

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLEX LOGIX TECHNOLOGIES, INC.
Petitioner

v.

VENKAT KONDA
Patent Owner

Case PGR2019-00042
Patent No. 10,003,553

PETITIONER'S RESPONSE TO AUGUST 19, 2019 ORDER

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I. INTRODUCTION

Petitioner provides this response to the Board's Order dated August 19, 2019 (Paper 9) and requests that the Board institute all three petitions.

II. RANKING

Petitioner concurrently filed three petitions, challenging U.S. Patent No. 10,003,553 ("the '553 patent"): PGR2019-00037 (Paper 1, "Petition 1"), -00040 (Paper 1, "Petition 2"), and -00042 (Paper 1, "Petition 3"). While all three petitions are meritorious and justified as explained below, Petitioner requests that the Board consider the petitions in the following order:

| Rank | Petition | Challenged Claims | Grounds |
|------|------------|----------------------|--|
| 1 | Petition 1 | 1-20 | <p><u>Ground 1</u>: Challenged Claims Are Indefinite under §112</p> <p><u>Ground 2</u>: Challenged Claims Do Not Satisfy Written Description Requirement under §112</p> <p><u>Ground 3</u>: Challenged Claims Do Not Satisfy Enablement Requirement under §112</p> |
| 2 | Petition 2 | 1-7, 9-15, and 17-19 | <u>Ground 1</u> : Challenged Claims Anticipated by Wong |
| 3 | Petition 3 | 1-7, 9-15, and 17-19 | <p><u>Ground 1</u>: Challenged Claims Anticipated by Konda '756 PCT</p> <p><u>Ground 2</u>: Challenged Claims Obvious over Konda '756 PCT and Wong</p> |

Case PGR2019-00042

III. DIFFERENCES BETWEEN THE PETITIONS, WHY THEY ARE MATERIAL, AND WHY ALL SHOULD BE INSTITUTED

At the time of filing of the petitions, the '553 patent was asserted against Petitioner in *Konda Technologies Inc. v. Flex Logix Technologies, Inc.*, No. 5:18-cv-07581-LHK (N.D. Cal.). Patent Owner ("PO") has since voluntarily dismissed this litigation without prejudice. In the litigation, PO asserted that one or more claims of the '553 patent was infringed. Given PO's broad assertion of infringement that did not narrow the set of asserted claims in litigation, the current circumstances are consistent with the updated Trial Practice Guide, which states that "the Board recognizes that there may be circumstances in which more than one petition may be necessary, including, for example, when the patent owner has asserted a large number of claims in litigation." Trial Practice Guide Update (July 2019) at 26.

As explained in the petitions and below, the three petitions were filed because the claims are invalid at least under 35 U.S.C. §§ 112, 102, and 103. *See* Petition 1, 1-2; Petition 2, 1-2; Petition 3, 1-2. Petitioner submits that consideration of all three of the petitions would not be a significant burden given the claims apparent non-compliance with § 112 (Petition 1) and the clear mapping of the prior art to the claims (Petitions 2-3). As also discussed below, PO's admissions in the Preliminary Responses simplify the issues that will be contested after institution. For at least these reasons, Petitioner submits that all three petitions should be instituted.

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