

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 ANCORA TECHNOLOGIES, INC.,)

5 Plaintiff,)

6 vs.)

) No. 2:16-cv-01919-RAJ

7 HTC AMERICA, INC., a Washington)
8 corporation, HTC CORPORATION, a)
9 Taiwanese corporation,)

10 Defendant.)
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12
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14

15 Deposition of JON B. WEISSMAN, Ph.D., taken on
16 behalf of the Plaintiff, at 2040 Main Street, 14th
17 Floor, Irvine, California, commencing at 8:29 a.m., on
18 Monday, September 9, 2019, before CATHERINE ELISE
19 NADEAU, CSR No. 11528, RPR.
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1 APPEARANCES OF COUNSEL:
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1 PLAINTIFF'S EXHIBITS FOR IDENTIFICATION: (Continued)
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 3 12 3.3.14 United States Court of Appeals for 10
 the Federal Circuit, Ancora Technologies,
 4 Inc. vs. Apple, Inc., 15 pages
 5 13 Microsoft Press Computer User's Dictionary, 78
 7 pages
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1 I N D E X
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 3 DEPONENT EXAMINED BY PAGE
 4
 5 JON B. WEISSMAN, Ph.D. MR. LORELLI 5
 6 PLAINTIFF'S EXHIBITS FOR IDENTIFICATION:
 7 1 6.25.02 United States Patent Mullor, et al., 7
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 9 2 The prosecution history, 179 pages 66
 10 5 United States Patent and Trademark Office, 8
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 Apple Inc. vs. Ancora, Declaration of Jon
 B. Weissman, 76 pages
 11 6 12.31.12 Claim Construction Order, 10
 21 pages
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 13 7 United States Patent and Trademark Office, 9
 Before the Patent Trial and Appeal Board,
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 Inc., Declaration of Jon B. Weissman,
 Ph.D., 52 pages
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 15 8 8.26.19 Declaration of Ian Jestice, with 69
 an attachment, 20 pages
 16 9 9.4.19 Declaration of Jon B. Weissman, 9
 Ph.D. Regarding Claim Construction, with
 an attachment, 27 pages
 17 10 4.23.18 United States Court of Appeals 80
 for the Federal Circuit, Brief of
 Appellees HTC America, Inc. and HTC
 Corporation, 3 pages
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 19 11 11.16.18 United States Court of Appeals 57
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 Inc. vs. HTC America, Inc., HTC Corporation,
 13 pages
 20
 21
 22
 23
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1 IRVINE, CALIFORNIA; MONDAY, SEPTEMBER 9, 2019
 2 8:29 A.M.
 3 -oOo-
 4 JON B. WEISSMAN, PH.D.,
 5 having been first duly sworn, was
 6 examined and testified as follows:
 7 -oOo-
 8 EXAMINATION
 9 BY MR. LORELLI:
 10 Q Good morning, Dr. Weissman.
 11 A Good morning.
 12 Q My name is Marc Lorelli. I represent the
 13 plaintiff Ancora Technologies in this matter. Nice
 14 to meet you.
 15 A Same.
 16 Q I assume there's other folks that are
 17 present on that end. So if maybe we could have a
 18 roll call, that would be helpful.
 19 MR. CLAASSEN: Mark, this is Brian Claassen on
 20 behalf of HTC.
 21 MR. KIANG: Mark, this is Daniel Kiang, also on
 22 behalf of HTC.
 23 Q BY MR. LORELLI: Dr. Weissman, I assume
 24 you've been deposed a number of times before.
 25 A Yes, I have.

