nor any supplemental declaration of Dr. Baker to rehabilitate himself as a POSITA, in spite of the time it had since the Conference call with the Board on May 27, 2020.

III. CONCLUSION: PETITIONER AND ITS COUNSEL BRAZENLY CONTINUES TO USE THE AIA's PROCEDURES AS A TOOL FOR HARASSMENT. (*See, H.R. Rep. No. 112-98, pt. 1, at 48 (2011)*).

PO respectfully requests the Board to grant PO's Motion to exclude Ex. 1002, Ex. 1003 and all their alleged support presented in the Petition.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e) and consent of the Petitioner, I certify that on August 3, 2020, a copy of Patent Owner's Reply to Petitioner's Opposition to Patent Owner's Motion to Exclude and the exhibits were served on counsel of record for Petitioner by email to PH-FlexLogix-Konda-PGR@paulhastings.com

Dated: August 3, 2020

Respectfully submitted,

/Venkat Konda/

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