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I. INTRODUCTION

Ancora has asserted claims 1–3, 6–14, 16 (“asserted claims”) of U.S. Patent 6,411,941 (“the ’941 patent”) against Defendants. *See* Ancora’s Disclosure of Asserted Claims and Infringement Contentions served on Defendants on October 16, 2020 (“Infringement Contentions”).

This Court has not yet construed any of the terms in the ’941 patent in this case. Accordingly, Defendants’ Invalidity Contentions are based on Defendants’ present understanding of the asserted claims and any apparent construction of the claims used by Ancora in its Infringement Contentions. Defendants’ Invalidity Contentions, including the attached invalidity claim charts, may reflect alternative positions dependent upon claim construction and scope. These Invalidity Contentions are not an admission by Defendants that the accused products, including any current or past versions of these products or Defendants’ technology, are covered by or infringe the asserted claims. Further, by including prior art that anticipates or renders obvious claims based on Ancora’s apparent claim constructions or any other claim constructions, Defendants are not adopting Ancora’s apparent claim constructions or any other claim constructions. Defendants’ Invalidity Contentions are made in a variety of alternatives and do not represent Defendants’ agreement with Ancora’s apparent applications or views as to the meaning, definiteness, written description support for, or enablement of any claim contained therein.

To the extent that any of the prior art discloses the same or similar functionality, feature, or features of any of the accused products, Defendants reserve the right to argue that said feature or functionality does not practice any limitation of any of the asserted claims, and to argue, in the alternative, that if said feature or functionality is found to practice any limitation of any of the asserted claims of the ’941 patent, then the prior art reference discloses the limitation and that the claim is not patentable.

The prior art references in the accompanying invalidity claim charts disclose, either expressly or inherently, each limitation of each asserted claim and/or render obvious, either alone or in combination with other prior art references, each asserted claim of the ’941 patent. In the claim charts, Defendants have attempted to identify the most relevant portions of the references. However, the references may contain additional support for claim limitations. Defendants may rely on uncited portions of the references, other documents, and expert testimony to provide

context or to aid in understanding the disclosures of the references.

Where Defendants cite to a particular figure in a reference, the citation should be understood to encompass the caption and any corresponding description of the figure. Conversely, where Defendants cite to particular text referring to a figure, the citation should be understood to include the corresponding figure as well.

Defendants reserve the right to amend these disclosures in the event that Ancora supplements or amends its Infringement Contentions in any way. At this time, Ancora's specific infringement theories are unclear, vague, ambiguous, and unsupported by specific evidence even in view of its infringement contentions.

Defendants further reserve the right to amend these disclosures in accordance with the Federal Rules of Civil Procedure, the Joint Scheduling Order, and any other orders of the Court. Defendants also reserve the right to amend these Invalidity Contentions in response to discovery of information potentially impacting the priority date of any asserted claim.

Defendants may rely on the '941 patent itself, its file history, its reexamination, inventor admissions concerning the scope of prior art relevant to the '941 patent; and any deposition testimony of any named inventor on the '941 patent. Defendants reserve the right to assert that the asserted claims are invalid under 35 U.S.C. § 102(f) in the event Defendants obtains evidence that the named inventors did not invent the subject matter claimed in the '941 patent.

Prior art not included in this disclosure, whether known or unknown to Defendants, may become relevant. In particular, Defendants are currently unaware of the extent, if any, to which Ancora will contend that limitations of the Asserted Claims are not disclosed in the prior art identified by Defendants. To the extent that such an issue arises, Defendants reserve the right to identify additional references, including other references that would render obvious the allegedly missing limitations. Further, Defendants reserve the right to revise, amend, and/or supplement the information provided herein, including identifying, charting, and relying on additional references, should Defendants' further search and analysis yield additional information or references.

Additionally, because discovery is not yet complete, Defendants reserve the right to present additional items of prior art under pre-AIA 35 U.S.C. §§ 102(a), (b), (e), and/or (g), and/or § 103, located during the course of such discovery or further investigation such as learning of prior art from other related litigations, and to assert invalidity under 35 U.S.C. §§ 102(c), (d), or (f), to the extent that such discovery or investigation yields information forming the basis for such invalidity.

Defendants may issue subpoenas to third parties with knowledge of prior art. These third parties include, without limitation, the authors, inventors, or assignees of the references listed in these disclosures, and entities and persons familiar with products, systems, and software that anticipate and/or render obvious the asserted claims.

Defendants reserve the right to amend these disclosures and associated document production, should Ancora provide any information that they failed to provide in its Infringement Contentions, should Ancora amend its disclosures in any way, should the Court's claim construction order in this case make amendment necessary, or should additional prior art come to light.

To the extent that Ancora's Infringement Contentions lack the specificity required to inform Defendants of the specifics of certain aspects of Ancora's infringement positions, Defendants provide these Invalidity Contentions consistent with the case schedule currently in place but do so without waiving any right to receive from Ancora such full and complete specific infringement disclosures as should have been provided from the outset. Defendants' compliance with the current schedule should not be viewed as waiver of any rights in regard to Ancora's Infringement Contentions. Furthermore, if Ancora revises its Infringement Contentions to address any deficiencies that may be identified by Defendants, Defendants reserve the right to amend these Invalidity Contentions.

Moreover, Defendants reserve the right to revise their ultimate contentions concerning the invalidity of the asserted claims, which may change depending upon the Court's construction of the asserted claims in this case, any findings as to the priority date of the asserted claims, and/or positions that Ancora may take concerning claim construction, infringement, and/or invalidity issues. Defendants hereby provide disclosures and related documents pertaining only to the asserted claims as identified by Ancora in its Infringement Contentions. Defendants also reserve the right to rely on discovery and papers and evidence filed, served, or submitted by Ancora in connection with this litigation.

These Invalidity Contentions are limited to Defendants' current positions regarding the grounds of invalidity called for in Paragraph 5 of the Court's Scheduling Order. Defendants reserve the right to assert and pursue all other defenses that may be available, including all of the affirmative defenses pled in any of Defendants' answers, or any other grounds.

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