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1 Q We don't need to go through the formalities
2 and you know what to expect; correct?
3 **A Yes, I do.**
4 Q How many times have you been deposed as an
5 expert witness in a patent case?
6 **A I don't have the exact number. I would say**
7 **approximately 12.**
8 Q And where is your current employment, sir?
9 **A University of Minnesota Twin Cities.**
10 Q And what -- as a professor what types of
11 classes do you teach?
12 **A I teach a large variety of classes in**
13 **computer systems, operating systems, distributed**
14 **systems, networking, computer architecture.**
15 Q You have provided a number of declarations
16 with regards to the '941 patent; correct?
17 **A That's correct.**
18 MR. LORELLI: And I'll ask the court reporter to
19 mark as Weissman Exhibit 1 the patent that is in the
20 stack of materials in front of her.
21 MR. CLAASSEN: Marc, this is Brian. Do you have
22 multiple copies of each exhibit in the folders?
23 MR. LORELLI: There should be two copies of each
24 exhibit in the folder, one to mark and one for you,
25 Brian.

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1 MR. CLAASSEN: Thank you.
2 (Plaintiff's Exhibit No. 1 was marked
3 for identification.)
4 Q BY MR. LORELLI: So, Dr. Weissman, you've
5 seen this patent before; correct?
6 **A Yes, I have.**
7 Q And you've reviewed this patent?
8 **A I've read the patent, yes.**
9 Q And you were first employed by Apple, I
10 believe, with regards to this patent --
11 **A I believe that's --**
12 Q -- is that right?
13 **A I believe that's correct.**
14 Q And you submitted a declaration on behalf
15 of Apple?
16 **A Yes, I did.**
17 Q And then at some point later HTC or HTC's
18 attorneys contacted you; is that right?
19 **A That's correct.**
20 Q And what did they task you to do?
21 **A They tasked me to take a look at the '941**
22 **patents and also a set of prior art and do analysis.**
23 Q Similar to what Apple asked you to do?
24 **A Similar.**
25 Q And you submitted a declaration for -- on

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1 behalf of HTC; correct?
2 **A That's correct.**
3 Q Then more recently you did another
4 declaration on behalf of HTC; right?
5 **A That's correct.**
6 MR. LORELLI: So if we could why don't we start
7 in chronological order. Court reporter, if you
8 could please take out the folder Exhibit No. 5 and
9 mark that as Weissman Exhibit 5.
10 (Plaintiff's Exhibit No. 5 was marked
11 for identification.)
12 Q BY MR. LORELLI: Do you recognize, sir,
13 what we've marked as Weissman Exhibit 5?
14 **A Yes, I do.**
15 Q And what is it?
16 **A It's a declaration that I signed in the**
17 **Apple/Ancora matter.**
18 Q I just lost voice volume. Can you hear me?
19 **A I can hear you.**
20 Q I did not hear your answer. So I'll just
21 ask you to repeat it. I could just hear you
22 responding to my question, so hopefully it was just
23 a glitch.
24 **A Yeah. So this is a declaration that I**
25 **signed in the Apple/Ancora matter.**

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1 MR. LORELLI: Madam Court Reporter, if we can
2 mark as Exhibit No. 7 what's in the folder No. 7.
3 (Plaintiff's Exhibit No. 7 was marked
4 for identification.)
5 Q BY MR. LORELLI: Dr. Weissman, do you
6 recognize what we've marked as Weissman Exhibit
7 No. 7?
8 **A Yes, I do.**
9 Q And what is it?
10 **A It's a declaration that I wrote, signed in**
11 **the HTC/HTC America/Ancora Technologies matter.**
12 MR. LORELLI: Madam Court Reporter, if we could
13 pull out what's in the folder Exhibit 9 and please
14 mark that as Weissman Exhibit 9, please.
15 (Plaintiff's Exhibit No. 9 was marked
16 for identification.)
17 Q BY MR. LORELLI: Dr. Weissman, do you
18 recognize what we've marked as Weissman Exhibit 9?
19 **A Yes, I do.**
20 Q And what is it?
21 **A It's a declaration that I recently filed --**
22 **or signed in the Ancora/HTC matter with respect to**
23 **claim construction.**
24 Q I'm going to ask you some questions about
25 Exhibit No. 7. So if you can have that in front of

1 you.

2 Actually, let me do two other
3 exhibits first. If we could pull out Exhibit 6,
4 please, Madam Court Reporter.

5 (Plaintiff's Exhibit No. 6 was marked
6 for identification.)

