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Re: *Flex Logix Technologies, Inc. v. Venkat Konda and Konda Technologies, Inc.*

Dear Mr. Singh:

On behalf of Flex Logix Technologies, Inc. ("Flex Logix"), I am writing to notify you and your clients in this matter that we have reviewed various patents issued to Venkat Konda and assigned to Konda Technologies, Inc. (collectively "the Konda Defendants") and have determined that they are invalid, unenforceable, and in any event, not infringed by Flex Logix. The referenced patents are:

8,269,523 ("the '523 patent")

8,898,611 ("the '611 patent")

9,374,322 ("the '322 patent")

9,529,958 ("the '958 patent")

9,929,977 ("the '977 patent")

10,003,553 ("the '553 patent")

10,050,904 ("the '904 patent")

We address some of the issues with these patents in this letter.

The '611, '958, and '904 Patents

The '611, '958, and '904 patents all attempt to claim priority to two provisional applications, namely U.S. Provisional Patent Application Nos. 60/252,603 ("the '603 provisional application") and 60/252,609 ("the '609 provisional application"). Both the '603 and the '609 provisional applications appear to have been filed on October 19, 2009.

The disclosure corresponding to the '603 provisional application had been previously filed as U.S. Provisional Patent Application No. 60/984,724 ("the '724 provisional application") on November 2, 2007. The disclosure corresponding to the '609 provisional application was previously filed as U.S. Provisional Patent Application No. 61/018,494 ("the '494 provisional application") on January 1, 2008.

Both the '494 and '724 provisional applications were incorporated by reference by PCT Application No. US2008/056064, which published on September 12, 2008 as WO 2008/109756 A1. As a result of the incorporation by reference of the '494 and '724 provisional applications in WO 2008/109756 A1, the *entirety* of the disclosure in the '494 and '724 provisional applications was publicly available as of September 12, 2008. *See* 37 C.F.R. §1.14(a)(iv).

As a consequence of that publication, the contents of the '494 and '724 provisional applications were public more than a year before the '603 and '609 provisional applications were filed, and WO 2008/109756 A1, the '494 provisional application, and the '724 provisional application are all prior art with respect to the '611, '958, and '904 patents. This is true even if the '611, '958, and '904 patents are entitled to priority to the '603 and '609 provisional applications. Put differently, *any* subject matter claimed in the '611, '958, and '904 patents that is supported by the disclosure of those patents was publicly disclosed in WO 2008/109756 A1,

which includes the disclosures of the ’494 provisional application and the ’724 provisional application.

In light of these facts, the Konda Defendants cannot argue in good faith that the ’611, ’958, and ’904 patents are valid or enforceable.

The ’523 Patent

The ’523 patent derives from U.S. Patent Application No. 12/601,275 (“the ’275 application”) that claims priority to PCT Application No. US08/064605 (“the ’605 PCT”), which in turn claims priority to U.S. Provisional Patent Application No. 60/940,394 (“the ’394 provisional application”). The ’605 PCT was filed on May 22, 2008. The ’275 application purports to be a national phase entry of the ’605 PCT under 35 U.S.C. § 371. However, when the ’275 application was filed on November 22, 2009, the national filing fee required for a national application under 35 U.S.C. § 371 was not paid. Instead, the national stage filing fee was paid a month later on December 22, 2009, which is after the ’605 PCT expired. Thus, the ’275 application is not a valid national application derived from the ’605 PCT. In addition, Dr. Konda was aware that his late payment of the national stage filing fee rendered the ’275 application invalid, and thus he did not comply with his duty of candor to the Patent Office. As a result, the ’523 patent is also unenforceable because of inequitable conduct.

