

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

ANCORA TECHNOLOGIES, INC.	)	CIVIL ACTION NO. 1:20-CV-00034-ADA
	)	
Plaintiff,	)	JURY TRIAL DEMANDED
	)	
vs.	)	
	)	
LG ELECTRONICS INC. and LG	)	RESTRICTED –
ELECTRONICS U.S.A., INC.	)	CONFIDENTIAL SOURCE CODE
	)	ATTORNEYS’ EYES ONLY
	)	
Defendants.	)	

---

**REBUTTAL EXPERT REPORT OF DR. DAVID MARTIN ON INVALIDITY  
REGARDING LG ELECTRONICS INC. AND LG ELECTRONICS U.S.A., INC.**

**TABLE OF CONTENTS**

I. Background of the Case .....6

II. Summary of Opinions Regarding the Validity of the '941 Patent.....6

III. High-Level Description of Materials Studied.....7

IV. Relevant Legal Principles .....8

    A. Presumption of Validity .....8

    B. Anticipation.....8

    C. Obviousness .....10

    D. Prior Art Considered by the Examiner, and Prior Art that Is  
    Cumulative to the Prior Art Considered by the Examiner .....13

    E. Claim Construction .....14

    F. Secondary Considerations of Non-Obviousness.....19

    G. Enablement and Definiteness.....19

    H. Abstract Ideas.....20

    I. The Manner of Rebuttal .....20

    J. The Level of Ordinary Skill in the Art and Person of  
    Ordinary Skill in the Art .....21

    K. Avoidance of Impermissible Hindsight .....22

    L. Requirements for Asserting Obviousness .....22

V. Technology Background .....23

VI. The References Addressed in the LG Expert Reports .....28

VII. General Comments on the Barber Report .....29

    A. Use of Formulaic Approach to Asserting Invalidity .....29

    B. Frequent Use of Impermissible Hindsight .....29

    C. Inadequacy of Addressing the Expectation of Success.....29

VIII. Rebuttal to Dr. Barber’s Opinions Regarding the '941 Patent .....30

A.	Arbaugh Does Not Anticipate or Render Obvious the Asserted Claims of the '941 Patent.....	31
1.	Dependent Claims.....	42
B.	Jablon Does Not Anticipate or Render Obvious the Asserted Claims of the '941 Patent.....	47
1.	Dependent Claims.....	59
C.	Arbaugh and Chou Do Not Invalidate the Asserted Claims of the '941 Patent.....	62
D.	Jablon and Chou Do Not Invalidate the Asserted Claims of the '941 Patent.....	65
E.	Arbaugh and Mirov Do Not Invalidate the Asserted Claims of the '941 Patent.....	69
F.	Jablon and Mirov Do Not Invalidate the Asserted Claims of the '941 Patent.....	72
G.	Schwartz and Yee Do Not Invalidate the Asserted Claims of the '941 Patent.....	75
1.	Schwartz's Alleged Memory of the BIOS.....	77
2.	Yee's Alleged Pseudo-Unique Key and Alleged Memory of the BIOS.....	79
3.	Alleged Motivation to Combine.....	81
4.	Dependent Claims.....	83
H.	Hellman and Chou or Christeson Do Not Invalidate the Asserted Claims of the '941 Patent.....	86
1.	Alleged Memory of the BIOS.....	91
2.	Chou's Alleged Pseudo-Unique Key.....	94
3.	No Motivation to Combine.....	94
4.	Dependent Claims.....	95
IX.	Secondary Considerations of Non-Obviousness.....	96
X.	Incremental Value of the Asserted Invention.....	100

XI. Priority Date of the '941 Patent .....102  
XII. Materials Considered .....106

1. My name is Dr. David Martin. I am an independent software consultant with 40 years of professional experience with computer software, the Internet, and associated technologies. I have been previously retained by Ancora Technologies, Inc. (“Ancora”) to provide expert opinions in the above-captioned litigation.

2. I have previously served an expert report in this litigation, which I incorporate herein by reference. Among other things, my qualifications are set forth in the Opening Expert Report of Dr. David Martin Regarding LG Electronics Inc. and LG Electronics U.S.A., Inc., which includes my Curriculum Vitae as an attachment. My Curriculum Vitae has not changed in any material respect since my Opening Expert Report was served.

3. I receive compensation of \$525 per hour for my time working on this matter plus expenses. My compensation is not dependent on the outcome of this litigation and I have no personal interest in it. The conclusions I present are due to my own judgment.

4. In this report, I respond to the expert report that LG Electronics Inc. and LG Electronics U.S.A., Inc. (“Defendants” or “LG”) provided: the Expert Report of Suzanne Barber dated January 22, 2021 (“the Barber Report”). Dr. Barber makes reference to further reports provided by Samsung, and I have considered these reports as well: the Expert Report of Dr. Scott M. Nettles dated November 20, 2020 (“the Nettles Report”); Expert Report of Dr. Marwan Hassoun dated November 20, 2020 (“the Hassoun Report”); Expert Report and Declaration of Dr. William A. Arbaugh dated November 20, 2020 (“the Arbaugh Report”); and Expert Report and Declaration of Dr. Michael W. Hicks dated November 20, 2020 (“the Hicks Report”) (collectively, “the Samsung Expert Reports”).

5. Having reviewed the Samsung Expert Reports, I understand that the Hassoun Report, the Arbaugh Report, and the Hicks Report offer opinions regarding an appropriate priority date for certain art references. I further understand that these three reports do not opine on the validity of the ’941 patent. For example, neither the Arbaugh Report nor the Hicks Report even mentions the ’941 patent. The Hassoun Report, in turn, is limited to addressing whether “source code identified by Ancora in its response to Defendants’ Interrogatory No. 10 and related material... include[d] source code from before the filing date of the ’941 patent that shows storing any key or license information in the memory of the BIOS” or “checking the existence of any type of key.” Hassoun Report ¶ 17. In citing the materials considered for his report, Dr. Hassoun does not identify or

# 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.