

Exhibit 8

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13 *Attorneys for Plaintiff Ancora Technologies, Inc.*

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 ANCORA TECHNOLOGIES, INC.

18 Plaintiff,

19 v.

20 APPLE, INC.,

21 Defendant.

Case No. 4:11-cv-06357-YGR

DECLARATION OF IAN JESTICE

22 APPLE, INC.

23 Counterclaimant,

24 v.

25 ANCORA TECHNOLOGIES, INC.

26 Counterdefendant.

27

28

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

2
3 1. I have been engaged by Ancora as a technical expert in this case.

4 2. I have over 38 years of experience with computer storage devices and embedded
5 software systems for industry and consumer products, including BootROM and BIOS. I have
6 written and designed BIOS, device drivers, software and firmware for Windows, Linux,
7 VxWorks, QNX and other embedded real-time operating systems (RTOSs). I am a software
8 developer experienced with various programming languages, including C, C++, Delphi, C# and
9 assembly. I hold a degree in Telecommunications and Computer Science from City and Guilds
10 Institute of London.
11

12
13 3. I have reviewed U.S. Patent No. 6,411,941 (the ‘941 patent) and its file history,
14 including the reexamination file history in which the Patent Office reconfirmed the patentability
15 of claims of the ‘941 patent. Because of my education and experience summarized above, I am
16 readily familiar with the terms and concepts disclosed in the patent and recited in the claims.
17

18 4. I understand that disputes have arisen between the parties regarding the meaning
19 of “volatile” and “non-volatile” memory as those terms are used in the asserted claims of the
20 ‘941 patent.
21

22 5. The terms “volatile” and “non-volatile” memory are very well defined terms in
23 the computer industry. While the physical composition of the two types of memory can vary as
24 explained below, the key distinction between the two types of memory is that information stored
25 in “volatile” memory is not preserved for use after power is removed, and information stored in
26 “non-volatile” memory is preserved for use after power is removed.
27
28

1 6. The meaning of volatile / non-volatile memory is well understood by persons of
2 skill in the art of computer hardware and programming. During examination of the '941 patent,
3 the examiner provided the correct definition for the term "non-volatile memory": "memory that
4 is maintained even when the power is removed from the storage system." (6/21/01 Office
5 Action, p. 108.) It follows from this definition that "volatile" memory is memory that is *not*
6 maintained when the power is removed from the storage system – the opposite of "non-volatile"
7 memory.

8
9 7. Volatile memory can take several physical forms. For example, Random Access
10 Memory or "RAM" is often considered "volatile" memory because information stored in RAM
11 is automatically lost when power is removed. Other physical forms of memory are also
12 commonly used as volatile memory, however, such as "flash" and "hard disk" or "hard drive."
13 Due to the historically higher price of RAM storage in comparison to the price of hard drive
14 storage (certainly at the time the '941 application was filed in 1998), available space on the hard
15 was often used while the computer was running to supplement the volatile storage space
16 available in RAM. This supplemental storage is common and is often referred to as "virtual"
17 memory. Information stored in virtual memory, like information stored in RAM is not preserved
18 for use after power is removed, *i.e.*, the computer is turned off.

19
20
21 8. The '941 patent recognizes that volatile memory can be stored in either "RAM"
22 or "hard disk." ('941 patent, 4:52-54; 5:15-16.) This is consistent with the understanding of
23 persons of ordinary skill in the art explained above.

24
25 9. I also understand that a dispute has arisen as to the meaning of the term "BIOS."
26 BIOS is a necessary component of all computers today. Because a computer processor has no
27 knowledge or memory at the time it is first started, the BIOS conditions or initializes the
28

1 processor in terms of what it is connected to for purposes input and output, and where to find the
2 first instruction to execute.

3
4 10. At the time the computer is first started, BIOS automatically performs the initial
5 steps necessary to boot the operating system. While different computers may have different
6 steps performed by the BIOS, the steps may include initializing the RAM and identifying the
7 memory location of instructions to be executed at startup.

8
9 11. Without these initialization steps being performed, a computer is unable to
10 operate because it has no inherent knowledge of what it is connected to for input and output, or
11 where to find the first instruction to execute.

12
13 12. Before the advent of BIOS, these parameters had to be set manually by the user.
14 For decades, however, BIOS has been implemented to perform these steps automatically.

15
16 13. I understand that Apple contends that BIOS is only present in “IBM” computers,
17 presumably to exclude “Apple” computers. That is not correct because virtually all computers
18 have BIOS. Any computer that does not include BIOS would require the user to manually input
19 the system initialization parameters described above at start-up. I am not aware of any computer
20 available for retail sale today, or in 1998 when the ‘941 application was filed, that requires
21 manual initialization. This is because they all include BIOS which performs the initialization
22 steps automatically at start-up.
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