Moreover, the ’394 provisional application, to which the ’523 patent purports to claim priority, was incorporated by reference in WO 2008/109756 A1. As noted above, WO 2008/109756 A1 also incorporated the ’494 and ’724 provisional patent applications by reference and was published on September 12, 2008. Because the ’275 application was not a valid § 371 national stage application derived from the ’605 PCT, if the submissions corresponding to filing the ’275 application are somehow sufficient to constitute a utility patent application filing, the priority date for such an application is November 22, 2009 at best. Therefore WO 2008/109756 A1, which includes the disclosure of the ’394 provisional, is prior art with respect to the ’523 patent. In light of these facts, the Konda Defendants cannot argue in good faith that the ’523 patent is valid and enforceable.

The ’322 and ’977 Patents

All of the claims in the ’322 and ’977 patents recite “rings.” During prosecution of these patents, Dr. Konda defined “rings” to include *both* the feedback of forward connecting links to backward connecting links and the feedback of backward connecting links to forward connecting links. For example, during the prosecution of the application leading to the ’322 patent, Dr. Konda stated:

> Current application discloses stages in rings where forward connecting links are feedback into backward connecting links through one or more multiplexers and also backward connecting links are feedback into forward connecting links through one or more multiplexers, whereas US Patent No. 8,898,611 discloses folded and butterfly fat tree networks where in each stage only forward connecting links are feedback into backward connecting links.

Dr. Konda also stated the following in response to a rejection of the pending claims during prosecution of the application leading to the ’322 patent:

> The ring concept disclosed in the current application is not a true ring, the term ring is used in the current invention since in each stage backward connecting links are feedback to forward connecting links and vice versa as opposed to only a U-turn in original multi-stage networks.

In short, a product that does not include *both* the feedback of forward connecting links to backward connecting links and the feedback of backward connecting links to forward connecting links would not include a ring as that term is used in the ’322 and ’977 patents. As the Konda Defendants undoubtedly know, Flex Logix’s products do not include such rings. The Konda Defendants cannot assert in good faith that Flex Logix’s products infringe the ’322 and ’977 patents.

The ’553 Patent

The earliest possible priority date for the ’553 patent is September 7, 2011. Even assuming that the claims of the ’553 patent are entitled to that September 7, 2011 priority date, which they are not, WO 2008/109756 A1, which includes the entire disclosure of each of the ’494, ’724, and ’394 provisional applications, was

published September 12, 2008 and is prior art with respect to the subject matter of the '553 patent. The claims of the '553 patent do not include "rings" as recited in the claims of the '322 and '977 patents, and the claims of the '553 patent are very similar in scope to the claims of the '904 patent. As such, the disclosure of WO 2008/109756 A1 would apply as prior art to the claims of the '553 patent in the same manner that such disclosure applies to the '904 patent claims. Given these facts, the Konda Defendants cannot argue in good faith that the '553 patent is valid or enforceable.

Conclusion

In light of the foregoing analysis, we renew our demand that the Konda Defendants cease their dissemination of false statements on the Kondatech.com website and elsewhere that Flex Logix was founded based on "stolen interconnect IP from Konda Technologies," as well as all similar statements. *See* Complaint at ¶¶ 13-16.

In addition, we are through this letter putting the Konda Defendants and their counsel on notice that any effort to enforce any of the patents described herein in the pending lawsuit or elsewhere against Flex Logix would violate Rule 11 of the Federal Rules of Civil Procedure and would trigger the remedies available under that rule and under 35 U.S.C. § 285. If such patent claims are asserted, Flex Logix intends to seek recovery of all of its attorneys' fees and costs from the Konda Defendants and their counsel. As the Federal Circuit explained in *View Engineering, Inc. v. Robotic Vision Systems*, 208 F.3d 981, 986 (Fed. Cir. 2000), in the course of affirming such an award:

> "A patent suit can be an expensive proposition. Defending against baseless claims of infringement subjects the alleged infringer to undue costs—precisely the scenario Rule 11 contemplates. Performing a pre-filing assessment of the basis of each infringement claim is, therefore, extremely important. In bringing a claim of infringement, the patent holder, if challenged, must be prepared to demonstrate to both the court and the alleged infringer exactly why it believed before filing the claim that it had a reasonable chance of proving infringement. Failure to do so should ordinarily result in the district court expressing its broad

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