

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASML NETHERLANDS B.V., EXCELITAS TECHNOLOGIES CORP., AND
QIOPTIQ PHOTONICS GMBH & CO. KG,
Petitioners

v.

ENERGETIQ TECHNOLOGY, INC.,
Patent Owner

Case IPR2015-01362
U.S. Patent No. 8,969,841

**PATENT OWNER'S PRELIMINARY RESPONSE
UNDER 37 C.F.R. § 42.107**

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I. INTRODUCTION

Pursuant to § 42.107, Patent Owner Energetiq Technology, Inc. (“Energetiq” or “Patent Owner”) hereby files this preliminary response (“Preliminary Response”) to the Petition for *Inter Partes* Review of U.S. Patent No. 8,969,841 (the “Petition”) in IPR2015-01362 filed by ASML Netherlands B.V., Excelitas Technologies Corp., and Qioptiq Photonics GmbH & Co. KG, (“ASML” or “Petitioner”).

The Filing Date for the Petition was accorded on June 19, 2015 (Paper No. 6) setting a three month deadline for Patent Owner to file its optional Preliminary Response. As September 19, 2015 fell on a Saturday, this Preliminary Response is being timely filed on the next succeeding business day, Monday, September 21, 2015, pursuant to 35 U.S.C. § 21(b), 37 C.F.R. § 1.7(a), and 37 C.F.R. § 42.1(a).

Patent Owner, by submitting this Preliminary Response, does not waive its rights to add or modify arguments should the Patent Trial and Appeal Board (the Board”) decide to institute a trial on this matter. Patent Owner has limited its identification of only certain deficiencies in Petitioner’s argument in this Preliminary Response. The absence of any subject matter addressing or rebutting any arguments or other material presented in the Petition should not be deemed a waiver or admission by Patent Owner, nor should it be deemed to be a concession that the Petitioner has satisfied the heavy burden it must meet for the Board to

institute a trial. Additionally, Patent Owner's discussion or emphasis on any particular claim elements or features of the '841 Patent in this Preliminary Response, unless otherwise noted herein, is intended to relate only to this IPR proceeding and in no way is a concession regarding other patentable features or aspects of claims in any related proceedings.

The PTAB should deny the Petition's request to institute an *inter partes* review ("IPR") of U.S. Patent No. 8,969,841 (the "'841 Patent") because the grounds in the Petition do not demonstrate a reasonable likelihood of any claims being invalid. If the Board nonetheless institutes trial on any of the challenged claims, Patent Owner will address in detail in its § 42.120 Response the numerous substantive errors and shortcomings that underlie each of Petitioner's arguments and its purported evidence. In this paper, however, pursuant to Rule 42.107 Patent Owner addresses only the meaning of certain of the challenged claims' pertinent terms, and some fundamental shortcomings of the Petition; in particular: Petitioner's failure to demonstrate, as to any of the challenged claims, a reasonable likelihood of success on any asserted ground of invalidity. Because of this clear threshold failure, the Petition should be denied and no *inter partes* review should be instituted under 35 U.S.C. § 314.

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