UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ANCORA TECHNOLOGIES, INC., Plaintiff, vs. GOOGLE LLC, Defendant.	CIVIL ACTION NO. 6:21-cv-735-ADA JURY TRIAL DEMANDED
ANCORA TECHNOLOGIES, INC., Plaintiff, vs. ROKU, INC., Defendant.	CIVIL ACTION NO. 6:21-cv-737-ADA JURY TRIAL DEMANDED
ANCORA TECHNOLOGIES, INC., Plaintiff, vs. NINTENDO CO., LTD., and RETRO STUDIOS, INC., Defendant.	CIVIL ACTION NO. 6:21-cv-738-ADA JURY TRIAL DEMANDED

DEFENDANTS' OPENING CLAIM CONSTRUCTION BRIEF

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Defendants Google LLC ("Google"); Roku, Inc. ("Roku"); Nintendo Co., Ltd. ("Nintendo"); and Retro Studios, Inc. ("Retro") (collectively, "Defendants") present the following arguments in support of their proposed claim constructions for U.S. Patent No. 6,411,941 ("the '941 patent").

The '941 patent, filed on October 1, 1998 and titled "Method of Restricting Software Operation within a License Limitation," is directed toward "identifying and restricting an unauthorized software program's operation," by "strongly rel[ying] on the use of a key and of a record, which have been written into the non-volatile memory of a computer." Ex. 1, '941 patent, 1:6–8, 1:40–43[1]. The alleged invention in the '941 patent was based on the presence and unique arrangement in the late 1990s of "BIOS" non-volatile memory modules in personal computers, which were hard to tamper with. *See id.*, 3:4–17. As described below, the asserted claims and the disputed claim terms are rooted in the patent's express objective of using the then well-known and well-understood "BIOS" as part of a process for verifying that a particular program is licensed to run on a specified PC-compatible computer. Some of the disputed claim terms are so vague and so lacking of definition in the intrinsic record that they could not be understood with reasonable certainty by a person of ordinary skill in the art ("POSITA") at the time of invention, and thus are indefinite. For the reasons that follow, the Court should adopt Defendants' proposed constructions and indefiniteness positions.

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[1] Unless otherwise stated, all exhibits referenced herein are attached to the Declaration of Robert W. Unikel, filed concurrently herewith.

1.   **"computer" (claims 1, 6, 7)**

Defendants' Construction	Ancora's Construction
a conventional PC-compatible device	a digital data processor that includes one or more non-volatile memory and volatile memory areas

The parties' dispute turns largely on whether the claims are directed to any and all computers, or only computers that have "BIOS." *See* § 3, *infra* (explaining how BIOS was only used in PC-compatible computers).

Myriad devices include computers in a generic sense; however, a person of ordinary skill in the art would have understood from the '941 patent's disclosure that the asserted claims were directed to conventional PC-compatible devices, and did not cover every device that included a digital data processor. The meaning of "computer" is particularly important because Ancora now attempts to accuse products as wide-ranging as thermostats, video-game consoles, mobile phones, soundbars, and video streaming devices as "computers" covered by the '941 patent. The '941 patent, which was filed in 1998, explains that the invention is directed to "a conventional computer having a conventional BIOS module." '941 patent, 1:46–47. The '941 patent further declares, "In the context of the present invention, a 'computer' relates to a digital data processor. These processors are found in *personal computers*, or on one or more processing cards in multi-processor machines." *Id.*, 3:18–21 (emphasis added). Because, at the time of invention, the required "BIOS" was a term limited to booting personal computers ("PCs"), as explained below, the claimed "computer" in the '941 patent, which is required to have a "BIOS," must mean a "conventional PC-compatible device."

The extrinsic evidence confirms this. In particular, The BIOS Companion, published in 1998, emphasizes that a BIOS is used only in a conventional PC-compatible (*i.e.*, "IBM-

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