UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

ANCORA TECHNOLOGIES, INC. Plaintiff, v. HTC AMERMICA, INC., a Washington Corporation, HTC CORPORATION, a Taiwanese corporation Defendants.	Case No. 2:16-cv-01919-RAJ **DECLARATION OF IAN JESTICE**

I, Ian Jestice, declare as follows:

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

2. I have over 38 years of experience with computer storage devices and embedded software systems for industry and consumer products, including BootROM and BIOS. I have written and designed BIOS, device drivers, software and firmware for Windows, Linux, VxWorks, QNX and other embedded real-time operating systems (RTOSs). I am a software developer experienced with various programming languages, including C, C++, Delphi, C# and assembly. I hold a degree in Telecommunications and Computer Science from City and Guilds Institute of London. I previously provided a declaration regarding the construction of claim terms for the '941 Patent and incorporate that declaration herein.

3. I am being compensated at $360 and my CV is attached as Exhibit A which includes my publications in the last 10 years and my expert testimony in the last four years.

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

5. I understand that disputes have arisen between the parties regarding the meaning and definiteness of "agent" as that term is used in the asserted claims of the '941 patent.

6. The term "agent" is a well-defined and understood term in the computer industry. An agent is a software program or routine. An agent would be understood by those skilled in the art to have that definitive structure. I understand that HTC has presented a declaration asserting

"A person or ordinary skill in the art would not understand 'agent' of claims 1 and 18 to have any definite structure." This is not supported by the intrinsic record or by the extrinsic evidence cited by HTC. An agent has a definite structure as a software routine as claimed in the '941 patent.

7. Claim 1 of the '941 Patent states: "using an agent to set up a verification structure in the erasable, non-volatile memory of the BIOS." The specification provides, as an example, that the modification, removal or addition of data in the erasable, non-volatile memory of the BIOS can be performed "using E^2PROM manipulation commands." ('941 Patent at 1:65-2:4.) Such commands are encoded in a software routine and are well-known to those skilled in the art.

8. In another example, the specification also states that a bureau can also be employed in order to assist in setting "setting up the verification structure" using a series of steps. ('941 Patent at 3:42-50, *see also* Claim 3.) The use of a bureau "helps to limit the understanding of potential software hackers; since they can not observe how these functions are constructed." ('941 Patent at 3:44-46.) Similarly, steps of setting up the verification structure are set forth at 6:18-22. But, setting up the verification structure is one step in the claimed method that recites several steps as graphically depicted in Figure 2.

9. The term "agent" was not included in claim 1 originally presented to the Patent Office. Claim 1, however, included the term "program" to refer to the software program to be verified, i.e. "verifying the program." I understand that during prosecution, the term "agent" was added to the claim based on the suggestion of the Examiner to distinguish the software routine that wrote to the BIOS from the software program that was already claimed. (ANCC 119, 11/9/2001 Interview Summary, "Agreement was reached" regarding "Storage of license data using BIOS 112 corrections editing independent claim language.") The Examiner, of course, understood the well-

defined and understood meaning of the term "agent" when the Examiner suggested this clarification.

10. Additional intrinsic evidence confirms the meaning of "agent" as used in claim 1 of the '941 Patent. First, the Examiner expressly defined "agent" with a software program during prosecution. The Examiner stated: "Misra et. al. also teach encryption keys and programs ("agent") used in the license collection process." (ANCC 144, 11/14/2001 OA at 6.) The Examiner cites portions of U.S. Patent No. 6,189,146 (Misra et al.) including its statement that: "These software programs are preferably implemented as part of the client's operating system." (Misra at 12:3-31.) Misra's agents refer to software programs, confirming the well-understood meaning in the art of the claim term "agent." Third, in the reasons for allowance, the Examiner confirmed that Misra et al. disclosed "a method for licensing software that uses agents to manage software licenses." (ANCC 161, 03/28/2002 NOA at 3.) Third, at the request of Microsoft, the '941 Patent obtained a Re-Examination Certificate from the Patent Office, the Patent Office had no trouble understanding the claim language, including the term "agent" where Microsoft's positions relied upon construing "agent" as a "program." (*See, e.g.*, ANCC 54062, Request at 16.)

11. While I understand that HTC now takes the position that "agent" can be software, hardware or both, there is no support for this position in the intrinsic evidence of the '941 patent. First, "agent" has a specific meaning in the art and that is why it was chosen by the examiner to distinguish the software program used for setting up the verification structure from the program to be verified. Second, HTC already admitted to the Federal Circuit that an agent is a software routine. (HTC Brief at 22: "The claims simply direct an agent (e.g., a software routine) to [set up a verification structure] without further explanation.") Third, the extrinsic evidence identified by

HTC supports the well-understood meaning to those skilled in the art that I have provided in this declaration.

12. The extrinsic evidence relied upon by HTC does not support its position. I understand that HTC cites to U.S. Patent No. 5,568,552 for support. But, the '552 patent uses the phrase "hardware agent" which distinguishes it from the use of "agent" in the '941 Patent. "Agent" is a software program routine which was described as an example in the preferred embodiment as "E^2PROM manipulation commands" which is software.

13. I understand that HTC relies on extrinsic computer dictionaries for support. (DN 58-1.) The Microsoft dictionary defines agent as "A program . . . " Newton's Telecom dictionary discusses airline agents, but then states: "an 'agent' – a kind of software program.. . " The Encyclopedia of Computer Science states that "multi-agent systems" are "programs [that] interact or work together over a communications network to perform some set of tasks jointly or to satisfy some set of goals." PC Magazine also states that agents are "a software routine that waits in the background and performs an action when a specified event occurs." The Telecommunications Handbook states that "An agent is a program." HTC establishes with its own evidence that "Agent" is well-understood in the art as a software program or routine.

14. A person of ordinary skill in the art would understand that "using an agent to set up a verification structure in erasable, non-volatile memory of the BIOS," in light of the specification, refers to using software programs or routines to set up a verification structure in the erasable, non-volatile memory of the BIOS. For example, one could use "E^2PROM manipulation commands" such as those from the DMI Specification in the manner described in the intrinsic record at ANCC 183-184 to perform this single step in the multi-step claimed method. An "agent" has a defined meaning in the art and is not a generic placeholder without structure or meaning.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date:___8/26/2019_____ _____

Ian Jestice

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