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9

10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12

13 ANCORA TECHNOLOGIES, INC.,

14 Plaintiff,

15 v.

16 TCT MOBILE (US) INC., HUIZHOU  
17 TCL MOBILE COMMUNICATION  
CO. LTD., and SHENZHEN TCL  
18 CREATIVE CLOUD TECHNOLOGY  
CO., LTD.,

19 Defendants.  
20

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

Case No. 2:20-cv-01252-GW-ASx  
(CONSOLIDATED CASE)

Judge: Hon. George H. Wu  
Judge: Hon. Alka Sagar

**TCL'S RESPONSIVE CLAIM  
CONSTRUCTION BRIEF**

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1 **I. INTRODUCTION**

2 Defendants (“TCL”) file this brief in response to Plaintiff’s (“Ancora”) opening claim construction brief (Dkt. No. 52) (“Ancora’s Opening Brief”). For  
3 the reasons described in TCL’s opening brief (Dkt. No. 53) (“TCL’s Opening  
4 Brief”) and for the reasons discussed below, TCL requests that the Court adopt its  
5 constructions of the disputed terms.  
6

7 **II. CLAIM TERMS IN DISPUTE**

8 Seven claim terms are in dispute, the first five of which relate to the only  
9 asserted independent claim, claim 1.

10 **A. “Memory of the BIOS”**

Claim	Ancora’s Construction	TCL’s Construction
1	plain and ordinary meaning	a memory that: (i) stores the BIOS; (ii) is not recognized by an operating system as a storage device; and (iii) does not have a file system

15 As TCL explained in its opening brief, the applicant for the ’941 Patent made  
16 a clear, unambiguous disclaimer of the scope of “memory of the BIOS.” (*See*  
17 *TCL’s Opening Brief* at 9–14.) The applicant disclaimed from the scope of  
18 “memory of the BIOS” any storage device that is recognized by the operating  
19 system as a storage device or that has a file system. (*Id.*) In its infringement  
20 contentions, Ancora now tries to reclaim that disclaimed scope, accusing as the  
21 “memory of the BIOS” the *primary* storage device used by the operating system,  
22 and in fact the storage device that the operating itself is stored on. This is precisely  
23 the situation that the application of prosecution disclaimer is designed to prevent.  
24 *Aylus Networks, Inc. v. Apple Inc.*, 856 F.3d 1353, 1360 (Fed. Cir. 2017)  
25 (“Ultimately, the doctrine of prosecution disclaimer ensures that claims are not  
26 ‘construed one way in order to obtain their allowance and in a different way against  
27 accused infringers.’” (quoting *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d  
28 1570, 1576 (Fed. Cir. 1995)).

1 Ancora's primary argument to the contrary is that the comments made during  
2 prosecution characterized only the prior art, and not the claimed invention.  
3 (Ancora's Opening Brief at 16–20.) This is incorrect as seen from the specification  
4 and the prosecution history. Ancora's arguments do not and cannot explain away  
5 the explicit and unambiguous disclaimer made during prosecution, as discussed  
6 further below.

7 **1. Applicant's Comments During Prosecution Described the**  
8 **Claimed Invention, Not Just the Prior Art.**

9 As discussed in TCL's Opening Brief, the applicant argued during  
10 prosecution that it was non-obvious to store license information in BIOS memory  
11 because:

12 Moreover, the present invention proceeds against conventional  
13 wisdom in the art. Using BIOS to store application data such as that stored in  
14 Misra's local cache for licenses is not obvious. The BIOS area is not  
15 considered a storage area for computer applications. An ordinary skilled  
16 artisan would not consider the BIOS a storage medium to preserve  
17 application data for at least two reasons.

18 First, OS does not support this functionality and is not recognized as a  
19 hardware device like other peripherals. . . . There is no OS support  
20 whatsoever to write data to the system BIOS. . . .

21 Second, no file system is associated with the BIOS. Every writable  
22 device connected to the PC is associated with an OS file system to arrange  
23 and manage data structures. An example for such a file system would be  
24 FAT, FAT32, NTFS, HPFS, etc. that suggests writing data to the writable  
25 device. No such file system is associated with the BIOS. This is further  
26 evidence that OS level application would not consider the BIOS as a storage  
27 medium for license data.  
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