

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. SACV 19-2192-GW-ASx Date April 9, 2020

Title *Ancora Technologies, Inc. v. TCT Mobile (US), Inc., et al.* Page 1 of 3

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez  
Deputy Clerk

None Present  
Court Reporter

Attorneys Present for Plaintiff(s)

Attorneys Present for Defendant(s)

None Present

None Present

**Proceedings: IN CHAMBERS - ORDER DIRECTING FURTHER EFFORTS BY THE PARTIES TO RESOLVE THEIR DISPUTES RELATING TO TCL'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

The Court has reviewed the parties' briefing related to TCT Mobile (US) Inc., Huizhou TCL Mobile Communication Co., Ltd., and Shenzhen TCL Creative Cloud Technology Co., Ltd.'s (collectively "TCL") Motion to Dismiss the First Amended Complaint. Docket No. 37 (Notice of Motion), Docket No. 37-1 (Memorandum in Support of Motion); *see also* Docket No. 24 (First Amended Complaint), Docket No. 39 (Opposition to Motion), Docket No. 40 (Reply in Support of Motion).

The Central District of California is operating at a significant deficit of District Judges. TCL's motion was also filed during a time of international crisis due to the coronavirus pandemic. *See* Docket No. 37 (recognizing same by referencing the Order of the Chief Judge 20-042). Moreover, the Court's review of the parties' filings related to TCL's motion to dismiss suggests that at least some, if not all, of the disputes addressed therein would be capable of resolution by reasonable parties without Court involvement.

For these reasons, the Court **ORDERS** the parties to meet and confer *telephonically* by noon on Monday, April 13, 2020 to discuss the issues identified *infra* and for Ancora to file by noon on April 16, 2020 a report (effectively a surreply) no longer than ten pages that addresses the following:

- Whether Ancora is willing to specify in a further amended complaint whether it is accusing (i) smartphones, (ii) servers, (iii) software, and/or (iv) some combination of (i) through (iii) of being capable of infringing the asserted patent. The Court agrees with TCL that Ancora's representations in its opposition in this regard are not fully consistent with the

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allegations made in the FAC as far as what constitutes an “accused product” or instrumentality.

- Whether Ancora is willing to specify (again) in a further amended complaint what conduct listed under 35 U.S.C. § 271(a) it is alleging in this case insofar as infringement (*i.e.*, are Ancora’s actions of “making, using, selling, importing,” etc. the accused instrumentality considered the basis for the alleged infringing conduct?). TCL’s reply casts doubt on what type of conduct Ancora is alleging, based on the statements and representations made in Ancora’s opposition.
- Whether Ancora is willing to specify in a further amended complaint what theory or theories of infringement (direct, indirect, joint, etc) it is alleging in this case. The FAC does not explicitly state one way or the other (it does not use the words “direct,” “indirect,” or “joint” at all), and the Court agrees with TCL that some of the language in the FAC tracks, for example, the legal requirements of a joint infringement claim, even though it is not otherwise pled and Ancora’s opposition denies joint infringement is being alleged.
- Whether Ancora would agree to incorporate into a further amended complaint certain information that appears in its opposition, but is not exactly reflected in its FAC. For example, Ancora should explain whether it would agree to amend its complaint to add claim charts or additional information linking the functioning of the accused instrumentalities to the claim limitations, similar to the claim charts and explanation set forth in its opposition. Ancora should also explain whether it would be willing to provide additional information without Court involvement beyond what was provided in its opposition; for instance, whether it would be willing to provide additional allegations regarding the “using an agent” step of Claim 1 of the asserted patent.
- Whether, based on its meet and confer with TCL, Ancora believes the parties can resolve their differences regarding the relevant legal authority governing accusations of patent infringement by defendant-owned software being run on a third-party device; specifically, their dispute with respect to *Ricoh Co., Ltd. v. Quanta Computer Inc.*, 550 F.3d 1325, 1335 (Fed. Cir. 2008), *SiRF Tech., Inc. v. Int’l Trade Comm’n*, 601 F.3d 1319, 1331 (Fed. Cir. 2010), and related legal authority. Ancora should also state whether it would be willing to file a further amended complaint based on a resolution of that dispute. Otherwise, Ancora may provide a brief response to TCL’s reply arguments on the issue.

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At this time, the Court makes no determinations regarding what is required for Ancora to satisfy its pleading obligations. However, it does believe that at least some of the arguments made in TCL's motion and reply, including those related to at least some, if not all, of the bullet points Ancora is being directed to address herein, would indeed support a determination of failure to state a claim. Ancora should bear this in mind in deciding whether it would choose to expend additional judicial and party resources relating to TCL's motion, as opposed to simply being permitted by the Court, and accordingly agreeing to submit, an amended complaint on various issues that would, at the least, narrow the parties' dispute.<sup>1</sup> *See* Fed. R. Civ. P. 1.

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<sup>1</sup> TCL is expected to bear in mind similar considerations of judicial and party economy during the parties' meet and confer efforts and in maintained or subsequent challenges, if any, to Ancora's pleadings.