

Exhibit 30

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANCORA TECHNOLOGIES, INC.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No.: 11-CV-06357 YGR

CLAIM CONSTRUCTION ORDER

AND RELATED COUNTER-CLAIM

Ancora Technologies, Inc. (“Ancora”) alleges that devices that run Apple Inc.’s (“Apple”) iOS operating system infringe on U.S. Patent No. 6,411,941 (the “’941 Patent”). Apple has counterclaimed for declaratory judgments of non-infringement and invalidity.

The parties have requested the Court construe seven claim terms/phrases from the ’941 Patent: (1) “volatile memory”; (2) “non-volatile memory”; (3) “BIOS”; (4) “program”; (5) “license record”; (6) “verifying the program using at least the verification structure”; and (7) whether the steps in the asserted claims must be performed in a specific order. On June 29, 2012, the parties provided a technology tutorial and on July 11, 2012, the Court held a claim construction hearing.

Based upon the papers submitted, the argument of counsel, for the reasons set forth below, the Court provides the following claim construction.

I. BACKGROUND

The patent in suit relates to software anti-piracy technology. At issue here is technology directed at preventing computer users from copying software and then running that software without a license. Ancora is the owner of the ’941 Patent, which claims a method of restricting software

1 **B. THIRD DISPUTED CLAIM TERM/ PHRASE – “BIOS” (CLAIMS 1-3, 5-17)**

2 No party disputes that “BIOS” is an acronym for Basic Input/Output System. Rather, the
3 parties dispute whether the term “BIOS” applies to all computers or only to IBM PC-compatible
4 computers, as Apple proposes.⁵ The parties’ proposed constructions are shown below:

APPLE’S PROPOSED CONSTRUCTION	ANCORA’S PROPOSED CONSTRUCTION
software routines on IBM PC compatible computers that handle startup operations and support the transfer of data among peripheral devices	software routines that handle startup operations

5
6
7
8
9
10 The claims of the ’941 Patent refers to the “non-volatile memory area of the BIOS” of a
11 computer fourteen times (and refers to the “non-volatile memory area of *a* BIOS” once). Neither the
12 claim nor the specification defines “BIOS.” In the prosecution history the Patent Examiner gave the
13 following definition of BIOS based upon “The Microsoft Computer Dictionary, 5th Edition, 2002”:

14 the set of essential software routines that test hardware at startup, start the operating
15 system, and support the transfer of data among hardware devices.

16 The Patent Examiner further commented:

17 This definition is consistent with the specification of the ’941 patent. Since a BIOS is
18 therefore defined by the functional descriptive material contained within it, one skilled
19 in the art would consider any non-functional descriptive material, such as tables, to be
20 part of the BIOS only if it is made and used by the functions of the BIOS itself. This
21 does not preclude such material being also used or modified by programs located
22 outside of the BIOS, such as applications running in an operative system. The fact that
23 a program or tables resides in non-volatile memory does not necessarily mean that it is
24 part of the BIOS. It is therefore the case that a reasonable examiner would only
25 consider a table to be in a BIOS if it were, at a minimum, created by a function
26 residing in the BIOS.

(Rondini Dec. ¶ 4, Ex. 3, Order Granting Request for Reexamination, at 8-9, ANCA 2568-69.)

25
26
27
28
⁵ Apple also seeks to limit the scope of the definition so that BIOS handles transfer of data among “peripheral” devices. Ancora argues that the Claim does not mention “peripheral” devices and that the Examiner used the broader “hardware” language not the narrower term “peripheral.” In a footnote, Apple states that its construction is consistent with the definitions in the technical dictionaries, but Apple’s proposed construction is consistent with only one of the five the technical dictionaries quoted in Apple’s *Markman* Brief. Apple has not otherwise explained why it believes that BIOS should be construed to interact with peripheral devices only. The Court has not found any basis to support this interpretation.

1 Apple points out that the definition supplied by the Patent Examiner is incomplete, referring
2 again to the Microsoft dictionary:

3 BIOS n. Acronym for basic input/output system. On PC-compatible computers, the
4 set of essential software routines that tests hardware at startup, starts the operating
5 system, and supports the transfer of data among hardware devices, including the date
6 and time. The operating system date is initialized from the BIOS or Real Time Clock
7 date when the machine is booted. Many older PCs, particularly those dating before
8 1997, have BIOSs that store only 2-digit years and thus may have suffered from Year
9 2000 problems. The BIOS is stored in read-only memory (ROM) so that it can be
10 executed when the computer is turned on. Although critical to performance, the BIOS
11 is usually invisible to computer users.

