

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 ANCORA TECHNOLOGIES, INC.,)
5)
6 Plaintiff,)
7 vs.) No. 2:16-cv-01919-RAJ
8 HTC AMERICA, INC., a Washington)
9 corporation, HTC CORPORATION, a)
10 Taiwanese corporation,)
11 Defendant.)
12 _____)

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15 Deposition of JON B. WEISSMAN, Ph.D., taken on
16 behalf of the Plaintiff, at 2040 Main Street, 14th
17 Floor, Irvine, California, commencing at 8:29 a.m., on
18 Monday, September 9, 2019, before CATHERINE ELISE
19 NADEAU, CSR No. 11528, RPR.
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Page 2 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 APPEARANCES OF COUNSEL: For Plaintiff: BROOKS KUSHMAN P.C. BY: MARC LORELLI, ESQUIRE (Present via teleconference) 1000 Town Center 22nd Floor Southfield, Michigan 48075 248.358.4400 For Defendants: KNOBBE, MARTENS, OLSON & BEAR, LLP BY: BRIAN C. CLAASSEN, ESQUIRE DANIEL C. KIANG, ESQUIRE 2040 Main Street 14th Floor Irvine, California 92614 949.760.0404	Page 4 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 PLAINTIFF'S EXHIBITS FOR IDENTIFICATION: (Continued) 12 3.3.14 United States Court of Appeals for the Federal Circuit, Ancora Technologies, Inc. vs. Apple, Inc., 15 pages 13 Microsoft Press Computer User's Dictionary, 78 7 pages
Page 3 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 I N D E X DEPONENT EXAMINED BY PAGE JON B. WEISSMAN, Ph.D. MR. LORELLI 5 PLAINTIFF'S EXHIBITS FOR IDENTIFICATION: 1 6.25.02 United States Patent Mullor, et al., 7 7 pages 2 The prosecution history, 179 pages 66 5 United States Patent and Trademark Office, Before the Patent Trial and Appeal Board, Apple Inc. vs. Ancora, Declaration of Jon B. Weissman, 76 pages 8 6 12.31.12 Claim Construction Order, 21 pages 10 7 United States Patent and Trademark Office, Before the Patent Trial and Appeal Board, HTC Corporation vs. Ancora Technologies Inc., Declaration of Jon B. Weissman, Ph.D., 52 pages 9 8 8.26.19 Declaration of Ian Jestice, with an attachment, 20 pages 69 9 9.4.19 Declaration of Jon B. Weissman, Ph.D. Regarding Claim Construction, with an attachment, 27 pages 9 10 4.23.18 United States Court of Appeals for the Federal Circuit, Brief of Appellees HTC America, Inc. and HTC Corporation, 3 pages 80 11 11.16.18 United States Court of Appeals for the Federal Circuit, Ancora Technologies, Inc. vs. HTC America, Inc., HTC Corporation, 13 pages 57	Page 5 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 IRVINE, CALIFORNIA; MONDAY, SEPTEMBER 9, 2019 8:29 A.M. -oOo- JON B. WEISSMAN, PH.D., having been first duly sworn, was examined and testified as follows: -oOo- EXAMINATION BY MR. LORELLI: Q Good morning, Dr. Weissman. A Good morning. Q My name is Marc Lorelli. I represent the plaintiff Ancora Technologies in this matter. Nice to meet you. A Same. Q I assume there's other folks that are present on that end. So if maybe we could have a roll call, that would be helpful. MR. CLAASSEN: Mark, this is Brian Claassen on behalf of HTC. MR. KIANG: Mark, this is Daniel Kiang, also on behalf of HTC. Q BY MR. LORELLI: Dr. Weissman, I assume you've been deposed a number of times before. A Yes, I have.

