

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

ANCORA TECHNOLOGIES, INC.

Plaintiff,

v.

ROKU, INC.,

Defendant.

Civil Action No. 6:21-cv-00737

Jury Trial Requested

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Ancora Technologies, Inc. makes the following allegations against Roku, Inc. (“Roku”):

RELATED CASE

1. This case is related to the actions *Ancora Technologies, Inc. v. Google, Inc.* (W.D. Tex. Jul. 16, 2021); *Ancora Technologies Inc. v. Nintendo Co. Ltd. et al.* (W.D. Tex. Jul. 16, 2021); and *Ancora Technologies Inc. v. Vizio, Inc.* (W.D. Tex. Jul. 16, 2021)—each of which was filed on July 16, 2021, in the United States District Court for the Western District of Texas, Waco Division, asserting infringement of United States Patent No. 6,411,941.

PARTIES

2. Plaintiff Ancora Technologies, Inc. is a corporation organized and existing under the laws of the State of Delaware with a place of business at 23977 S.E. 10th Street, Sammamish, Washington 98075.

3. Defendant Roku, Inc., is a corporation organized and existing under the laws of Delaware with a principal place of business at 9606 N. Mopac Expressway, Suite 400, Austin, Texas.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code, such that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court also has personal jurisdiction over Roku, including because Roku also maintains a regular and established place of business in the Western District of Texas, including at 9606 N. Mopac Expressway, Suite 400, Austin, Texas.

6. In addition, directly or through intermediaries, Roku has committed acts within the Western District of Texas giving rise to this action and/or has established minimum contacts with the Western District of Texas such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

7. For example, Roku has placed or contributed to placing infringing products like the Roku Ultra into the stream of commerce via an established distribution channel knowing or understanding that such products would be sold and used in the United States, including in the Western District of Texas.

8. Further, on information and belief, Roku also has derived substantial revenues from infringing acts in the Western District of Texas, including from the sale and use of infringing products like the Roku Ultra.

9. In addition, venue is proper under 28 U.S.C. § 1391(b)-(c) and 28 U.S.C. § 1400 as Roku maintains a regular and established place of business in the Western District of Texas, including at 9606 N. Mopac Expressway, Suite 400, Austin, Texas.

THE ASSERTED PATENT

10. This lawsuit asserts causes of action for infringement of United States Patent No. 6,411,941 (“the ’941 Patent”), which is entitled “Method of Restricting Software Operation Within a License Limitation.”

11. The U.S. Patent and Trademark Office duly and legally issued the ’941 Patent on June 25, 2002.

12. Subsequent to issue, and at least by December 21, 2004, all right, title, and interest in the ’941 Patent, including the sole right to sue for any infringement, were assigned to Ancora Technologies, Inc., which has held, and continues to hold, all right, title, and interest in the ’941 Patent.

13. The president of Ancora Technologies, Inc.—Mr. Miki Mullor—is one of the inventors of the ’941 Patent.

14. A reexamination certificate to the ’941 Patent subsequently was issued on June 1, 2010.

15. Since being assigned to Ancora Technologies, Inc., the ’941 Patent has been asserted in patent infringement actions filed against Microsoft Corporation, Dell Incorporated, Hewlett Packard Incorporated, Toshiba America Information Systems, Apple Inc., HTC America, Inc., HTC Corporation, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., LG Electronics, Inc., LG Electronics U.S.A., Inc., Sony Mobile Communications AB, Sony Mobile Communications, Inc., Sony Mobile Communications (USA) Inc., Lenovo Group Ltd., Lenovo

(United States) Inc., Motorola Mobility, LLC, TCT Mobile (US) Inc., and Huizhou TCL Mobile Communication Co., Ltd.

16. In the course of these litigations, a number of the '941 Patent's claim terms have been construed, and the validity of the '941 Patent has been affirmed repeatedly.

17. For example, in December 2012, the United States District Court for the Northern District of California issued a claim construction order construing the terms (1) "volatile memory"; (2) "non-volatile memory"; (3) "BIOS"; (4) "program"; (5) "license record"; and (6) "verifying the program using at least the verification structure." *Ancora Techs., Inc. v. Apple Inc.*, No. 11–CV–06357 YGR, 2012 WL 6738761, at *1 (N.D. Cal. Dec. 31, 2012).

18. Further, the court rejected Apple's indefiniteness arguments and further held that, at least with respect to Claims 1-3 and 5-17, "[t]he steps of the Claim do not need to be performed in the order recited." *Ancora Techs., Inc. v. Apple Inc.*, No. 11–CV–06357 YGR, 2012 WL 6738761, at *5, *13 (N.D. Cal. Dec. 31, 2012).

19. Subsequently, the United States Court of Appeals for the Federal Circuit affirmed the district court's rejection of Apple's indefiniteness argument. *Ancora Techs., Inc. v. Apple, Inc.*, 744 F.3d 732, 739 (Fed. Cir. 2014).

20. The Federal Circuit also agreed with Ancora Technologies, Inc. that "the district court erred in construing 'program' to mean 'a set of instructions for software applications that can be executed by a computer'"—holding that, as Ancora had argued, the term should be accorded its normal meaning of "'a set of instructions' for a computer." *Ancora Techs., Inc. v. Apple, Inc.*, 744 F.3d 732, 734-35, 737 (Fed. Cir. 2014).

21. Subsequently, in a more recent decision, the Federal Circuit held that the '941 Patent satisfied § 101 as a matter of law—stating: "[W]e conclude that claim 1 of the '941 patent is not

directed to an abstract idea.” *Ancora Techs., Inc. v. HTC Am., Inc.*, 908 F.3d 1343 (Fed. Cir. 2018), *as amended* (Nov. 20, 2018).

22. In addition, the Patent Trial and Appeal Board rejected HTC’s request to institute covered business method review proceedings on the ’941 Patent—explaining that “the ’941 [P]atent’s solution to the addressed problem is rooted in technology, and thus, is a ‘technical solution’” and also rejecting HTC’s argument that “the ’941 [P]atent recites a technological solution that is not novel and nonobvious.”

23. This Court likewise issued a claim construction order construing or adopting the plain and ordinary meaning of various claims of the ’941 Patent, including (1) “non-volatile memory”; (2) “license”; (3) “license record”; (4) “volatile memory”; (5) “BIOS”; (6) “memory of the BIOS”; (7) “program”; (8) “selecting a program residing in the volatile memory”; (9) “using an agent to set up a verification structure in the erasable, non-volatile memory of the BIOS”; (10) “set up a verification structure”; (11) “verifying the program using at least the verification structure”; (12) “acting on the program according to the verification”; (13) “first non-volatile memory area of the computer”; (14) the Claim 1 preamble; and (15) the order of Claim 1 steps. *Ancora Technologies, Inc. v. LG Electronics, Inc.*, 1:20-cv-00034-ADA, at Dkt. 69 (W.D Tex. June 2, 2020).

24. Finally, and most recently, the United States District Court for the Central District of California issued a claim construction order construing the terms (1) “volatile memory”; (2) “selecting a program residing in the volatile memory”; (3) “set up a verification structure”; (4) “license record”; (5) “memory of the BIOS”; and (6) the whole of Claim 8. *Ancora Techs., Inc v. TCT Mobile (US), Inc., et al.*, No. 8:19-cv-02192-GW-AS, ECF No. 66 & 69 (C.D. Cal. Nov. 18-19, 2020).

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