UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

_____

IPR2021-01338
Patent 6,411,941 B1

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Before THU A. DANG, JONI Y. CHANG, and KEVIN W. CHERRY,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I.   INTRODUCTION

Nintendo Co., Ltd. and Nintendo of America Inc. (collectively, "Petitioner") filed a Petition requesting an *inter partes* review ("IPR") of claims 1−3, 6−14, and 16 ("the challenged claims") of U.S. Patent No. 6,411,941 B1 (Ex. 1001, "the '941 patent"). Paper 1 ("Pet."), 6. Ancora Technologies, Inc. ("Patent Owner") filed a Preliminary Response (Paper 7, "Prelim. Resp.").

Under 35 U.S.C. § 314(a), an *inter partes* review may not be instituted unless the information presented in the petition "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." For the reasons stated below, we determine that Petitioner has established a reasonable likelihood that it would prevail with respect to at least one claim. We hereby institute an *inter partes* review as to all of the challenged claims of the '941 patent and all of the asserted grounds of unpatentability.

A. Related Matters

The parties indicate that the '941 patent is involved in the following cases: *Ancora Technologies, Inc. v. Nintendo Co., Ltd.*, No. 6:21-cv-00738 (W.D. Tex.); *Ancora Technologies, Inc. v. Apple Inc.*, No. 11-cv-06357 YGR (N.D. Cal.) ("the *Apple* case"); *Ancora Technologies, Inc. v. VIZIO, Inc.*, No. 6:21-cv-00739 (W.D. Tex.); *Ancora Technologies, Inc. v. Roku, Inc.*, No. 6:21-cv-00737 (W.D. Tex.); *Ancora Technologies, Inc. v. Google, LLC*, No. 6:21-cv-00735 (W.D. Tex.); *Ancora Technologies, Inc. v. TCT Mobile (US) Inc.*, Nos. 8:19-cv-02192, 2:20-cv-01252 (C.D. Cal.) ("the *TCT* case"); *Ancora Technologies, Inc. v. Lenovo Group Limited*, No. 1:19-cv-

01712 (D. Del.); *Ancora Technologies, Inc. v. Sony Corp.*, No. 1:19-cv-
01703 (D. Del.); *Ancora Technologies, Inc. v. LG Electronics, Inc.*, No.
1:20-cv-00034 (W.D. Tex.) ("the *LG* case"); *Ancora Technologies, Inc. v.
Samsung Electronics Co., Ltd.*, No. 6:19-cv-00385 (W.D. Tex.); and *Ancora
Technologies, Inc. v. HTC America, Inc.*, No. 2:16-cv-01919 (W.D. Wash.).
Pet. 3−4; Paper 5, 1−2 (Patent Owner Mandatory Notices).

The '941 patent also is involved in *Roku, Inc. v. Ancora Technologies,
Inc.*, IPR2021-01406 (Pre-Institution).

In addition, the '941 patent was involved in *ex parte* Reexamination
No. 90/010,560. Ex. 1001, 8−9 (*Ex Parte* Reexamination Certificate issued
on June 1, 2010, confirming the patentability of claims 1−19 and indicating
that no amendments have been made to the patent).

The '941 patent also was involved in the following proceedings:
Apple Inc. v. Ancora Technologies, Inc., CBM2016-00023 (Institution
Denied); *HTC America, Inc. v. Ancora Technologies, Inc.*, CBM2017-00054
(Institution Denied); *Samsung Electronics Co., Ltd. v. Ancora Technologies,
Inc.*, IPR2020-01184 (Institution Denied); *TCT Mobile (US) Inc. v. Ancora
Technologies, Inc.*, IPR2020-01609 (Terminated after Institution); *HTC
Corporation v. Ancora Technologies, Inc.*, IPR2021-00570 (Institution
Denied); *LG Electronics, Inc. v. Ancora Technologies, Inc.*, IPR2021-00581
(Institution Denied); *Samsung Electronics Co., Ltd. v. Ancora Technologies,
Inc.*, IPR2021-00583 (Termination before Institution); and *Sony Mobile
Communications AB v. Ancora Technologies, Inc.*, IPR2021-00663 (Joined
with IPR2020-01609; Terminated after Institution).

B. The '941 patent

The '941 patent discloses a method of restricting software operation within a license limitation that is applicable for a computer having a first non-volatile memory area, a second non-volatile memory area, and a volatile memory area. Ex. 1001, code (57). According to the '941 patent, the method includes the steps of selecting a program residing in the volatile memory, setting up a verification structure in the non-volatile memories, verifying the program using the structure, and acting on the program according to the verification. *Id.*
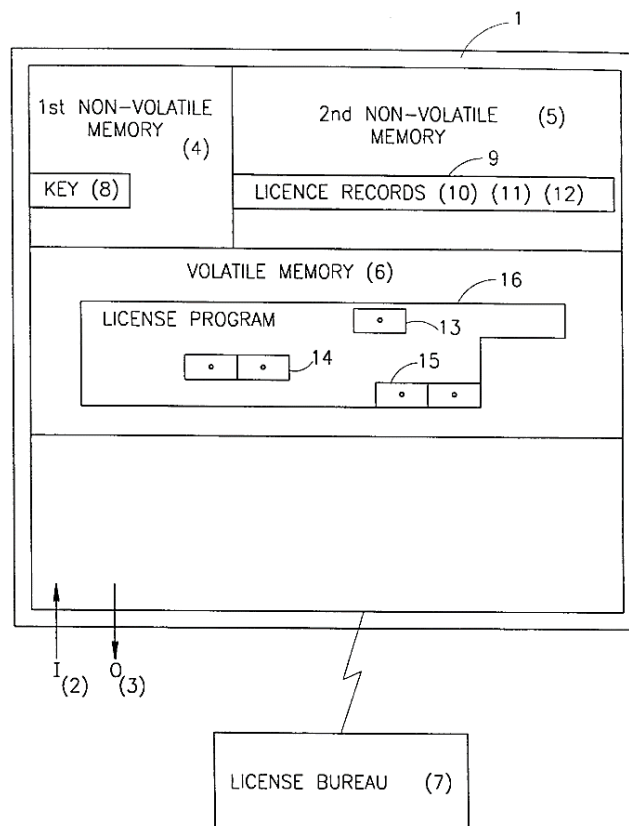
Figure 1 of the '941 patent is reproduced below.

Figure 1 above shows a schematic diagram of computer processor 1 and license bureau 7. *Id.* at 5:9−19. Computer processor 1 is associated

with input operations 2 and output operations 3. *Id.* Computer processor 1 contains first non-volatile memory area 4 (e.g., the read-only memory ("ROM") section of the Basic Input / Output System ("BIOS")), second non-volatile memory area 5 (e.g., the electrically erasable programmable read-only memory ("EEPROM") section of the BIOS), and volatile memory area 6 (e.g., the internal random access memory ("RAM") of the computer). *Id.*

C. Illustrative Claim

Of the challenged claims, only claim 1 is independent. Claims 2, 3, 6−14, and 16 directly or indirectly depend from claim 1. Claim 1 is illustrative:

> 1. A method of restricting software operation within a license for use with a computer including an erasable, non-volatile memory area of a BIOS of the computer, and a volatile memory area; the method comprising the steps of:
>
> selecting a program residing in the volatile memory,
>
> using an agent to set up *a verification structure in the erasable, non-volatile memory of the BIOS, the verification structure accommodating data that includes at least one license record*,
>
> verifying the program using at least the verification structure from the erasable non-volatile memory of the BIOS, and
>
> acting on the program according to the verification.

Ex. 1001, 6:59–7:4 (emphasis added).

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