Page 6 1 Q We don't need to go through the formalities 2 and you know what to expect; correct? 3 A Yes, I do. 4 Q How many times have you been deposed as an 5 expert witness in a patent case? 6 A I don't have the exact number. I would say 7 approximately 12. 8 Q And where is your current employment, sir? 9 A University of Minnesota Twin Cities. 10 Q And what -- as a professor what types of 11 classes do you teach? 12 A I teach a large variety of classes in 13 computer systems, operating systems, distributed 14 systems, networking, computer architecture. 15 Q You have provided a number of declarations 16 with regards to the '941 patent; correct? 17 A That's correct. 18 MR. LORELLI: And I'll ask the court reporter to 19 mark as Weissman Exhibit 1 the patent that is in the 20 stack of materials in front of her. 21 MR. CLAASSEN: Marc, this is Brian. Do you have 22 multiple copies of each exhibit in the folders? 23 MR. LORELLI: There should be two copies of each 24 exhibit in the folder, one to mark and one for you, 25 Brian.	Page 8 1 behalf of HTC; correct? 2 A That's correct. 3 Q Then more recently you did another 4 declaration on behalf of HTC; right? 5 A That's correct. 6 MR. LORELLI: So if we could why don't we start 7 in chronological order. Court reporter, if you 8 could please take out the folder Exhibit No. 5 and 9 mark that as Weissman Exhibit 5. 10 (Plaintiff's Exhibit No. 5 was marked 11 for identification.) 12 Q BY MR. LORELLI: Do you recognize, sir, 13 what we've marked as Weissman Exhibit 5? 14 A Yes, I do. 15 Q And what is it? 16 A It's a declaration that I signed in the 17 Apple/Ancora matter. 18 Q I just lost voice volume. Can you hear me? 19 A I can hear you. 20 Q I did not hear your answer. So I'll just 21 ask you to repeat it. I could just hear you 22 responding to my question, so hopefully it was just 23 a glitch. 24 A Yeah. So this is a declaration that I 25 signed in the Apple/Ancora matter.
Page 7 1 MR. CLAASSEN: Thank you. 2 (Plaintiff's Exhibit No. 1 was marked 3 for identification.) 4 Q BY MR. LORELLI: So, Dr. Weissman, you've 5 seen this patent before; correct? 6 A Yes, I have. 7 Q And you've reviewed this patent? 8 A I've read the patent, yes. 9 Q And you were first employed by Apple, I 10 believe, with regards to this patent -- 11 A I believe that's -- 12 Q -- is that right? 13 A I believe that's correct. 14 Q And you submitted a declaration on behalf 15 of Apple? 16 A Yes, I did. 17 Q And then at some point later HTC or HTC's 18 attorneys contacted you; is that right? 19 A That's correct. 20 Q And what did they task you to do? 21 A They tasked me to take a look at the '941 22 patents and also a set of prior art and do analysis. 23 Q Similar to what Apple asked you to do? 24 A Similar. 25 Q And you submitted a declaration for -- on	Page 9 1 MR. LORELLI: Madam Court Reporter, if we can 2 mark as Exhibit No. 7 what's in the folder No. 7. 3 (Plaintiff's Exhibit No. 7 was marked 4 for identification.) 5 Q BY MR. LORELLI: Dr. Weissman, do you 6 recognize what we've marked as Weissman Exhibit 7 No. 7? 8 A Yes, I do. 9 Q And what is it? 10 A It's a declaration that I wrote, signed in 11 the HTC/HTC America/Ancora Technologies matter. 12 MR. LORELLI: Madam Court Reporter, if we could 13 pull out what's in the folder Exhibit 9 and please 14 mark that as Weissman Exhibit 9, please. 15 (Plaintiff's Exhibit No. 9 was marked 16 for identification.) 17 Q BY MR. LORELLI: Dr. Weissman, do you 18 recognize what we've marked as Weissman Exhibit 9? 19 A Yes, I do. 20 Q And what is it? 21 A It's a declaration that I recently filed -- 22 or signed in the Ancora/HTC matter with respect to 23 claim construction. 24 Q I'm going to ask you some questions about 25 Exhibit No. 7. So if you can have that in front of

Page 10 1 you. 2 Actually, let me do two other 3 exhibits first. If we could pull out Exhibit 6, 4 please, Madam Court Reporter. 5 (Plaintiff's Exhibit No. 6 was marked 6 for identification.) 7 Q BY MR. LORELLI: Dr. Weissman, do you 8 recognize what we've marked as Weissman Exhibit 9 No. 6? 10 A Yes, I do. 11 Q And what is it? 12 A It's a claim construction order in the 13 Ancora/Apple matter. 14 MR. LORELLI: Madam Court Reporter, can we pull 15 out Exhibit No. 12. 16 (Plaintiff's Exhibit No. 12 was marked 17 for identification.) 18 Q BY MR. LORELLI: Dr. Weissman, we've marked 19 as Exhibit No. 12 a document. 20 Do you recognize it? 21 A I don't recall seeing this document before. 