

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLEX LOGIX TECHNOLOGIES INC.,

Petitioner

V.

VENKAT KONDA,

Patent Owner

Case PGR2020-00261

Patent 8,269,523 B2

**PATENT OWNER VENKAT KONDA'S REQUEST FOR REHEARING
UNDER 37 C.F.R. § 42.71(c)**

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I. INTRODUCTION

In response to the Decision Granting Institution of *Inter Partes* Review entered August 3, 2020, (Paper 22, hereinafter “Decision”) and pursuant to 37 C.F.R. § 42.71(c), Patent Owner Venkat Konda (“Patent Owner”) hereby respectfully requests that the Patent Trial and Appeal Board (“Board”) reconsider its decision granting institution for *inter partes* review of U.S. Patent No. 8,269,523 (“the ‘523 patent”).

II. STATEMENT OF RELIEF REQUESTED

The Decision ordered review on three grounds: (1) the published PCT Application No. WO 2008/109765 (“the ‘756 PCT”) anticipates Claims 1, 16, 20-22 and 32; (2) the ‘756 PCT renders Obvious Claims 15 and 17; and (3) the ‘756 PCT in view of U.S. Patent No. 6,940,308 (“Wong”) renders Obvious Claims 18 and 47. Specifically the Board’s Decision relied on three key factors:

- a) At this preliminary stage, the Board is not persuaded that Dr. Baker’s testimony should be disregarded;
- b) Relying on Dr. Baker’s testimony the Board determined “that Petitioner has established a reasonable likelihood that it would prevail in showing that the challenged claims in the ‘523 patent are not entitled to the benefit of the May 25, 2007 filing date of Provisional Application No. 60/940,394 (“the ‘394

provisional”), or the May 22, 2008 filing date of the PCT Application No.

PCT/US2008/064605 (“the ‘605 PCT”);

c) The Board stated that once the ‘756 PCT was published on September 12, 2008, the ‘394 provisional that is incorporated by reference therein became open to the public for inspection as of September 12, 2008.

Patent Owner requests that the Board reconsider its decision to institute *inter partes* review as to all three grounds on the following bases:

a) In light of Dr. Baker’s misrepresentations in his declaration as shown in Patent Owner’s Motion to Exclude (“Motion”), Dr. Baker’s testimony is inadmissible. Dr. Baker does not qualify as a Person of Ordinary Skill In The Art (“POSITA”) as to the “pertinent art” relating to the subject matter claimed in the ‘523 Patent. Moreover, the Board overlooked Patent Owner’s declaration given under the penalty of perjury in support of Patent Owner’s Preliminary response (Paper 9). Also, this motion is supported by the Declaration of Professor Vipin Chaudhary, Ph.D., Endowed Kranzusch Professor and Inaugural Chair, Department of Computer and Data Sciences, Case School of Engineering, Case Western Reserve University, Cleveland, Ohio (“Dr. Chaudhary”) (Exhibit 2025) and Curriculum Vitae of Dr. Chaudhary (Exhibit 2026) which addresses the Board’s misapprehension in its Decision that “integrated networks” is a relevant

field, whereas “integrated circuits” and “interconnection networks” is the “pertinent art” and there is no such field as “integrated networks”;

b) In light of the misrepresentations and errors in Dr. Baker’s declaration, Dr. Chaudhary’s declaration establishes that the challenged claims in the ‘523 patent are entitled to the benefit of the May 25, 2007 filing date of the ‘394 provisional;

c) The Board erred in finding the ‘394 provisional incorporated by reference in the ‘756 PCT became open to the public for inspection (i.e., the application alone and not the entire file history) on September 12, 2008 pursuant to 37 C.F.R. § 1.14(a)(1)(vi) and 37 C.F.R. § 1.14(c) without a power to inspect, i.e., the permission of Patent Owner;

Therefore, Patent Owner requests that no trial be instituted as to the ‘523 patent.

III. LEGAL STANDARDS

A request for rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or reply.” 37 C.F.R. § 42.71 (d). “When rehearing a decision on petition, the panel will review the decision for an abuse of discretion.” 37 C.F.R. § 42.71 (c). “An abuse of discretion

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