

From: Venkat Konda <venkat@kondatech.com>
Sent: Friday, April 16, 2021 9:48 PM
To: Trials <Trials@USPTO.GOV>
Cc: Modi, Naveen <naveenmodi@paulhastings.com>; FlexLogix-Konda-IPR <ph-flexlogix-konda-ipr@paulhastings.com>; Venkat Konda <venkat@kondatech.com>
Subject: Re: IPR2020-00260, -00261

Patent Owner apologises for another. email on this issue, but wanted to point out that Petitioner added more lines to its position after requesting Patent Owner's position. Accordingly, Patent Owner would like to note that Petitioner's argument is self contradictory. According to Petitioner's argument that even if August 10, 2020 filing was Motion to Exclude, it would have deprived Petitioner an opportunity to submit Supplemental evidence and Patent Owner's filing would have been improper. Therefore Petitioner could have objected in August 2020 itself. Since Petitioner did not raise any objections then, Petitioner's seeking motion to strike now is improper, self contradictory and meritless.

Very Respectfully,
Venkat Konda
Pro Se Patent Owner

On Fri, Apr 16, 2021 at 2:57 PM Modi, Naveen <naveenmodi@paulhastings.com> wrote:

Petitioner Flex Logix seeks leave to file a motion to strike the motions to exclude Patent Owner filed in the above-mentioned IPRs on April 13, 2021. Patent Owner has already filed motions to exclude in these proceedings on August 10, 2020. As such, the additional motions to exclude filed on April 13th are unauthorized. *See* Scheduling Order at 9 (stating “[e]ither party may file a *motion* to exclude evidence”) (emphasis added); 37 C.F.R. § 42.64(c); CBM2016-00008, Paper 31 at 3 (P.T.A.B. Sept. 6, 2016) (“Each party is permitted to file *one* motion to exclude without prior authorization.”) (emphasis in original).

In addition, Petitioner notes that the motions to exclude that were filed on April 13th include new evidence (*see, e.g.*, Exs. 2030-2033 in IPR2020-00260 and Exs. 2030-2037 in IPR2020-00261). As such, Petitioner seeks leave to file a motion to strike such new evidence as well.

Petitioner planned to respond to the motions to exclude that were filed on August 10, 2020, in accordance with Due Date 6 in the Scheduling Order in each of IPR2020-00260 and -00261 (i.e., April 20, 2021). Given the unauthorized motions to exclude filed by Patent Owner on April 13th, Petitioner seeks an expedited ruling on this request to strike so that Petitioner has an adequate notice and opportunity to respond. In its position below, Patent Owner now characterizes the motions it filed on August 20, 2020 as “objections.” But a simple review of the motions to exclude that were filed on August 20th shows otherwise. In fact, Patent Owner filed exhibits in support of the motions to exclude on August 20, 2020 (*see, e.g.*, Ex. 2024 in IPR2020-00260 and -00261).

Petitioner conferred with Patent Owner and Patent Owner opposes Petitioner's request. Patent Owner asked that its position be included as follows:

Patent Owner opposes Petitioner's request as it has no valid ground. On August 10, 2020, PO timely filed Objections to Exclude under 37 C.F.R. § 42.64(b)(1). Petitioner did not submit Supplementary evidence. On April 13, 2021, PO timely, i.e. in accordance with the Due Date 5 in the Scheduling Order, filed Motion to Exclude under 37 C.F.R. § 42.64(c) preserving the objections raised on August 10, 2020. The Case CBM2016-00008, Paper 31 Petitioner referred to has no relevance to this case and furthermore the Board noted that "In addition, we ordered "that no motion to exclude evidence shall be filed by either party until after Due Date 3 (*See* Paper 19)." (*See*, CBM2016-00008, Paper 31 at 3).

The exhibits 2030-2033 in IPR2020-00260 and IPR2020-00261 are not new evidence. Pursuant to 37 CFR § 42.11, Petitioner was well aware of it and should have disclosed in this case as the evidence provided in the exhibits originated by Petitioner and its publications.

Also Petitioner should be made to respond to the Motion to Exclude filed under 37 C.F.R. § 42.64(c), on April 13, 2021 in both IPR2020-00260 & -261.

To the extent the Board would like to have a call to discuss this request, the parties can be available at the Board's convenience.

Respectfully,

Naveen Modi

Counsel for Petitioner Flex Logix



**Naveen Modi | Partner & Global Vice Chair of IP, Litigation
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