22 Q What is the title of the document, sir? 23 A The title of the document is "United States 24 Court of Appeals for the Federal Circuit, Ancora 25 Technologies, Incorporated Plaintiff-Appellate	Page 12 1 IPR/CBMs. 2 Q So you agree with that statement at least 3 as of today for all proceedings. 4 MR. CLAASSEN: Objection to form. 5 THE DEPONENT: I'm not an attorney, so can you 6 please repeat the words? 7 Q BY MR. LORELLI: Sure. 8 The language was -- the question was do you 9 agree that claim terms are given their ordinary and 10 accustomed meaning as would be understood by one of 11 ordinary skill in the art? 12 MR. CLAASSEN: Objection to form. 13 THE DEPONENT: I would add in the time frame of 14 the matter under consideration. 15 Q BY MR. LORELLI: So the answer is yes with 16 your qualifier -- 17 A Yes. 18 Q -- is that right? 19 A Yes. 20 Q If I could -- you studied the claims of the 21 '941 patent in detail; correct? 22 A That's correct. 23 Q And did you find any concepts recited in 24 the claims that were not conventional or well known 25 to persons of ordinary skill in the art before
Page 11 1 versus Apple, Incorporated Defendant-Cross 2 Appellant." 3 Q You don't recall seeing that document 4 before? 5 A Sitting here I don't recall. 6 Q Do you agree, sir, that -- well, let me 7 back up. 8 You've done a declaration with regards to 9 claim construction that was the Exhibit No. 9; 10 correct? 11 A Yes, that's correct. 12 Q Do you agree with me, sir, that claim terms 13 are given their ordinary and accustomed meaning as 14 would be understood by one of ordinary skill in the 15 art? 16 MR. CLAASSEN: Objection to form. 17 THE DEPONENT: It depends what context we're 18 talking about. 19 Q BY MR. LORELLI: Let me ask you to go to -- 20 well, what do you mean? What type of context? 21 A Well, there's a different standard in -- 22 formerly in IPR and CBM proceedings, which was the 23 BRI standard. What you've cited to is the Phillip 24 (phonetic) standard which is typically in District 25 Court cases and now is also standard I believe for	Page 13 1 1988 -- I'm sorry -- 1998? Do you need me to repeat 2 that, sir? 3 A I do. 4 Q Based on your review of the '941 patent and 5 its related materials, did you find any concepts 6 recited in the claims that were not conventional or 7 well known to persons of ordinary skill in the art 8 before 1998? 9 A (Deponent reviewing document.) 10 I didn't find any terms that were 11 nonconventional. But I would not agree that all 12 terms have clear meaning. 13 Q Can I ask you to get Exhibit No. 7 in front 14 of you, sir? Do you have it? 15 A I do. 16 Q Could you go to paragraph 11 that's on 17 page 4? 18 A (Complies.) I'm there. 19 Q Could you read the last sentence into the 20 record, please? 21 A "For example, Figure 2 only" -- "(one 22 of only two figures in the '941 patent) 23 depicts these four basic steps." 24 Q Perhaps we are miscommunicating. Is it 25 Exhibit 7 that you have in front of you, sir?

Page 14 1 A It is Exhibit 7. 2 Q And Exhibit 7 is your declaration in the 3 HTC/CBM; correct? 4 A It is. 5 Q And could you go to paragraph 11? 6 A I'm sorry, I was on page 11. 7 Q Ah. 8 A My mistake. The last sentence in 9 paragraph 11? 10 Q Paragraph, yeah. 11 A Paragraph 11 states: 12 "Based on my review of the '941 patent, 13 I did not find any concepts recited in the 14 claims that were not conventional and well 15 known to persons of ordinary skill in the art 16 before 1998." 17 Q And I asked you that question and you had a 18 qualifier in your testimony. Do you recall that 19 just a minute ago? 20 A I do. 21 Q And you said "not all terms have clear 22 meaning"? 23 A I did say that, yes. 24 Q What term or terms are you referring to? 25 A I'm referring to the term "agent."	Page 16 1 is referring to that abstract idea, yes. 2 Q BY MR. LORELLI: And you think that the 3 claims are directed to controlling access based on 4 data stored in a particular location; correct? It 5 was paragraph 50 in your declaration, if you care to 6 look at it. 7 A (Deponent reviewing document.) 8 That's what it states in paragraph 50. 9 Q And that's your testimony? 10 A Yes. 11 Q Can you turn back to page 12, paragraph 34. 12 A Yes. 13 Q Do you have it, sir? 14 A I do. 15 Q Above paragraph 34 there's a figure from 16 the patent. 17 A I see it. 18 Q Are you familiar with it? 19 A I am. 20 Q And are you familiar with the claims have a 21 four-step process in them? 22 A Well, this embodiment is showing four 23 steps. 24 Q Do you agree that claim 1 of the '941 25 patent claims those four steps?
