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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

)	Civil Action No. 2:16-cv-01919 -RAJ
ANCORA TECHNOLOGIES, INC.,)	
)	
Plaintiff,)	DECLARATION OF JON B.
)	WEISSMAN, PH.D. REGARDING
v.)	CLAIM CONSTRUCTION
)	
HTC AMERICA, INC., a Washington)	
Corporation, HTC CORPORATION, a)	
Taiwanese corporation,)	
)	
Defendants.)	
)	
)	

1 I, Jon B. Weissman, declare as follows:

2 **I. INTRODUCTION**

3 1. I have been retained by Knobbe, Martens, Olson, & Bear LLP (“Knobbe Martens”) on behalf of HTC Corporation and HTC America, Inc. (“HTC” or “Petitioner”) as an independent expert in this case. Although I am being compensated at my usual rate of \$500 per hour for the time I spend on this matter, no part of my compensation depends on the outcome of this proceeding, and I have no other interest in this case.

9 2. I understand that this case involves U.S. Patent No. 6,411,941 (“the ’941 patent”). The application for the ’941 patent was filed on October 1, 1998, as U.S. Patent Application No. 09/164,777, and the patent issued on June 25, 2002.

13 3. I have been asked by counsel to review relevant materials and render my expert opinion in connection with technical matters related to the ’941 patent. I previously set forth my opinions in a declaration dated May 25, 2017, Exhibit 1009 (“Previous Declaration”) in *HTC Corp. v. Ancora Techs. Inc.*, CBM2017-00054 (filed May 26, 2017). My opinions regarding claim construction are set forth below.

18 4. My academic and professional background is set forth in my Previous Declaration in paragraphs 4-9. My curriculum vitae, which includes a more detailed summary of my background, experience, and publications, is attached as Appendix A.

22 5. In forming my opinions, I have reviewed the ’941 patent, the prosecution history of the ’941 patent (including the reexamination file history), the August 26, 2019 declaration of Ian Jestice, and the documents cited by Mr. Jestice.

25 6. My understanding of the legal standards for claim construction is set forth in my Previous Declaration in paragraphs 15-18. I further understand that at the district court, the claim

1 construction standard differs from the broadest reasonable interpretation standard that applied in
2 the patent office proceeding.

3 7. I set forth an overview of the '941 patent, its file history, the level of ordinary skill
4 in the art in my Previous Declaration in paragraphs 33-43.

5 8. In my opinion, a person of ordinary skill in the art would not understand the "agent"
6 of claim 1 to have any definite structure, whether it is software, hardware, or a combination of
7 both. The term "agent" is broad enough to encompass hardware and/or software computational
8 entities. For example, U.S. Patent No. 5,568,552, which is in a similar technological field as the
9 '941 patent, describes a hardware agent for enforcing software licenses. *See, e.g.*, U.S. Pat. No.
10 5,568,552 at 1:19-25, 3:1-10, 8:55-9:12. In other contexts, an agent could be a software daemon
11 or another type of program that is a computational entity. I stated this opinion in my Previous
12 Declaration in paragraph 71.

13 9. Nothing in the claim language itself specifies any particular structure. Similarly,
14 because of the complete lack of any disclosure of an agent in the '941 patent specification, the
15 specification fails to define "agent" in any terms, let alone by structural terms. Further, there is
16 nothing in the '941 patent specification that a person of ordinary skill in the art would consider to
17 disclose an agent. Rather, a person of ordinary skill in the art would only understand the "agent"
18 in the context of the claimed functions that the "agent" is required to perform in the claims. I stated
19 this opinion in my Previous Declaration in paragraphs 72 and 74.

20 10. The claimed function of the "agent" in claim 1 is "to set up a verification structure
21 in the erasable, non-volatile memory of the BIOS." There is no disclosure of hardware or software
22 that performs this function in the '941 patent specifications. Rather, at most, a person of ordinary
23 skill in the art would understand that the '941 patent specification describes generic, high-level
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1 functions that could potentially be used to setup a verification structure as well as for other
2 purposes. There is no disclosure in the '941 patent of any structure, whether a software algorithm,
3 hardware, or a combination of both, that performs these functions. I stated this opinion in my
4 Previous Declaration in paragraph 73.

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6 11. Furthermore, claim 1 recites that the verification structure is “in the erasable,
7 nonvolatile memory of the BIOS.” The specification’s disclosure of the “set up” step, by contrast,
8 describes only the processes of: (i) “establishing or certifying the existence of a pseudo-unique
9 key in the first non-volatile memory area” (id. at 6:18-20)—which is non-erasable (id. at 2:1-3);
10 and (ii) and “establishing at least one license-record location in the first or the second nonvolatile
11 memory area” (id. at 6:20-22 (emphasis added)). The first step (i) is not in the erasable, nonvolatile
12 memory of the BIOS because the first non-volatile memory area is non-erasable. The second step,
13 at most, establishes a “location,” but does not actually perform a function of setting up a
14 “verification structure in the erasable, non-volatile memory of the BIOS” or explain how to achieve
15 this setting up. In my opinion, a person of ordinary skill in the art would not understand either of
16 these disclosures to describe the claimed erasable, non-volatile memory of the BIOS. I stated this
17 opinion in my Previous Declaration in paragraph 74. I also set forth further analysis of the “agent”
18 in paragraphs 86-89 of my Previous Declaration.

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21 12. To the extent that Mr. Jestice opines that the claimed “agent” refers to software
22 generally, I agree. I also agree with Mr. Jestice to the extent he understands that the term
23 “program” in the claimed “verify the program” refers to a different software routine than the term
24 “agent.”

25 13. Mr. Jestice contends that the claimed agent “has a definite structure as a software
26 routine as claimed in the '941 patent.” Jestice at ¶6. I disagree. The word “agent” does not appear
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1 in the '941 patent specification at all, as I explained in my Previous Declaration at paragraph 87.
2 Moreover, Mr. Jestice does not identify any software routine at all.

3 14. The first example Mr. Jestice identifies refers the '941 patent at 1:65-2:4. Jestice
4 at ¶7. Mr. Jestice says that “modification, removal of data in the erasable, non-volatile memory
5 of the BIOS can be performed ‘using E²PROM manipulation commands.’” However, “using
6 E²PROM manipulation commands” does not refer to any specific software routine. Mr. Jestice
7 acknowledges this by stating that “Such commands *are encoded in a software routine* and are well-
8 known to those skilled in the art.” *Id.* The commands themselves are not the software routine.
9 They are merely the fundamental building blocks. A person of ordinary skill would need to
10 combine those building blocks to create a software routine. In other words, a person of ordinary
11 skill in the art would need to know the specific E²PROM manipulation commands used in a
12 specific software routine. Even if the commands used were provided, this still does not disclose
13 an algorithm which would require the specific sequence of E²PROM manipulation commands and
14 the intervening logic. The Patentee omitted any software routine from the specification. At most,
15 the “using E²PROM manipulation commands” suggests that a person of ordinary skill in the art
16 would need to look to a document other than the specification or develop their own algorithm from
17 the commands. The specification does not identify any particular document for a person of
18 ordinary skill to consider.
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21 15. Mr. Jestice further opines that “Such commands ... are well-known to those skilled
22 in the art.” But, the Patentee said otherwise in the prosecution history. In an Office Action
23 Response dated Feb. 5, 2002, Patentee explained “the present invention proceeds against
24 conventional wisdom in the art.” Feb. 5, 2002 Response to Office Action at 5. The patentee
25 further stated, “an ordinary person skilled in the art would not consider the BIOS for *any operation*,

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