

# Exhibit 9

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

ANCORA TECHNOLOGIES, INC.

Plaintiff,

v.

HTC AMERMICA, INC., a Washington  
Corporation, HTC CORPORATION, a  
Taiwanese corporation

Defendants.

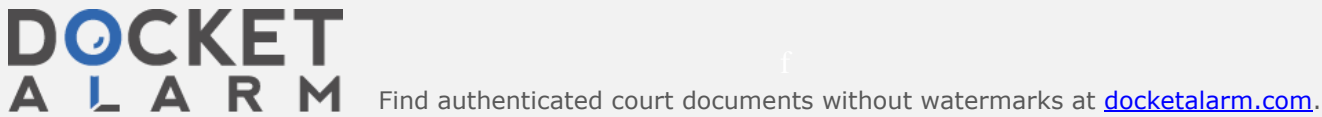
Case No. 2:16-cv-01919-RAJ

**DECLARATION OF IAN JESTICE**

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**I, Ian Jestice, declare as follows:**

1. I have been engaged by Ancora as a technical expert in this case.
  
2. I have over 38 years of 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. I hold a degree in Telecommunications and Computer Science from City and Guilds Institute of London. I previously provided a declaration regarding the construction of claim terms for the ‘941 Patent and incorporate that declaration herein.
  
3. I am being compensated at \$360 and my CV is attached as Exhibit A which includes my publications in the last 10 years and my expert testimony in the last four years.
  
4. I have reviewed U.S. Patent No. 6,411,941 (‘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.
  
5. I understand that disputes have arisen between the parties regarding the meaning and definiteness of “agent” as that term is used in the asserted claims of the ‘941 patent.
  
6. The term “agent” is a well-defined and understood term in the computer industry. An agent is a software program or routine. An agent would be understood by those skilled in the art to have that definitive structure. I understand that HTC has presented a declaration asserting



1 “A person or ordinary skill in the art would not understand ‘agent’ of claims 1 and 18 to have any  
2 definite structure.” This is not supported by the intrinsic record or by the extrinsic evidence cited  
3 by HTC. An agent has a definite structure as a software routine as claimed in the ‘941 patent.

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5 7. Claim 1 of the ‘941 Patent states: “using an agent to set up a verification structure  
6 in the erasable, non-volatile memory of the BIOS.” The specification provides, as an example,  
7 that the modification, removal or addition of data in the erasable, non-volatile memory of the BIOS  
8 can be performed “using E<sup>2</sup>PROM manipulation commands.” (‘941 Patent at 1:65-2:4.) Such  
9 commands are encoded in a software routine and are well-known to those skilled in the art.

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11 8. In another example, the specification also states that a bureau can also be employed  
12 in order to assist in setting “setting up the verification structure” using a series of steps. (‘941  
13 Patent at 3:42-50, *see also* Claim 3.) The use of a bureau “helps to limit the understanding of  
14 potential software hackers; since they can not observe how these functions are constructed.” (‘941  
15 Patent at 3:44-46.) Similarly, steps of setting up the verification structure are set forth at 6:18-22.  
16 But, setting up the verification structure is one step in the claimed method that recites several steps  
17 as graphically depicted in Figure 2.

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19 9. The term “agent” was not included in claim 1 originally presented to the Patent  
20 Office. Claim 1, however, included the term “program” to refer to the software program to be  
21 verified, i.e. “verifying the program.” I understand that during prosecution, the term “agent” was  
22 added to the claim based on the suggestion of the Examiner to distinguish the software routine that  
23 wrote to the BIOS from the software program that was already claimed. (ANCC 119, 11/9/2001  
24 Interview Summary, “Agreement was reached” regarding “Storage of license data using BIOS 112  
25 corrections editing independent claim language.”) The Examiner, of course, understood the well-  
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1 defined and understood meaning of the term “agent” when the Examiner suggested this  
2 clarification.

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4 10. Additional intrinsic evidence confirms the meaning of “agent” as used in claim 1  
5 of the ‘941 Patent. First, the Examiner expressly defined “agent” with a software program during  
6 prosecution. The Examiner stated: “Misra et. al. also teach encryption keys and programs  
7 (“agent”) used in the license collection process.” (ANCC 144, 11/14/2001 OA at 6.) The Examiner  
8 cites portions of U.S. Patent No. 6,189,146 (Misra et al.) including its statement that: “These  
9 software programs are preferably implemented as part of the client’s operating system.” (Misra at  
10 12:3-31.) Misra’s agents refer to software programs, confirming the well-understood meaning in  
11 the art of the claim term “agent.” Third, in the reasons for allowance, the Examiner confirmed that  
12 Misra et al. disclosed “a method for licensing software that uses agents to manage software  
13 licenses.” (ANCC 161, 03/28/2002 NOA at 3.) Third, at the request of Microsoft, the ‘941 Patent  
14 obtained a Re-Examination Certificate from the Patent Office, the Patent Office had no trouble  
15 understanding the claim language, including the term “agent” where Microsoft’s positions relied  
16 upon construing “agent” as a “program.” (*See, e.g.*, ANCC 54062, Request at 16.)  
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19 11. While I understand that HTC now takes the position that “agent” can be software,  
20 hardware or both, there is no support for this position in the intrinsic evidence of the ‘941 patent.  
21 First, “agent” has a specific meaning in the art and that is why it was chosen by the examiner to  
22 distinguish the software program used for setting up the verification structure from the program to  
23 be verified. Second, HTC already admitted to the Federal Circuit that an agent is a software  
24 routine. (HTC Brief at 22: “The claims simply direct an agent (e.g., a software routine) to [set up  
25 a verification structure] without further explanation.”) Third, the extrinsic evidence identified by  
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