

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

IPR2021-01338
Patent 6,411,941 B1

Record of Oral Hearing
Held: October 03, 2022

Before THU A. DANG, KEVIN W. CHERRY, and RYAN H. FLAX,
Administrative Patent Judges.

IPR2021-01338
Patent 6,411,941 B1

APPEARANCES:

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The above-entitled matter came on for hearing Monday,
October 3, 2022, commencing at 12:00 p.m. EDT.

P-R-O-C-E-E-D-I-N-G-S

11:59 a.m.

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2
3 JUDGE DANG: Good afternoon, everybody. We are here to hear
4 arguments for case number IPR2021-01338 between Nintendo Co. and
5 Nintendo of America, as Petitioner, and Ancora Technologies, Inc., as Patent
6 Owner. This is concerning U.S. Patent No. 6,411,941. Counsels, please
7 introduce yourselves, starting with Petitioner.

8 MR. CANAVERA: Yes, Your Honor. Kyle Canavera, on behalf of
9 the Petitioners.

10 JUDGE DANG: Hello.

11 MR. GOSSE: Thank you, Your Honor. David Gosse on behalf of
12 Patent Owner.

13 JUDGE DANG: Okay, great. We had the pre-hearing call in which
14 Patent Owner would like to assess how much time it would like at the end of
15 the proper portion for the private portion. Could you please confirm whether
16 or not thirty minutes for both parties would be enough?

17 MR. GOSSE: Your Honor, Patent Owner would prefer to reserve ten
18 minutes for the non-public portion of the hearing.

19 JUDGE DANG: Okay. Ten minutes, okay.

20 MR. CANAVERA: Your Honor, we would like to reserve ten
21 minutes as well.

22 JUDGE DANG: Okay, great. So, twenty minutes at the end. Okay,
23 so we will have a public portion; and this will be our public portion and by
24 the end of this portion, each, we will turn off the audios for the phone calls
25 and we will invite the public to leave camera so we can have our private

1 portion. Okay, and so with each reserving ten minutes, you will each have
2 fifty minutes. Petitioner, would you like to begin any time, and you will
3 have fifty minutes -- Oh, I'm sorry. Would you like to reserve any time?

4 MR. CANAVERA: Yes, Your Honor. I'd like to reserve fifteen for
5 rebuttal in this hearing.

6 JUDGE DANG: Okay, great. So thirty-five minutes and then fifteen
7 minutes. Okay. Thank you.

8 MR. CANAVERA: May I begin?

9 JUDGE DANG: Yes, please.

10 MR. CANAVERA: Good afternoon, Your Honors. Kyle Canavera
11 on behalf of the Nintendo Petitioners.

12 I'll discuss five issues today. Two relate to whether the prior art
13 discloses particular claim elements; two relate to the combination of the
14 prior art; and one relates to secondary considerations of non-obviousness.
15 The last issue will be handled in the post-hearing following this one.

16 Looking at slide 2 of our demonstratives, the petition presented two
17 grounds for invalidity. Hellman is the base reference for both. For the
18 primary claim at issue, Claim 1, Hellman discloses all of the elements except
19 for the BIOS memory.

20 Chou discloses that feature. Chou also provides its own motivation to
21 combine the references to arrive at the claimed features.

22 It's a simple combination with its own motivation to combine. We
23 ask that this panel find the claims invalid for the reasons stated in the
24 petition.

1 Turning to the first issue, is the question of whether Hellman plus
2 Chou discloses the using of agent limitation. On slide 10 of our
3 demonstratives, we show Patient Owner's proposed construction for this
4 term. OS-level software program for routine.

5 The Board cannot agree with that construction unless it finds
6 disclaimer. That's not our petition, that's not our position, that's Ancora's
7 position.

8 And the board should take account of the construction that Ancora has
9 proposed for agent in over a decade of litigation. We have examples of
10 those on our slides 11 through 20 of our demonstratives.

11 In repeated presentations to Courts, to this Board, Ancora has said that
12 agent requires software program routine without ever mentioning the OS-
13 level limitation.

14 This is not a position that they had and have changed. As shown on
15 slide 20 of our demonstratives. In February of this year, or I mean January
16 of this year after the preliminary response in this proceeding, Ancora was
17 still saying that the instruction for agent should be software programmer
18 routine, in light of, including the prosecution history which they now say
19 creates disclaimer.

20 JUDGE FLAX: So, counsel, the examiner said it had to be at the OS-
21 level, right, in the notice of allowance?

22 MR. CANAVERA: That's not quite right, Your Honor.

23 JUDGE FLAX: Not quite, right?

24 MR. CANAVERA: The examiner said that the license programs had
25 to be at the OS-level. The examiner did not say the agent was at the OS-

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