### UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and NINTENDO OF AMERICA INC., Petitioners,

v.

ANCORA TECHNOLOGIES, INC., Patent Owner.

Case IPR2021-01338 U.S. Patent No. 6,411,941 B1

### PATENT OWNER'S RESPONSE

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450



## TABLE OF CONTENTS

				<u>Page</u>	
I.	INT	RODU	UCTION	1	
II.	SUMMARY OF THE '941 PATENT				
	A.	The	Inventions Disclosed in the '941 Patent	2	
	B.	The	Challenged Claims	6	
	C.	Prosecution History			
		1.	Non-Final Office Action, December 20, 2000	7	
		2.	Amendment, May 23, 2001	10	
		3.	Final Office Action, June 22, 2001	10	
		4.	Amendment and Request for Continued Examination November 16, 2001		
		5.	Non-Final Office Action, January 15, 2002	11	
		6.	Amendment, February 5, 2002	17	
		7.	Notice of Allowability, March 28, 2002	18	
	D.	Prio	r Invalidity Challenges	20	
		1.	Microsoft's Reexamination No. 90/010,560	20	
		2.	Apple Litigation	26	
		3.	HTC's Failed Petition for CBM Review	27	
		4.	HTC's Failed Patentable Subject Matter Challenge	27	
		5.	TCL's IPR Petition Asserting Hellman and Chou and th "Me-Too" Challengers		
		6.	Samsung's Failed Inter Partes Review Petition	28	
	E.	Leve	el of Ordinary Skill in the Art	29	



# IPR2021-01338: Patent Owner Response

	F.	Claim Interpretation		30	
		1.	"Agent"	32	
III.	SUMMARY OF THE ASSERTED REFERENCES				
	A.	Hellman		37	
	B.	Chou	1	43	
	C.	Shne	ck	46	
IV.	PETITIONER FAILS TO ESTABLISH OBVIOUSNESS BASED ON EITHER ASSERTED GROUND4				
	A.	Gove	erning Legal Principles	49	
	В.		n 1: The Petition Fails to Establish a Valid Motivation for bining Hellman With Chou	52	
		1.	The Petition's Asserted Motivations to Combine Hellman with Chou Are Logically Flawed	52	
		2.	Petitioners Do Not Offer Any Motivation for Storing Hellman's Value "M" in the Memory Area "Used By the BIOS"	55	
	Step of Using an Agent to		n 1: Petitioners' Combinations Fail to Identify the Claimed of Using an Agent to Set Up a Verification Structure in the able, Non-Volatile Memory of the BIOS	56	
		1.	The Petition Wholly Fails to Identify Any Teaching in the Combined References of the claimed "Agent," Which Requires an "OS-Level Software Program or Routine"	57	
		2.	The Petition Fails to Identify a Legally Sufficient Motivation For Modifying Hellman's Update Unit 36 or Authorization and Billing Unit 13 to Be Software-Based	59	
		3.	The Petition Improperly Conflates the Memory of the BIOS and the Verification Structure, Which the Claim Requires to be Separate.	62	



# IPR2021-01338: Patent Owner Response

	D.	Dependent Claims 3, 8, 9, 14: The Allegedly Combined System Proposed in the Petition Would Not Function for its Intended Purpose	54
	Е.	Dependent Claims 2, 6–7, 10–13 Are Not Obvious For All of the Same Reasons as Claim 1	56
	F.	Objective Evidence Establishes Non-Obviousness of the Claimed Invention	
		A Leading BIOS Company Praised the Claimed Invention and Agreed to Commercialize	56
		2. Additional Licenses Establish the Significance of the Claimed Invention	59
$\mathbf{V}$	CON	NCLUSION	71



## **TABLE OF AUTHORITIES**

	<u>Page</u>
Cases	
Activevideo Networks, Inc. v. Verizon Commc'ns, Inc.,	
694 F.3d 1312 (Fed. Cir. 2012)	51
Akzo N.V. v. United States ITC,	
808 F.2d 1471 (Fed. Cir. 1986)	50
Ancora Techs., Inc. v. Apple, Inc.,	
744 F.3d 732 (Fed. Cir. 2014)	27, 35, 36, 70
Ancora Techs., Inc. v. HTC Am., Inc.,	
908 F.3d 1343 (Fed. Cir. 2018)	27, 28
Apple Inc. v. Samsung Elecs. Co., Ltd.,	
839 F.3d 1034 (Fed. Cir. 2016)	66, 67
Bosch Automotive Service Solutions, LLC v. Matal,	
878 F.3d 1027 (Fed. Cir. 2017)	68
Comcast Cable Commc'ns, LLC v. Rovi Guides, Inc.,	
IPR2019-00299, Paper 45 (PTAB June 29, 2020)	52
Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.,	
807 F.2d 955 (Fed. Cir. 1986)	66
Fox Factory Inc. v. SRAM LLC,	
944 F.3d 1366 (Fed. Cir. 2019)	67
Graham v. John Deere Co. of Kansas City,	
383 U.S. 1 (1966)	50
Henny Penny Corp. v. Frymaster LLC,	
938 F.3d 1324 (Fed. Cir. 2019)	67
Impax Laboratories Inc. v. Lannett Holdings Inc.,	
893 F.3d 1372 (Fed. Cir. 2018)	69
In re Dow Chem. Co.,	
837 F.2d 469 (Fed. Cir. 1988)	51, 62
In re Evanega,	
829 F.2d 1110 (Fed. Cir. 1987)	50
In re Gordon,	
733 F.2d 900 (Fed. Cir. 1984)	51
In re Huang,	
100 F.3d 135 (Fed. Cir. 1996)	67
In re NTP, Inc.,	
654 F 3d 1279 (Fed. Cir. 2011)	50 61 62



# DOCKET

# 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.