Page 15 1 Q Any other terms, sir? 2 MR. CLAASSEN: Objection. Relevance. 3 THE DEPONENT: As I stated, in the CBM 4 declaration there were other terms that I determined 5 were indefinite. 6 Q BY MR. LORELLI: What terms were those? 7 And perhaps you can point me to that. 8 A Paragraph 75, the "unique key" of claim 5 9 is indefinite. Claim 16, paragraph 83, "second 10 non-volatile memory" is indefinite. Claim 17, "the 11 license record" is indefinite. That appears to be 12 the scope. 13 Q Let's talk about -- is it your opinion that 14 claim 1 of the '941 patent is directed to 15 controlling access based on data stored in a 16 particular location? 17 A I'm sorry, can you repeat the question? 18 Q Sure. 19 Is it your opinion that the claims -- I'm 20 sorry. Is it your opinion that the claim 1 of the 21 '941 patent is directed to controlling access based 22 on data stored in a particular location? 23 MR. CLAASSEN: Objection. Relevance. 24 THE DEPONENT: (Deponent reviewing document.) 25 As I stated in the CBM declaration, claim 1	Page 17 1 A (Deponent reviewing document.) 2 Claim 1 is referring to the functions of 3 selecting, setting up, verifying and acting. 4 Q Can those four -- let me ask this question. 5 Are those four steps an algorithm in your 6 view? 7 A A figure is not an algorithm, no. 8 Q So you're telling me that in your view you 9 would not -- you would not opine that the four steps 10 shown in Figure 2 -- strike that. That's a poorly 11 worded question. 12 Your testimony is that Figure 2 does not 13 show an algorithm; is that true? 14 A Figure 2 contains four verbs: Selecting, 15 setting up, verifying, acting. To me that's not an 16 algorithm. It's not even close. 17 Q What does one have to -- what 18 qualifications does something have to have to be an 19 algorithm in your view, sir? 20 A Algorithm has to describe how to do 21 something. 22 Q And what does Figure 2 describe how to do? 23 MR. CLAASSEN: Objection. Form. 24 THE DEPONENT: Figure 2 is just describing 25 high-level functional steps. It doesn't tell me how

Page 18 1 to do it. 2 Q BY MR. LORELLI: So Figure 2 shows four 3 steps; correct? 4 A Four functional steps. 5 Q And those steps -- four functional steps in 6 your view is not an algorithm; is that fair? 7 A Certainly not looking at the figure. But 8 also in the way it's described in the specification 9 I conclude that there is no algorithm. 10 Q Tell me what an algorithm would be for the 11 first step. 12 MR. CLAASSEN: Objection. Form. 13 THE DEPONENT: An algorithm would disclose 14 software that tells you how to make such a selection 15 from where you're selecting, what are the parameters 16 of that selection, how it works, how you do it. 17 Q BY MR. LORELLI: Tell me what an algorithm 18 would be for the last step, acting. 19 MR. CLAASSEN: Objection. Form. 20 THE DEPONENT: An algorithm for the acting step 21 would tell you, you know, what actions are 22 performed, how they're performed, any contingencies 23 with respect to whether to perform that action and 24 so forth. 25 Q BY MR. LORELLI: When you say "how it is	Page 20 1 Q With regards to setting up you said 2 something about how it would be accomplished? 3 A Correct. 4 Q Can you give me an example of how -- or 5 what disclosure you would need to determine how that 6 was accomplished? 7 A In this particular case "setting up" refers 8 to verification structure. So I would need details 9 about the data structure, how it is initialized, how 10 it is used, what is using it, what is doing the 11 setting up, how is it doing the setting up. None of 12 that's present in the patent. 13 Q As one skilled in the art, would you know 14 how to do that? Let me be more specific in my 15 question, Doctor. 16 As one of ordinary skill in the art, would 17 you know how to set up a verification structure? 18 MR. CLAASSEN: Objection. Vague as to time. 19 THE DEPONENT: (Deponent reviewing document.) 20 I would likely know how to do it, but the 21 patent doesn't provide any details for me to figure 22 out how to do it. 23 Q BY MR. LORELLI: As one of skill in the 24 art, sir, would you know how to set up a 25 verification structure in the erasable non-volatile
