

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and
NINTENDO OF AMERICA INC.,

Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

PTAB Case No. IPR2021-01338

Patent No. 6,411,941 B1

PETITIONERS' RESPONSE BRIEF ON REMAND

TABLE OF CONTENTS

	Page
I. Ancora cites no authority for three licenses outweighing strong <i>prima facie</i> obviousness and other licenses that are directly contradictory.	2
II. The low-value licenses have stronger nexus than the high-value licenses.....	3

The Federal Circuit was clear how the Board should proceed on remand. First, “the Board should evaluate the nexus issue regarding these [high-value] licenses and then weigh such evidence against what was in effect its *prima facie* case of obviousness.” (Appeal Order, 20.) Second, “the Board should also consider the nexus issue and the probative value of these [low-value] licenses and weigh that against the licenses produced by Ancora.” (*Id.*)

In its opening brief, Ancora urges the Board to do neither of those things. Instead of evaluating the evidence before it, Ancora urges the Board to turn to the Federal Circuit opinion, and to focus myopically on nine words of dicta: the licenses “should have been given more, if not controlling, weight...” If the Board focuses intently enough, Ancora says, it will discover that the Federal Circuit has already found that the high-value licenses outweigh the *prima facie* case of obviousness. According to Ancora, there is nothing left to do but affirm that apparent factfinding.

Ancora has the roles of these two tribunals backwards, and the Board should reject Ancora’s invitation to find a wink and a nudge in the appellate order. If the Federal Circuit had already found the claims non-obvious, it would have reversed, not remanded. The Board should instead do what the Federal Circuit instructed. And when the Board weighs the low probative value but high dollar licenses, the high probative value but low dollar licenses, and the exceedingly strong *prima facie* case of obviousness, the Board should again conclude that the claims are obvious.

I. Ancora cites no authority for three licenses outweighing strong *prima facie* obviousness and other licenses that are directly contradictory.

Ancora's own branding of the high-value licenses—the “Big Three”—demonstrates how different they are from what would *actually* make licenses probative of non-obviousness. Licensing evidence is relevant to non-obviousness because it can show “acquiescence by a substantial portion of the competitors in a market to the validity of a patent. 2A Chisum on Patents § 5.05[3]; *see also Cole Kepro Int'l, LLC v. VSR Indus., Inc.*, 695 F. App'x 566, 572 (Fed. Cir. 2017).

Ancora's “Big Three” licenses—really only two when the [REDACTED] license is again excluded¹—do not show this sort of broad appreciation of the validity of the '941 patent. Against this collection of two to three companies who paid high-value licenses, there are a similar number of companies that have refused to license the '941 patent and instead are participants in this and the parallel IPR—Nintendo,

¹ Ancora alleges that the [REDACTED] license “must be included in the Board's analysis” on remand, because it was discussed in the appellate order. (Paper 56 (“Ancora Op. Br.”), 3.) That is incorrect. The Board excluded the [REDACTED] license as evidence first advanced in sur-reply. (FWD, 48 n.4.) The Federal Circuit did not consider, much less find, an abuse of discretion to overturn that evidentiary finding. *See ParkerVision v. Vidal*, 88 F.4th 969, 980–981.

Roku, and VIZIO. There are a similar number that remain litigating against Ancora but are not parties to these IPRs—Google and HTC. There are a similar number of companies that received licenses and paid less than the cost of litigation—[REDACTED] and [REDACTED]. There are a similar number of companies that received licenses and paid little to nothing at all—[REDACTED] and [REDACTED]. See *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1539 (Fed. Cir. 1983) (licensing evidence insufficient where only two members of entire industry licensed, and one license was royalty free).

