(Also referred to as FORM PTO-1465)

REQUEST FOR *EX PARTE* REEXAMINATION TRANSMITTAL FORM

Address to:
Mail Stop *Ex Parte* Reexam
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attorney Docket No.:   418263007US

Date:

1. [X] This is a request for *ex parte* reexamination pursuant to 37 CFR 1.510 of patent number
   _____6,411,941_____ issued ____June 25, 2002____ . The request is made by:
   [ ] patent owner.   [X] third party requester.

2. [X] The name and address of the person requesting reexamination is:

   Chun M. Ng
   Perkins Coie LLP
   P.O. Box 1247
   Seattle, WA 98111-1247

3. [ ] a. A check in the amount of $ _____ is enclosed to cover the reexamination fee, 37 CFR 1.20(c)(1);

   [ ] b. The Director is hereby authorized to charge the fee as set forth in 37 CFR 1.20(c)(1)
   to Deposit Account No. ____50-0665____ ; or

   [X] c. Payment by EFT Account SEA1PIRM in the amount of $2,520.00 is hereby authorized.

4. [X] Any refund should be made by [ ] check or [X] credit to Deposit Account No. ____50-0665____ .
   37 CFR 1.26(c). If payment is made by credit card, refund must be to credit card account.

5. [X] A copy of the patent to be reexamined having a double column format on one side of a separate paper
   is enclosed. 37 CFR 1.510(b)(4)

6. [ ] CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table

   [ ] Landscape Table on CD

7. [ ] Nucleotide and/or Amino Acid Sequence Submission
   If applicable, items a. – c. are required.

   a. [ ] Computer Readable Form (CRF)

   b. Specification Sequence Listing on:

   i. [ ] CD-ROM (2 copies) or CD-R (2 copies); **or**

   ii. [ ] paper

   c. [ ] Statements verifying identity of above copies

8. [ ] A copy of any disclaimer, certificate of correction or reexamination certificate issued in the patent is
   included.

9. [X] Reexamination of claim(s) _____1-19_____ is requested.

10. [ ] A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof
    on Form PTO/SB/08, PTO-1449, or equivalent.

11. [ ] An English language translation of all necessary and pertinent non-English language patents and/or
    printed publications is included.

12. [X] The attached detailed request includes at least the following items:

    a. A statement identifying each substantial new question of patentability based on prior patents and printed publications. 37 CFR 1.510(b)(1)

    b. An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited art to every claim for which reexamination is requested. 37 CFR 1.510(b)(2)

13. [ ] A proposed amendment is included (only where the patent owner is the requester). 37 CFR 1.510(e)

14. [X] a. It is certified that a copy of this request (if filed by other than the patent owner) has been served in its entirety on the patent owner as provided in 37 CFR 1.33(c). The name and address of the party served and the date of service are:

> Robert Kinberg
> Venable LLP
> 575 7th Street NW
> Washington, DC 20004

    Date of Service: _____ May 28, 2009 _____ ; or

    [ ] b. A duplicate copy is enclosed since service on patent owner was not possible.

15. Correspondence Address: Direct all communication about the reexamination to:

    [X] The address associated with Customer Number: | 45979 |

OR

[ ] Firm or Individual Name

Address

City	State	Zip
Country	Telephone	Email

16. [ ] The patent is currently the subject of the following concurrent proceeding(s):

    [ ] a. Copending reissue Application No. _____ .

    [ ] b. Copending reexamination Control No. _____ .

    [ ] c. Copending Interference No. _____ .

    [X] d. Copending litigation styled:
        Ancora Technologies, Inc. v. Toshiba America Information Systems, Inc. et al.,
        No. 2-09-cv-00270-MJP (W.D. Wa.)

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

_____	5/28/09
Authorized Signature	Date

_____	_____
Chun M. Ng	36,878
Typed/Printed Name	Registration No.

    [ ] For Patent Owner Requester

    [X] For Third Party Requester
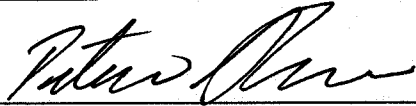
PROOF OF SERVICE – MAIL

STATE OF WASHINGTON, COUNTY OF KING

I am and was at all times herein mentioned employed in the County of King, State of Washington. I am over the age of 18 years and not a party to the within action or proceeding. My business address is 1201 Third Avenue, Suite 4800, Seattle, Washington 98101-3099.

