

1 William E. Thomson, Jr. (SBN 47195)  
**BROOKS KUSHMAN P.C.**  
601 S. Figueroa Street, Suite 2080  
2 Los Angeles, California 90017-5780  
Phone: (213) 622-3003  
3 wthomson@brookskushman.com

4 Marc Lorelli (Admitted *pro hac vice*)  
mlorelli@brookskushman.com  
5 John P. Rondini (Admitted *pro hac vice*)  
jrondini@brookskushman.com  
6 Mark A. Cantor (Admitted *pro hac vice*)  
mcantor@brookskushman.com  
7 John S. LeRoy (Admitted *pro hac vice*)  
jleroy@brookskushman.com

8 **BROOKS KUSHMAN P.C.**  
1000 Town Center, 22<sup>nd</sup> Floor  
9 Southfield, MI 48075  
Phone: (248) 358-4400  
10

11 *Attorneys for Plaintiff*  
*Ancora Technologies, Inc.*

12  
13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ANCORA TECHNOLOGIES,  
16 INC.

17 Plaintiff,

18 v.

19 TCT MOBILE (US) INC.,  
HUIZHOU TCL MOBILE  
COMMUNICATION CO.,  
20 LTD., and SHENZHEN TCL  
CREATIVE CLOUD  
21 TECHNOLOGY CO., LTD.,

22 Defendants.  
23  
24

**Case No. 8:19-cv-02192-GW-ASx**  
**(LEAD CASE)**

Consolidated Case  
No. 2:20-cv-01252-GW-ASx

**PLAINTIFF'S BRIEF IN  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS THE  
AMENDED COMPLAINT FOR  
FAILURE TO STATE A CLAIM**

Hearing Date: April 20, 2020  
Time: 8:30 am  
Before Hon. George H. Wu  
United States Courthouse  
Courtroom: 9D, 9th Floor

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

TABLE OF AUTHORITIES ..... ii

I. INTRODUCTION ..... 1

II. CONCISE STATEMENT OF FACTS ..... 2

    A. Summary of the ‘941 Patent..... 2

    B. Factual background of the present action ..... 4

    C. Ancora’s Amended Complaint expressly describes how TCL  
    infringes the asserted claim ..... 5

III. ARGUMENT ..... 9

    A. Legal standards ..... 9

        1. Legal standards for stating a claim ..... 9

        2. Legal standards for pleading direct infringement ..... 10

    B. TCL’s arguments are unfounded .....10

        1. Ancora’s Amended Complaint clearly identifies the TCL  
        devices and systems that infringe claim 1 of the ‘941  
        Patent..... 11

        2. The Amended Complaint places TCL “on notice” with  
        respect to each claim limitation..... 14

            a. The “agent” limitation..... 15

            b. The “selecting a program” limitation ..... 17

            c. The “set up a verification structure” limitation..... 18

            d. The “verify the program” limitation ..... 19

        3. TCL directs and controls the software that infringes the  
        asserted claim ..... 20

IV. CONCLUSION .....23

**TABLE OF AUTHORITIES**

**Cases**

1

2

3 *Ancora Techs., Inc. v. Apple, Inc.*,

4       744 F.3d 732 (Fed. Cir. 2014)..... 3

5 *Ancora Techs., Inc. v. HTC Am., Inc.*,

6       908 F.3d 1343 (Fed. Cir. 2018)..... 3

7 *Ashcroft v. Iqbal*,

8       556 U.S. 662 (2009)..... 10

9 *Bell Atl. Corp. v. Twombly*,

10       550 U.S. 544 (2007)..... 9

11 *InCom Corp. v. Walt Disney Co.*, No. CV15-3011 PSG,

12       2016 U.S. Dist. LEXIS 71319 (C.D. Cal. Feb. 4, 2016) ..... 10, 15

13 *Nalco Co. v. Chem-Mod, LLC*,

14       883 F.3d 1337 (Fed. Cir. 2018)..... 10, 14, 15, 21, 23

15 *Pres. Techs. LLC v. Mindgeek USA Inc.*, No. CV17-8906-DOC,

16       2019 U.S. Dist. LEXIS 145072 (C.D. Cal. Apr. 2, 2019) ..... 14, 15

17 *SiRF Tech., Inc. v. Int’l Trade Comm’n*,

18       601 F.3d 1319 (Fed. Cir. 2010)..... 22, 23

19 *SKC Kolon PI v. Kaneka Corp.*, No. CV 16-05948 AG,

20       2017 U.S. Dist. LEXIS 182989 (C.D. Cal. Mar. 13, 2017)..... 17

21 *United States Gypsum Co. v. New NGC, Inc.*, No. 17-130-VAC-MPT,

22       2017 WL 2538569 (D. Del. June 12, 2017)..... 17

**Statutes**

23

24 35 U.S.C. § 271 ..... 10, 20

## Rules

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Fed. R. Civ. P. 12..... 15, 21, 23

Fed. R. Civ. P. 8..... 9

## I. INTRODUCTION

Defendants TCT Mobile (US) Inc., Huizhou TCL Mobile Communication Co., Ltd., and Shenzhen TCL Creative Cloud Technology Co., Ltd. (collectively “TCL”) motion omits key aspects of the present case relevant to the relief being sought. Specifically, TCL’s motion omits that TCL filed a declaratory judgment complaint last November. (Dkt. #1.) TCL’s complaint stated it had reviewed the infringement allegations raised within Ancora’s earlier filed “Texas Lawsuit.” (*Id.*, ¶¶13-15.) And upon reviewing Ancora’s infringement allegations, TCL’s complaint alleged that the “Accused [TCL] Products” did “not infringe and [have] not infringed any claim” of U.S. Patent No. 6,411,941 (“the ‘941 Patent”). (*Id.*, ¶20.)

But now TCL wants this Court to believe that “it is unclear whether Ancora is accusing devices or accusing a system.” (Dkt. #37-1 at pg. 3.) TCL never explains how or why it cannot understand the same infringement allegations it articulated were not infringed just several months ago. Indeed, Ancora’s recently filed Amended Complaint (Dkt. #24) that TCL now alleges is “unclear” is duplicative of Ancora’s Texas Lawsuit complaint which TCL affirmatively alleged to this Court was not infringed.<sup>1</sup>

Regardless, Ancora’s Amended Complaint clearly states a claim for patent infringement by (i) identifying the asserted patent claim TCL infringes, (ii) identifying

---

<sup>1</sup> It should also be noted that TCL’s motion is a nearly duplicative copy of a motion filed by Sony Corporation in a separate, unrelated lawsuit. (Ex. 1.) This motion filed on February 10, 2020 remains undecided by the Delaware District Court. This likely explains why TCL fails to include the factual history pertaining to *this case*. But Sony’s motion does not apply to the present case because the facts and procedural history between Ancora and Sony are much different those between Ancora and TCL.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.