

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 VENKAT KONDA'S SUPPLEMENTAL EVIDENCE IN
RESPONSE TO PETITIONER'S OBJECTIONS TO PATENT OWNER'S
EXHIBITS PURSUANT TO 37 C.F.R. § 42.64(b)(2)**

On August 10, 2020, pursuant to 37 C.F.R. § 42.71(c) Patent Owner Venkat Konda (“Patent Owner”) submitted to the Patent Trial and Appeal Board (“Board”) a Request for Rehearing to reconsider its decision granting institution of *inter partes* review IPR2020-00261 (“Petition”, Paper 1) of U.S. Patent No. 8,269,523 (“the ‘523 patent”) (Paper No. 22). On August 24, 2020, pursuant to 37 C.F.R. § 42.64(b)(1) Petitioner Flex Logix Technologies Inc. (“Petitioner”) submitted objections to the Exhibits 2025-2027 submitted by Patent Owner with his Request for Rehearing on the grounds that: (1) the exhibits constitute new evidence, (2) Patent Owner did not establish good cause, and (3) under Federal Rules of Evidence 401 and 402 the exhibits lack relevance. Pursuant to 37 C.F.R. § 42.64(b)(2), Patent Owner respectfully submits the following supplemental evidence in response to Petitioner’s Objections, that Patent Owner established good cause for the consideration of the Exhibits 2025-2027 submitted with Patent Owner’s Request for Rehearing.

Patent Owner respectfully submits to the Board that he established the following showing of good cause for the acceptance of the Exhibits 2025-2027 by the Board in Patent Owner’s Request for Rehearing:

(1) Prior to filing the Petition, Petitioner should have known that its only expert witness in support of the Petition, Dr. Baker, is not qualified in the “Pertinent Art” of this case, i.e., Dr. Baker is not qualified in the fields of either

“interconnection networks”, or “Field Programmable Gate Arrays” or “networks”.

(See, Paper 27 at 2-5)

(2) Petitioner, its Counsel and Dr. Baker under the Penalty of Perjury should not have made misrepresentations and errors¹. (See, Paper 27 at 2-5)

(3) The Board’s Decision instituting the IPR stated that the Board accepted Dr. Baker’s testimony, since Petitioner submitted Dr. Baker’s testimony under the penalty of perjury in the Petition (Paper 22 at 8), but did not accord any weight to Patent Owner Dr. Konda’s Declaration given under the penalty of perjury in support of Patent Owner’s Preliminary Response (Paper 8).

Consequently, the Board misapprehended in its Decision that “integrated networks” is a relevant field, instead of “integrated circuits” and “interconnection networks” being the “Pertinent Art”. Moreover, there is no such field as “integrated networks”.

¹ On August 10, 2020, Patent Owner filed his Motion to Exclude Dr. Baker’s testimony in the present case in view of the misrepresentations in Dr. Baker’s Declaration in support of the Petition (Paper 25). Notably, Petitioner did not, and evidently cannot, redeem itself as it did not submit supplemental evidence pursuant to 37 C.F.R. § 42.64(b)(2) by the due date of August 24, 2020.

(4) Because the Patent Owner Dr. Konda's Declaration was not considered by the Board in the Decision instituting this IPR, Patent Owner is left with no other option but to submit an independent expert witness's testimony in support of Patent Owner's Request for Rehearing, i.e., Dr. Chaudhary's Declaration (Exhibit 2025) and accompanying Curriculum Vitae of Dr. Chaudhary (Exhibit 2026) rectify the Board's misapprehension in its Decision that "integrated networks" is a relevant field, whereas "integrated circuits" and implementing "interconnection networks" is the "Pertinent Art" and there is no such field as "integrated networks". Rectifying the Board's misapprehension establishes **good cause**.

(5) Petitioner filed its Petition with the support of misrepresentations and errors in Dr. Baker's testimony under the penalty of perjury, with disregard of the following (which further constitutes **good cause** for the Board to admit Exhibits 2025 and 2026):

- a. Dr. Baker ignored the straightforward fact that the USPTO Examiner allowed Claim 1 as amended after the first Office Action in the patent application No. 12/601,275, which issued as the '523 patent, on May 8, 2012, particularly with respect to "said routing network comprising a plurality of stages y, in each said sub-integrated circuit

block, starting from the lowest stage of 1 to the highest stage of y , where $y \geq 1$ ”.

- b. Dr. Baker ignored the straightforward fact that: “A POSITA would understand that the first stage of a butterfly fat tree network has no preceding stage, and so no backward connecting links are connected from the first stage. A POSITA would also understand that the last stage of a butterfly fat tree network has no succeeding stage, and so no forward connecting links are connected from the last stage.

Therefore, a POSITA would understand that when there is one stage in a butterfly fat tree network as illustrated in FIG. 2A1-3 of the priority applications, it is the first stage as well as the last stage.

Furthermore, the one stage has neither a preceding stage nor a succeeding stage, and so no forward connecting links are connected from the stage and no backward connecting links are connected from the stage. Such an understanding for a POSITA is straight forward. Accordingly no experimentation is needed to understand, let alone undue experimentation. (Exhibit 2025 at ¶¶35-37)”.

- c. As a consequence, Dr. Baker ignored the straightforward fact that “a POSITA reviewing the ‘605 PCT and the ‘394 Provisional would

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