On _May 28_, 2009, I served a true copy of the **REQUEST FOR EX PARTE REEXAMINATION OF U.S. PATENT NO. 6,411,941** as filed with the United States Patent Office on the patent owner by mailing said document enclosed in a sealed envelope (for collection and mailing, with postage thereon fully prepaid, on the same date, following ordinary business practices) by Express Mail, addressed as follows:

Robert Kinberg
Venable LLP
575 7th Street NW
Washington, D.C. 20004

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct; that I am employed in the office of a member of the Washington bar at whose direction this service was made; and that this Proof of Service was executed on _May 28_, 2009, at Seattle, Washington.

_____
Peter Sher

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent of:
 	
    Mullor et al.
 	
U.S. Patent No: 6,411,941
 	
Reexamination Request Control No:
 	
    Not Yet Assigned
 	
Filed: October 1, 1998
 	
Issued: June 25, 2002
 	
For: METHOD OF RESTRICTING
       SOFTWARE OPERATION WITHIN
       A LICENSE LIMITATION
	REQUEST FOR EX PARTE
	REEXAMINATION UNDER
	35 U.S.C. §302

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR *EX PARTE* REEXAMINATION

Dear Sir:

Pursuant to 35 U.S.C. §§ 302-307 and 37 C.F.R. § 1.510, requester Microsoft Corporation hereby requests *ex parte* reexamination of claims 1-19 of United States Patent No. 6,411,941 ("the '941 patent"), which issued on June 25, 2002, to Miki Mullor and Julian Valiko. The '941 patent was based on an application filed October 1, 1998 and claims priority to an application filed in Israel on May 21, 1998. A copy of the '941 patent is attached to this request as Exhibit A. The '941 patent is currently the subject of pending litigation including *Ancora Technologies, Inc. v. Toshiba America Information Systems, Inc. et al.*, No. SACV 08-0626-AG (C.D. Cal.).[1] The original complaint for the

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[1] The lawsuit was recently transferred to the Western District of Washington, and is now captioned as *Ancora Technologies, Inc. v. Toshiba America Information Systems, Inc. et al.*, No. 2:09-cv-00270-MJP (W.D. Wa.)

suit is attached as Exhibit B. In the pending litigation, the patent owner has proposed an extremely broad claim construction that expands the scope of the patent well beyond the scope that was argued during the original prosecution of the '941 patent. Had the patent owner asserted such scope during the original prosecution, these claims would not have been allowed. Even with the narrower construction that the patent owner originally argued, the '941 patent was anticipated by the references discussed below. Given the current, broad claim construction that patent owner now asserts, the invalidity of the patent's claims is even clearer. An opening Markman brief filed by patent owner (hereinafter "Patent Owner's Markman Brief") is attached to this request as Exhibit C.[2]

The substantial new questions of patentability raised in this request involve prior art questions that were not considered during prosecution of the application leading to the '941 patent. As detailed below, claims 1-19 of the '941 patent were anticipated under 35 U.S.C. § 102 in view of a patent to Robert Schwartz et al. filed in 1997. Claims 1-19 were also anticipated under § 102 in view of a patent to David Lewis filed in 1994.

During the original prosecution of the '941 patent, patent owner made strong statements distinguishing low-level programs that regularly access the BIOS from operating system level programs such as the claimed system. Amendment for Application No. 09/164,777 filed on February 5, 2002, at 5 (attached as Exhibit D). However, patent owner now asserts that claim 1 of the '941 patent covers any system that verifies a program (i.e. any set of instructions that can be executed by a computer) using information stored in a non-volatile memory area of the BIOS of a computer. Patent Owner's Markman Brief at 14-21. Thus, patent owner's arguments during prosecution are clearly no longer operative. Requestors respectfully assert that this changing story should be considered when evaluating the substantial new question of patentability and in any resulting reexamination.

The prior art references cited in this request raise substantial new questions of patentability that were not considered during prosecution of the application leading to

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[2] 37 C.F.R. § 1.104(c)(3) (2007) ("In rejecting claims the examiner may rely upon admissions by the applicant, or the patent owner in a reexamination proceeding, as to any matter affecting patentability").

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