Ancora's reliance on the "Big Three" licenses amounts to little more than cherry picking the one class of litigants that benefits its case, and ignoring the other four classes of litigants that undermine it. In its discussion of the high-value licenses, Ancora does not, and cannot, cite any authority that the decision by two to three market participants to pay high-value licenses should somehow outweigh the decision by four times as many other market participants—and likely many not publicly accused of infringement—to *not* pay high-value licenses. The high-value licenses, even when considered, provide little probative value.

II. The low-value licenses have stronger nexus than the high-value licenses.

Ancora encourages the Board to disregard the low-value licenses entirely based on a supposed lack of nexus. But while the Federal Circuit did not make a finding on nexus for the high-value licenses (Appeal Order, 20 ("On remand, the Board should evaluate the nexus issue regarding these [high-value] licenses...")), it

identified several aspects that might support a finding of nexus, and each is equally applicable to the low-value licenses. First, the high-value licenses only identified the '941 patent as being the subject of the license. (Appeal Order, 17.) Similarly the '941 patent is the only subject of the [REDACTED] and [REDACTED] licenses. (EX1050, EX1051.) Second, the Federal Circuit noted that the high-value licenses were made with full awareness of the prior art. (Appeal Order, 17–18.) So too here Ancora entered the low-value licenses not just with full awareness of the Hellman/Chou combination, but with clear intent to rid itself of that prior art combination and its invalidity risk. (Paper 58 (“Nintendo Op. Br.”), 4–6.) Third, the Federal Circuit discerned from the circumstances that the high-value licenses demonstrated “considered reluctance to run the risk of larger financial consequences from infringement” by the high-value licensees. (Appeal Order, 18.) Similarly the low-value licenses demonstrate Ancora’s own reluctance to risk the financial consequences of having the '941 patent invalidated by the Hellman/Chou combination.

Ancora makes several attacks on the nexus of the low-value licenses that the Federal Circuit already rejected on appeal. Ancora argues that the low-value licenses should not be considered because the amount at risk is unknown (Ancora Op. Br., 8–9), but the Federal Circuit rejected that consideration as not being probative of nexus to invalidity in the context of the high-value licenses (Appeal Order, 18–19). Ancora again relies heavily on *Iron Grip* for the proposition that

low-value licenses are not probative of obviousness (Ancora Op. Br., 8), even though the Federal Circuit observed that the Ancora's reliance on *Iron Grip* for that premise was flawed (Appeal Order, 20).

Ancora points to the circumstances surrounding the [REDACTED] and [REDACTED] licenses, but reaches the wrong conclusions. For the [REDACTED] license, Ancora argues that it supports non-obviousness because it was executed (on April 1, 2021) while the Hellman/Chou combination was already instituted in the [REDACTED] IPR (on [REDACTED] [REDACTED]). But Ancora fails to note the key intervening event: during a March 18, 2021 telephone conference with the Board, Ancora, [REDACTED], [REDACTED], and others, [REDACTED] counsel requested approval to immediately terminate its IPR due to settlement. [REDACTED] [REDACTED] v. *Ancora Techs., Inc.*, [REDACTED], EX2004, pp. 6–7. Ancora's counsel seconded that request, and requested that it be done “without delay.” *Id.* at 8. So yes, [REDACTED] did enter its license while the Hellman/Chou combination was instituted, but it did so two short weeks after learning that both the petitioner and Ancora were seeking to terminate that IPR. Similarly, the [REDACTED] license was entered a few days after [REDACTED] own attempt to institute the Hellman/Chou combination was denied (Nintendo Op. Br., 9).

The licensing evidence collectively demonstrates broad appreciation of the invalidity of the claims over the Hellman/Chou combination, and it does not overcome the strong case of *prima facie* obviousness.

Petitioners' Response Brief on Remand

PTAB Case No. IPR2021-01338

Respectfully submitted,

Dated: September 12, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025 true and correct copies of the foregoing **PETITIONERS' RESPONSE BRIEF ON REMAND** were served via electronic mail upon the following counsel of record for Patent Owner:

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Respectfully submitted,

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Date: September 12, 2025