7 Q BY MR. LORELLI: Dr. Weissman, do you
8 recognize what we've marked as Weissman Exhibit
9 No. 6?

10 A Yes, I do.

11 Q And what is it?

12 A It's a claim construction order in the
13 Ancora/Apple matter.

14 MR. LORELLI: Madam Court Reporter, can we pull
15 out Exhibit No. 12.

16 (Plaintiff's Exhibit No. 12 was marked
17 for identification.)

18 Q BY MR. LORELLI: Dr. Weissman, we've marked
19 as Exhibit No. 12 a document.

20 Do you recognize it?

21 A I don't recall seeing this document before.

22 Q What is the title of the document, sir?

23 A The title of the document is "United States
24 Court of Appeals for the Federal Circuit, Ancora
25 Technologies, Incorporated Plaintiff-Appellate

1 IPR/CBMs.

2 Q So you agree with that statement at least
3 as of today for all proceedings.

4 MR. CLAASSEN: Objection to form.

5 THE DEPONENT: I'm not an attorney, so can you
6 please repeat the words?

7 Q BY MR. LORELLI: Sure.

8 The language was -- the question was do you
9 agree that claim terms are given their ordinary and
10 accustomed meaning as would be understood by one of
11 ordinary skill in the art?

12 MR. CLAASSEN: Objection to form.

13 THE DEPONENT: I would add in the time frame of
14 the matter under consideration.

15 Q BY MR. LORELLI: So the answer is yes with
16 your qualifier --

17 A Yes.

18 Q -- is that right?

19 A Yes.

20 Q If I could -- you studied the claims of the
21 '941 patent in detail; correct?

22 A That's correct.

23 Q And did you find any concepts recited in
24 the claims that were not conventional or well known
25 to persons of ordinary skill in the art before

1 versus Apple, Incorporated Defendant-Cross
2 Appellant."

3 Q You don't recall seeing that document
4 before?

5 A Sitting here I don't recall.

6 Q Do you agree, sir, that -- well, let me
7 back up.

8 You've done a declaration with regards to
9 claim construction that was the Exhibit No. 9;
10 correct?

11 A Yes, that's correct.

12 Q Do you agree with me, sir, that claim terms
13 are given their ordinary and accustomed meaning as
14 would be understood by one of ordinary skill in the
15 art?

16 MR. CLAASSEN: Objection to form.

17 THE DEPONENT: It depends what context we're
18 talking about.

19 Q BY MR. LORELLI: Let me ask you to go to --
20 well, what do you mean? What type of context?

21 A Well, there's a different standard in --
22 formerly in IPR and CBM proceedings, which was the
23 BRI standard. What you've cited to is the Phillip
24 (phonetic) standard which is typically in District
25 Court cases and now is also standard I believe for

1 1988 -- I'm sorry -- 1998? Do you need me to repeat
2 that, sir?

3 A I do.

4 Q Based on your review of the '941 patent and
5 its related materials, did you find any concepts
6 recited in the claims that were not conventional or
7 well known to persons of ordinary skill in the art
8 before 1998?

9 A (Deponent reviewing document.)

10 I didn't find any terms that were
11 nonconventional. But I would not agree that all
12 terms have clear meaning.

13 Q Can I ask you to get Exhibit No. 7 in front
14 of you, sir? Do you have it?

15 A I do.

16 Q Could you go to paragraph 11 that's on
17 page 4?

18 A (Complies.) I'm there.

19 Q Could you read the last sentence into the
20 record, please?

21 A "For example, Figure 2 only" -- "(one
22 of only two figures in the '941 patent)
23 depicts these four basic steps."

