Exhibit 15

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11

12   **UNITED STATES DISTRICT COURT**

13   **CENTRAL DISTRICT OF CALIFORNIA**

14

ANCORA TECHNOLOGIES, INC.	
Plaintiff,	
vs.	Case No. SACV08-626 AG (MLGx)
TOSHIBA AMERICA INFORMATION SYSTEMS, INC. et al.,	**ANCORA TECHNOLOGIES, INC.'S OPENING *MARKMAN* BRIEF**
Defendants.	
TOSHIBA AMERICA INFORMATION SYSTEMS, INC. et al.,	**Jury Trial Demanded**
Counterclaimants	
vs.	
ANCORA TECHNOLOGIES, INC.	
Counterdefendant.	
MICROSOFT CORPORATION,	
Intervenor.	

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1   in a manner different from the plain import of its terms.") These are all terms that

2   defendants' conjured to avoid infringement, contrary to controlling law. [5]

3   **C.**   **"selecting a program residing in the volatile memory"**

Ancora's Construction	Defendants' Construction
running a program in the volatile memory	choosing from a group of programs that have been loaded into the computer's volatile memory

8   Briefly, this step is performed when the claimed "program" discussed

9   above is run on the computer. The specification states: "the specified program is run

10   on the specified computer." (Ex. 1, col. 1, lines 60-61.) The defendants, however,

11   propose:

12   choosing from *a group of programs* that have been loaded

13   into the computer's volatile memory.

14   (Italics added.)

15

16   The only dispute is the Defendants' proposed limitation that there must

17   be a "group" of different loaded programs from which one must be "chosen." The

18   terms "group" and "choosing" are not used anywhere in the '941 patent.

19   This construction, like the others, is engineered to avoid infringement

20   by excluding the possibility that only <u>one</u> program (such as Microsoft's accused

21   operating system at computer startup) is loaded into memory for execution. This is

22   another improper exclusionary construction having no basis whatsoever in the

23   intrinsic record.

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25

26   [5] It is unclear at this time how the Defendants' proposed constructions for

27   "program," "software," and "application" differ, if at all. Accordingly, Ancora

28   reserves the right to substantively respond to the Defendants' positions on these terms
     in Ancora's Response to Defendants' Opening Claim Construction Brief.

1   On the contrary, the written description repeatedly refers to a "program"

2 in the singular. For example, the very first sentence of the written description states

3 that the "Field of the Invention" includes "restricting an unauthorized software

4 program's operation." (Ex. 1, col. 1, lines 5-8.) The "Summary of the Invention" also

5 refers to the term program in the singular: "each application program that is to be

6 licensed to run on the specified computer." (Ex. 1, col. 1, lines 53-54.) The '941

7 patent is riddled with usages of the selected program in the singular, and <u>nothing</u> in

8 the intrinsic record requires that a "group" plurality of programs exist in the volatile

9 memory which must be chosen."

10   To the extent the Court seeks to construe this term, Ancora proposes that

11 it be construed to mean "running a program in the volatile memory."   This

12 construction is most consistent with the context of the '941 patent disclosure: "the

13 specified program is run on the specified computer." (Ex. 1, col. 1, lines 61-62.)

14

15 **D.   "agent"**

Ancora's Construction	Defendants' Construction
a program to perform a task	software that performs a background task for a user and reports to the user when the task is done or some expected event has occured

21   The claimed "agent" is the technology used to establish a "verification

22 structure" in the memory of the BIOS. The "verification structure" includes the

23 "license record" that is used to verify that the claimed "program" is authorized to run

24 on the computer as described above. Once again, the defendants divine additional

25 limitations for this term:

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