

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLEX LOGIX TECHNOLOGIES INC.,

Petitioner

V.

VENKAT KONDA,

Patent Owner

Case IPR2020-00261

Patent 8,269,523 B2

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

TABLE OF CONTENTS

I. INTRODUCTION & RELIEF REQUESTED1

II. REASONS WHY THE REQUESTED RELIEF SHOULD BE GRANTED1

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 and Should Not Have Filed Dr. Baker’s Declaration under the Penalty of Perjury 1

B. Dr. Baker Is Not Qualified in the “Pertinent Art” of This Case. 4

C. Dr. Baker’s Own Prior Testimony Disqualifies Him as a POSITA 8

D. Having known the evidence of secondary considerations, Dr. Baker with his dishonest testimony disqualifies him as a POSITA 10

III. CONCLUSION15

I. INTRODUCTION & RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.64(c), 37 C.F.R. § 42.11, and 37 C.F.R. § 42.51(b)(iii) Patent Owner Venkat Konda (“Patent Owner” or “PO”) 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”). PO timely filed and served its objections to Ex. 1002 and 1003 on August 17, 2020. *See* Paper 25; 37 C.F.R. § 42.64; Paper 30, 1-2. PO submits the declaration of Venkat Konda under the penalty of perjury in support of the Motion. (*See*, Ex. 2033.) PO therefore respectfully requests the Board exclude this evidence.

II. 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 and Should Not Have Filed Dr. Baker’s Declaration under the Penalty of Perjury

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*, 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 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).

PO further contends that Dr. Baker is not qualified as a POSITA according to Petitioner's own definition, let alone as an expert witness regarding the field of **interconnection networks** which is very fundamental to the Challenged Claims of the '523 in the Petition. Expertise in the field of interconnection networks is totally different the expertise in the field of networks.

Furthermore a POSITA would have understood that in a multi-stage network forward connecting links are not connected from the last stage and backward connecting links are not connected from the first stage. Accordingly a POSITA would have easily understood that if there is only one stage in a multi-stage network, that single stage will neither have any forward connecting links or any backward connecting links and with no need for any experimentation let alone "undue experimentation". (See, Dr. Chaudhary's Decl., Exhibit 2025 at ¶¶32-34.) Accordingly Dr. Baker either does not have basic understanding of multi-stage networks or disingenuously gave his declaration in support of the Petition.

Therefor PO's contention is not about the sufficiency or the weight of Dr. Baker's declaration. PO's challenges the admissibility of Dr. Baker's declaration because Dr. Baker is simply not even qualified as a POSITA in view of Petitioner's

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.