24 Q Perhaps we are miscommunicating. Is it
25 Exhibit 7 that you have in front of you, sir?

1 **A It is Exhibit 7.**
 2 Q And Exhibit 7 is your declaration in the
 3 HTC/CBM; correct?
 4 **A It is.**
 5 Q And could you go to paragraph 11?
 6 **A I'm sorry, I was on page 11.**
 7 Q Ah.
 8 **A My mistake. The last sentence in**
 9 **paragraph 11?**
 10 Q Paragraph, yeah.
 11 **A Paragraph 11 states:**
 12 **"Based on my review of the '941 patent,**
 13 **I did not find any concepts recited in the**
 14 **claims that were not conventional and well**
 15 **known to persons of ordinary skill in the art**
 16 **before 1998."**
 17 Q And I asked you that question and you had a
 18 qualifier in your testimony. Do you recall that
 19 just a minute ago?
 20 **A I do.**
 21 Q And you said "not all terms have clear
 22 meaning"?
 23 **A I did say that, yes.**
 24 Q What term or terms are you referring to?
 25 **A I'm referring to the term "agent."**

1 Q Any other terms, sir?
 2 MR. CLAASSEN: Objection. Relevance.
 3 THE DEPONENT: As I stated, in the CBM
 4 declaration there were other terms that I determined
 5 were indefinite.
 6 Q BY MR. LORELLI: What terms were those?
 7 And perhaps you can point me to that.
 8 **A Paragraph 75, the "unique key" of claim 5**
 9 **is indefinite. Claim 16, paragraph 83, "second**
 10 **non-volatile memory" is indefinite. Claim 17, "the**
 11 **license record" is indefinite. That appears to be**
 12 **the scope.**
 13 Q Let's talk about -- is it your opinion that
 14 claim 1 of the '941 patent is directed to
 15 controlling access based on data stored in a
 16 particular location?
 17 **A I'm sorry, can you repeat the question?**
 18 Q Sure.
 19 Is it your opinion that the claims -- I'm
 20 sorry. Is it your opinion that the claim 1 of the
 21 '941 patent is directed to controlling access based
 22 on data stored in a particular location?
 23 MR. CLAASSEN: Objection. Relevance.
 24 THE DEPONENT: (Deponent reviewing document.)
 25 As I stated in the CBM declaration, claim 1

1 is referring to that abstract idea, yes.
 2 Q BY MR. LORELLI: And you think that the
 3 claims are directed to controlling access based on
 4 data stored in a particular location; correct? It
 5 was paragraph 50 in your declaration, if you care to
 6 look at it.
 7 **A (Deponent reviewing document.)**
 8 **That's what it states in paragraph 50.**
 9 Q And that's your testimony?
 10 **A Yes.**
 11 Q Can you turn back to page 12, paragraph 34.
 12 **A Yes.**
 13 Q Do you have it, sir?
 14 **A I do.**
 15 Q Above paragraph 34 there's a figure from
 16 the patent.
 17 **A I see it.**
 18 Q Are you familiar with it?
 19 **A I am.**
 20 Q And are you familiar with the claims have a
 21 four-step process in them?
 22 **A Well, this embodiment is showing four**
 23 **steps.**
 24 Q Do you agree that claim 1 of the '941
 25 patent claims those four steps?

1 **A (Deponent reviewing document.)**
 2 **Claim 1 is referring to the functions of**
 3 **selecting, setting up, verifying and acting.**
 4 Q Can those four -- let me ask this question.
 5 Are those four steps an algorithm in your
 6 view?
 7 **A A figure is not an algorithm, no.**
 8 Q So you're telling me that in your view you
 9 would not -- you would not opine that the four steps
 10 shown in Figure 2 -- strike that. That's a poorly
 11 worded question.
 12 Your testimony is that Figure 2 does not
 13 show an algorithm; is that true?
 14 **A Figure 2 contains four verbs: Selecting,**
 15 **setting up, verifying, acting. To me that's not an**
 16 **algorithm. It's not even close.**
 17 Q What does one have to -- what
 18 qualifications does something have to have to be an
 19 algorithm in your view, sir?
 20 **A Algorithm has to describe how to do**
 21 **something.**
 22 Q And what does Figure 2 describe how to do?
 23 MR. CLAASSEN: Objection. Form.
 24 THE DEPONENT: Figure 2 is just describing
 25 high-level functional steps. It doesn't tell me how

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