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

ANCORA TECHNOLOGIES, INC., Plaintiff, v. LG ELECTRONICS INC. and LG ELECTRONICS U.S.A., INC., Defendants.	CIVIL ACTION NO. 1:20-CV-0034 JURY TRIAL DEMANDED
ANCORA TECHNOLOGIES, INC., Plaintiff, v. SAMSUNG ELECTRONICS CO., LTD., and SAMSUNG ELECTRONICS AMERICA, INC., Defendants.	CIVIL ACTION NO. 1:20-CV-0034 JURY TRIAL DEMANDED

DECLARATION OF IAN JESTICE

I, Ian Jestice, hereby declare as follows:

1.   I have been engaged by Ancora as a technical expert in this case. I am being paid my customary rate of $360. I am also being reimbursed for reasonable and customary expenses. My compensation is not dependent in any way on the results of the lawsuit or the substance of my testimony.

2.   I have over 40 years of experience as a computer engineer, including specific experience with computer storage devices and embedded software systems for industry and

consumer products, including BootROM and BIOS. I have written and designed BIOS, device drivers, software and firmware for Windows, Linux, VxWorks, QNX and other embedded real-time operating systems (RTOSs). I am a software developer experienced with various programming languages, including C, C++, Delphi, C# and assembly. My education, employment and consulting history, and a summary of prior testimony are included in my resume, which is attached to this declaration as Exhibit 1.

3.   I have reviewed U.S. Patent No. 6,411,941 (the '941 Patent) and its file history, including the reexamination file history in which the Patent Office reconfirmed the patentability of claims of the '941 Patent. Because of my education and experience summarized above, I am readily familiar with the terms and concepts disclosed in the patent and recited in the claims.

4.   I understand that disputes have arisen between the parties regarding what one of ordinary skill in the art at the time of invention would understand certain words and phrases of the '941 Patent to mean. I set forth below my understanding as to what one of ordinary skill would understand each of these words and phrases to mean.

A. "BIOS"

5.   I served as an expert for Ancora Technologies, Inc., in a prior case against Apple Inc. and understand that the court in that matter issued an order stating that, as used in the '941 Patent, the word "BIOS" is an acronym for "Basic Input/Output System," which the court defined to mean "the set of essential startup operations that run when a computer is turned on, which test hardware, starts the operating system, and support the transfer of data among hardware devices." I agree with this definition, and believe it is consistent with what one of ordinary skill in the art would understand BIOS to mean.

6.   I also understand that, in this case, certain parties are arguing that this definition

should be altered to require (1) that the BIOS be stored "in ROM," which I understand to refer to "read-only memory" and (2) that BIOS must run "automatically." I disagree that someone of ordinary skill in the art would understand the term BIOS to include either limitation—particularly as that term is used in the '941 Patent.

7.   First, one of ordinary skill in the art would not understand BIOS to be stored only in read-only memory, which, as its name reflects, cannot be altered. To the contrary, the '941 Patent itself requires that certain data be "set up" in the memory of the BIOS, which one of ordinary skill would understand could include writing to the BIOS (what the typical computer user would understand to be saving or storing data to the BIOS). Claim 1 of the '941 Patent demonstrates this understanding. Were the BIOS contained solely within read-only memory, such an action would not be possible.

8.   I also understand that certain parties in this action are pointing to my statement in the prior *Apple* case that, "[a]t the time the computer is first started, BIOS automatically performs the initial steps necessary to boot the operating system" as support for their argument that BIOS always must run "automatically." I disagree.

9.   My statement in the prior case explained only how BIOS typically runs when a computer is <u>first started</u>. It would be well understood by one of ordinary skill in the art that, at the time of invention, BIOS also could be prompted to run manually—including by restarting the computer or issuing specific BIOS commands. It also would be well understood by one of ordinary skill in the art that, at the time of invention, a user could use BIOS services to manually prompt specific BIOS operations. For example, on a Windows PC, a user could use the BIOS service command Interrupt 19 to cause certain BIOS reset and initialization functions to execute.

B. "volatile memory"

10.   The terms "volatile" and "non-volatile" memory are well understood in the computer industry. While the physical composition of the two types of memory can vary as I explain below, the key distinction between the two types of memory is that information stored in "volatile" memory is not preserved for use after power is removed, and information stored in "non-volatile" memory is preserved for use after power is removed.

11.   Volatile memory can take several physical forms. For example, Random Access Memory or "RAM" is often considered "volatile" memory because information stored in RAM is no longer accessible after power has been removed.

12.   A person of ordinary skill also would understand that other forms of memory can be used as volatile memory, however, including "FLASH" and "hard disk." For example, a computer's hard disk can be used as "virtual" memory in certain circumstances (such as when there is insufficient RAM to complete an operation) such that, after the power is removed, the relevant <u>data become inaccessible through the usual means.</u>

C. "order of steps"

13.   I understand that there is a dispute between the parties regarding whether the steps recited in Claim 1 need to be performed in a specific order.

14.   A person of ordinary skill in the art would understand that, at the time of the invention, step-by-step execution of computer processes was the exception, not the rule. Certainly, the Central Processor Units (CPUs) then in existence generally were capable of executing (and generally did execute) multiple instructions concurrently. Further, many devices included more than one CPU.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: _____3/19/2020_____   _____

Ian Jestice

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