12 (*Id.* Ex. I (Microsoft Press Computer User's Dictionary (5th ed. 2002)).)⁶

13 ⁶ In addition to the dictionary definition used by the Patent Examiner, Apple offers four other dictionary
14 definitions of the term BIOS:

15 BIOS n. Acronym for basic input/output system. On PC-compatible computers, the set of
16 essential software routines that test hardware at startup, start the operating system, and support
17 the transfer of data among hardware devices. The BIOS is stored in ROM so that it can be
18 executed when the computer is turned on. Although critical to performance, the BIOS is
19 usually invisible to computer users.

20 (Rahebi Dec., Ex. K (Microsoft Press Computer User's Dictionary (3d ed. 1998)).)

21 A set of programs encoded in read-only memory (ROM) on IBM PC-compatible computers.
22 These programs handle startup operations such as the power-on self-test (POST) and low-level
23 control for hardware, such as disk drives, keyboards, and monitor. The BIOS programs of
24 IBM personal computers are copyrighted, so manufacturers of IBM PC-compatible computers
25 must create BIOSs that emulate the IBM BIOS or buy an emulation from companies, such as
26 Phoenix Technologies and American Megatrends, Inc.

27 (*Id.* Ex. F (Webster's New World Dictionary of Computer Terms (6th ed. 1997)); *id.* Ex. G (Que's Computer
28 & Internet Dictionary (6th ed. 1995)).)

[A] set of procedures stored on a ROM chip inside IBM PC compatible computers. These
routines handle all input-output functions, including screen graphics, so that programs do not
have to manipulate the hardware directly

(*Id.* Ex. H (Barron's Dictionary of Computer and Internet Terms (5th ed. 1996)).)

On PC-compatible computers, the set of essential software routines that test hardware at
startup, start the operating system, and support the transfer of data among hardware devices.
The BIOS is stored in read-only memory (ROM) so that it can be executed when the computer
is turned on. Although critical to performance, the BIOS is usually invisible to computer users.

(*Id.* Ex. E (Microsoft Press Computer Dictionary (3d ed. 1997)).)

The part of the system software of the IBM PC and compatibles that provides the lowest level
interface to peripheral devices and controls the first stage of the bootstrap process, including
installing the operating system. The BIOS is stored in ROM, or equivalent, in every PC. Its
main task is to load and execute the operating system which is usually stored on the computer's
hard disk, but may be loaded from CD-ROM or floppy disk at install time.

(*Id.* Ex. J (Free On-Line Dictionary of Computing (June 6, 1999)).)

1 Apple proposes that BIOS be construed to operate only on IBM PC-compatible computers.
2 According to Apple, the plain and ordinary meaning of the term “BIOS” at the time of the invention,
3 as demonstrated by dictionary definitions is that BIOS is specific to the IBM PC-compatible
4 computer platform.

5 Ancora urges the Court to avoid using a dictionary to construe BIOS by arguing that the
6 Federal Circuit in *Phillips* stated that using a dictionary to alter the claim term violates the public
7 notice function of the patent. The problem identified in *Phillips* is that a dictionary definition
8 oftentimes will be overly broad and when taken out of the context of the patent at issue can lead to
9 an “unduly expansive” construction of the claim term. 415 F.3d at 1321. The opposite problem is
10 presented here. Apple is resorting to the dictionary definition to narrow the construction of the term
11 because it believes that the Patent Examiner gave BIOS an unduly expansive construction.

12 Ancora argues that the Examiner defined BIOS broadly, not limited to IBM PC-compatible
13 computers, and that the claim itself is not limited to a brand of computer but the “BIOS of a
14 computer.”⁷ Ancora argues that virtually all computers have BIOS, including the accused devices
15 (iPhone, Apple laptops and Apple desktops).⁸

16 As set forth above, “BIOS” stands for Basic Input/Output System; it is software code. No
17 one disputes that a person of ordinary skill in the art reading the Claim in the context of the
18 specification and prosecution history would understand the “BIOS” to be the location in the
19 computer where the software code was stored. The inventive aspect of the ’941 Patent was to write
20 information onto unused memory in the BIOS area of the computer. The limiting aspect of the
21 invention is to store information in the BIOS, not the type of computer that runs BIOS. The
22 technical dictionaries that Apple has offered into evidence do not convince the Court otherwise.

23 ⁷ Although Ancora argues that the Patent Examiner gave BIOS a specific definition, “the set of essential
24 software routines that test hardware at startup, start the operating system, and support the transfer of data
25 among hardware devices,” Ancora argues for an entirely different construction of BIOS tethered only to
26 Apple’s proposed construction. Other than to argue that its patent applies to non-IBM PC-compatible
27 computers, Ancora does not base its interpretation on any intrinsic evidence.

28 ⁸ Ancora also offers evidence of a 1983 Commodore 64 computer that ran BIOS, and that during the mid-
1990’s Apple’s Macintosh brand of computers, when operated in a PC-compatible mode, had BIOS. This
extrinsic evidence both before and after the relevant time period does not reflect the usage or meaning in the
art in 1998.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.