

May 10, 2019

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Honorable Scott Harris  
Clerk of Court  
U.S. Supreme Court  
1 First Street, NE  
Washington, DC 20543

Re: No. 18-1170, Xitronix Corp. v. KLA-Tencor Corp.

Dear Mr. Harris:

I represent Petitioner Xitronix Corporation in the above-captioned case. Xitronix filed its petition for certiorari on March 8, 2019. Xitronix filed the petition three weeks after the Fifth Circuit issued the decision under review, in an effort to obtain resolution before the summer break.

On March 18, 2019, Respondent KLA-Tencor Corporation filed a letter seeking an extension of time to file its response brief from April 8, 2019, until May 8, 2019. The letter explained that KLA-Tencor's counsel, Aaron Fountain, "will be primarily responsible for preparing KLA-Tencor's response to Xitronix Corporation's Petition." It described Mr. Fountain's scheduling conflicts and represented that KLA-Tencor is "in the process of getting Mr. Fountain admitted to this Court." The implication of this letter was that KLA-Tencor would, in fact, be filing a response by May 8, 2019; if it was not, there would be no reason to describe his scheduling conflicts and no reason to get him admitted. The Clerk granted KLA-Tencor's request, and the time was extended.

No response brief was served or filed on May 8, 2019. After Xitronix's counsel contacted KLA-Tencor's counsel, KLA-Tencor's counsel stated that "given the developments in the Federal Circuit,<sup>1</sup> we opted not to respond at this time." KLA-Tencor did not previously advise Xitronix or the Court that it would be "opt[ing] not to respond," notwithstanding KLA-Tencor's previous submission to the Court. The effect of KLA-Tencor's failure to file a response brief, after seeking and receiving an extension of time to file that brief, is that if the Petition is distributed according to the ordinary schedule, and a response is requested, the Petition will not be considered until the Long Conference next Term.

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<sup>1</sup> This may be a reference to the Federal Circuit's order accepting jurisdiction, which Xitronix addressed in its supplemental brief filed March 21, 2019. That order was issued on March 14, 2019, four days before KLA-Tencor sought its extension of time. The most recent order by the Federal Circuit in this matter was issued on April 2, 2019; in that order, the court rescheduled the argument date for May 22, 2019.

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In these circumstances, we respectfully request that the Clerk direct KLA-Tencor to file its response brief by May 24, 2019. That would be 77 days after the petition was filed, and 16 days after KLA-Tencor's originally-requested deadline. That would leave Xitronix 11 days before the distribution date for the last June conference to file its reply brief; Xitronix would be prepared to waive the 14-day period ordinarily allotted for reply briefs.

Alternatively, we respectfully request that the Clerk distribute this petition for Conference on the next available distribution date.

Sincerely,

A handwritten signature in blue ink, appearing to read "A.G. Unikowsky". The signature is stylized and written in a cursive-like font.

Adam G. Unikowsky