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

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

DEFENDANTS' REPLY CLAIM CONSTRUCTION BRIEF

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I.   INTRODUCTION

In its responsive brief, Ancora continues to advocate for positions that are in tension with the '941 Patent's specification, the applicants' statements to the USPTO, and the positions taken by Ancora in related litigations and appeals. Notably, Ancora now relies on a confidential Beeble White Paper from 2001, nearly three years after the patent was filed. Besides not being relevant to a skilled artisan's understanding at the time of the alleged invention, the Paper only undermines Ancora's positions and underscores that Defendants' constructions are correct.

II.   ARGUMENT

A.   "using an agent to set up a verification structure in the erasable, non-volatile memory of the BIOS"

Relying primarily on *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003 (Fed. Cir. 2018), Ancora's argument is premised on the idea that if the term "agent" is found to be software, the limitation is no longer subject to 35 U.S.C. § 112, ¶ 6. Ancora's argument is flawed in multiple respects. First, as Defendants' expert has opined, the term "agent" can connote software, hardware, or a combination of hardware and software. Second, even if the term "agent" denotes software, contrary to Ancora's position, courts have not found that software alone categorically connotes sufficient structure, particularly post-*Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1351 (Fed. Cir. 2015). (*See* Dkt. 45 at 7-8, n. 4.) Finally, even if the term "agent" connotes software, it cannot indicate structure at the pertinent time because, as Ancora expressly admits, the claimed "agent" was alleged to be novel and could not exist prior to the filing of the '941 Patent. Unlike *Zeroclick*, the claimed invention is not merely an update of an existing program that can signify structure.

The term "agent" is a nonce term and is not limited to software: Ancora's argument is premised on the assertion that the term "agent" connotes software, as opposed to hardware or a combination of hardware and software. As explained by Defendants' expert, a skilled artisan

would not arrive at such a conclusion. (Dkt. 45-1 at ¶¶ 54-55.) The Examiner did not, as Ancora argues, state that "he understood 'agent' to be synonymous with a software 'program.'" (Dkt. 50 at 3.) The Examiner merely identified certain programs as potential "agents." (Dkt. 44-5 at ANCORA_426-428.)

Ancora's argument that Dr. Zadok's research papers undermine his position that an "agent" can be software or hardware is unavailing. (*See* Dkt. 50 at 6.) As Ancora acknowledges, Dr. Zadok's papers refer to "agent-*daemons*" and *The Interposition Agents **Toolkit***. Both "daemon" and "toolkit" have a well-known meaning in the art and both identify a specific type of software to persons of skill. Zadok Supp. Decl. at ¶¶ 5-6. Thus, Dr. Zadok's reliance on modifiers before the term "agent" that point to specific software simply underscores his opinion that the term "agent" alone can connote software or hardware. *See id.*at ¶¶ 5-8.[1]

In contrast, the term "agent" does not include any modifier in the claims of the '941 Patent and Ancora does not dispute that the term "agent" is ascribed different functions across claims 1 and 18. (Dkt. 50 at 8.) Ancora argues that "simpler claims require simpler disclosures," suggesting that the "agent" in claim 1 is somehow not a nonce word because it performs less tasks than in claim 18. *Id*. But Ancora's argument misses the point; by ascribing different roles to the "agent" across the claims, the patent uses "agent" as a black box for generic hardware/software, confirming its status as a nonce word.

Courts have not found that software alone categorically connotes sufficient structure: Interpreting "agent" as a nonce word is consistent with the Court's recent decision in *Digital Retail Apps, Inc. v. H-E-B*, LP, 2020 WL 376664, at *5 (W.D. Tex. Jan. 23, 2020). Ancora argues that

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[1] Notably, Ancora neglects to identify a paper where Dr. Zadok expressly mentions "software agents," which underscores that "software" must precede "agent" in order to clarify that the "agent" at issue is a software implementation. *See id.* at ¶ 7.

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