

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

FLEX LOGIX TECHNOLOGIES INC.,

Petitioner

V.

VENKAT KONDA,

Patent Owner

---

Case PGR2020-00260

Patent 8,269,523 B2

---

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

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>RELIEF REQUESTED.....</b>	<b>1</b>
<b>III.</b>	<b>REASONS WHY THE REQUESTED RELIEF SHOULD BE GRANTED .....</b>	<b>2</b>
	<b>A. 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 .....</b>	<b>2</b>
	<b>B. Petitioner Should Not Have Filed Dr. Baker’s Declaration under the Penalty of Perjury .....</b>	<b>4</b>
	<b>C. Dr. Baker Is Not Qualified in the “Pertinent Art” of This Case. ....</b>	<b>5</b>
	<b>D. Petitioner, Its Counsel and Dr. Baker under the Penalty of Perjury Misrepresented That Dr. Baker Is Qualified in the “Pertinent Art” Several More Times .....</b>	<b>9</b>
	<b>E. Dr. Baker Made Several Key Errors in the Petition Due to His Lack of Expertise in the “Pertinent Art”. ....</b>	<b>10</b>
	<b>F. Dr. Baker Is the Only Witness in Support of the Petition.....</b>	<b>15</b>
<b>IV.</b>	<b>CONCLUSION .....</b>	<b>15</b>

## **I. INTRODUCTION**

Flex Logix Technologies Inc. (“Flex Logix” or “Petitioner”) filed its petition for *inter partes* review (“IPR”) IPR2020-00260<sup>1</sup> regarding claims 1, 15-18, 20-22, 32 and 47 (2-7 and 11) (the “Challenged Claims”) of U.S. Patent No. 8,269,523 (Ex. 1001, “the ‘523 Patent”) on December 16, 2019 (Paper 1 or “Petition”). Patent Owner Venkat Konda (“Patent Owner”) submitted his Preliminary Response pursuant to 37 C.F.R. § 42.107 in opposition to the Petition on May 6, 2020 (Paper 8). The Board instituted the IPR<sup>2</sup> on August 3, 2020 (Paper 22).

## **II. RELIEF REQUESTED**

Pursuant to 37 C.F.R. § 42.64, 37 C.F.R. § 42.11, and 37 C.F.R. § 42.51(b)(iii) Patent Owner hereby moves to exclude from evidence exhibits Ex. 1002, Ex. 1003 and all the support presented in the Petition with respect to Ex. 1002 and Ex. 1003 served with the Petition (“Motion”). Patent Owner submits the declaration of Venkat Konda under the penalty of perjury in support of the Motion. Venkat Konda holds a Ph.D. degree in Computer Science and engineering and,

---

<sup>1</sup> Petitioner concurrently filed two additional petitions for IPR of the ‘523 Patent. Those two petitions are IPR2020-00261 and IPR2020-00262.

<sup>2</sup> The Board also instituted IPR2020-00261 but denied IPR2020-00262.

unlike Dr. Baker, had extensive experience in designing, developing, researching, and teaching interconnection networks, for over two decades at the time of the effective priority date of the '523 Patent. *See* Ex. 2024.

### **III. REASONS WHY THE REQUESTED RELIEF SHOULD BE GRANTED**

#### **A. 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**

In the Petition, Petitioner submitted that "A person of ordinary skill in the art ("POSITA") at the time of the alleged invention of the '523 Patent would have had a master's degree in electrical engineering or a similar field, and at least two to three years of experience with integrated circuits and **networks**. (Ex. 1002, ¶¶18-19) Petitioner acknowledges that "[M]ore education can supplement practical experience and vice versa. (*Id.*).” (Petition, at 23)

However Petitioner's witness, Dr. Baker stated "All of my opinions stated in this declaration are based on my own personal knowledge and professional judgment. In forming my opinions, I have relied on my knowledge and experience in designing, developing, researching, and teaching regarding circuit design and **memory devices** referenced in this declaration.” (Ex. 1002, ¶3).

Notably, Petitioner's sole declarant by his own admission has no experience in **networks**. Expertise in networks is different from expertise in memory.

Dr. Baker submitted that he has education in Electrical Engineering and experience in "circuit designs for **networks** and communications." *See, e.g.*, Ex. 1002 at ¶¶ 7-9. However, the term "**networks**" appears *only once* in Dr. Baker's entire CV of 35 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**, *not networks*) (*See*, Exhibit 1003 at 30.)

In comparison, the term "**memory**" appears *more than 150 times* in Dr. Baker's CV of 35 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**".

Accordingly Dr. Baker **misrepresented** that he has experience in networks in his declaration (Ex. 1002) which had no support in Dr. Baker's CV (Ex. 1003). Consequently, Patent Owner files this Motion to exclude Petitioner's exhibits Ex. 1002, Ex. 1003, and all support presented in the Petition based on Ex. 1002 and Ex. 1003 served with the Petition should be excluded.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.