Page 19 1 performed," what do you mean? 2 A I mean the specifics, offer instructions 3 and the logic contained within those and the context 4 of that. 5 Q For the third step, verifying, what would 6 be an algorithm for verifying in your view, sir? 7 MR. CLAASSEN: Objection. Form. 8 THE DEPONENT: Again, the specific software 9 instructions that show me -- that describe how to do 10 the verification with detail. 11 Q BY MR. LORELLI: And I'll finish it with 12 the last question. What algorithm would need to be 13 disclosed in your view for the setting-up step? 14 MR. CLAASSEN: Objection. Form. 15 THE DEPONENT: Again, like with the other 16 functional blocks, a setting-up algorithm would have 17 to describe, you know, how the setting up is being 18 done in specifics, what -- 19 Q BY MR. LORELLI: Can you -- I'm sorry, I 20 don't mean to speak over you. And I apologize and I 21 will try to avoid that. Sometimes with the delay on 22 these videoconferences it gets a little bit more 23 difficult. But I apologize. 24 You were saying, sir? 25 A My thought's finished.	Page 21 1 memory of the BIOS? 2 MR. CLAASSEN: Objection. Vague as to time. 3 THE DEPONENT: I would have to sit down and 4 develop an algorithm for doing that in the context 5 of the entire system. I've not thought about that. 6 I probably could do it. But the patent doesn't 7 provide me a roadmap for how to do it. 8 Q BY MR. LORELLI: As of 1998, you as one of 9 skill in the art, would you know how to set up a 10 verification structure in the erasable non-volatile 11 memory of the BIOS? 12 A I would know how to do that, but I would 13 need to bring in additional documents and additional 14 references to, for example, use the API software 15 routines of the BIOS. But I would have to develop 16 my own algorithm, and that's not disclosed in the 17 '941 patent. 18 Q But that's within your skill as one of 19 ordinary skill in the art as of 1998; correct? 20 A It would be obvious to one of skill in the 21 art how to do that in 1998 given understanding of 22 priority references. 23 Q I'm not asking about obviousness, sir. As 24 one of skill in the art, would you be able to set up 25 a verification structure in the erasable

Page 22 1 non-volatile memory of the BIOS in 1998? 2 A You're asking about enablement, which I 3 think is a legal issue. So that's not something 4 I've thought about. 5 Q I wasn't asking about enablement, sir. 6 Would one of ordinary skill in the art know how to 7 do that? And I can rephrase the question if you'd 8 like. I'm not asking a legal question. I'm asking 9 you as one of ordinary skill in the art providing 10 this declaration. 11 My question is, as of 1998 would one of 12 skill in the art know how to set up a verification 13 structure in the erasable non-volatile memory area 14 of the BIOS? 15 A They would likely have sufficient knowledge 16 to do that, yes. 17 Q If we could turn in your declaration, 18 please, to page 19. 19 A CBM? 20 MR. CLAASSEN: Which declaration are you 21 referring to? Which exhibit? 22 MR. LORELLI: Still Exhibit No. 7. Thank you 23 for the clarification, Brian. 24 THE DEPONENT: I'm there. 25 Q BY MR. LORELLI: It's talking about the ROM	Page 24 1 structure? 2 A No. Those are completely different things. 3 Q How are they different? 4 A File is an attraction of data stored on 5 persistent storage devices. It's a completely 6 different story. 7 Q In order to find something in a file 8 storage system you need to know where it is; 9 correct? 10 A To locate the bites of a file you need to 11 know where they're stored, true. 12 Q And that storage can be done via an 13 address; right? 14 A A disk has -- lays out its data in terms of 15 addresses. That's true. 16 Q Dr. Weissman, I'm sorry, but it was 17 breaking up on me. The video feed was breaking up 18 on me. Could we get that -- or maybe I can have 19 that answer read back to me, please. Or you can 20 repeat it. That's fine too. 21 A Yes, the bites of information on a disk 22 have an address. 23 Q And that address could be located in a file 24 structure. 25 A Well, a file is something that sits on top
Page 23 1 section of a BIOS. Do you see that? 2 A I do see that in paragraph 52. 3 Q And information can be stored in a ROM 4 section of the BIOS; correct? 5 A It can be at least once. 6 Q And the same is true for an EEPROM section 7 of the BIOS; correct? 8 MR. CLAASSEN: Objection. Vague. 9 THE DEPONENT: (Deponent reviewing document.) 10 It can be. And I'll qualify the previous 11 answer. Provided you have the interface and you're 12 given the software connection to do that. 13 Q BY MR. LORELLI: How is memory stored in 14 that BIOS area? 15 MR. CLAASSEN: Objection. Vague. 16 THE DEPONENT: Memory is stored, so I don't 17 understand the question. 18 Q BY MR. LORELLI: Sure. 19 Once you -- once something is stored there, 20 how do you find it then? 21 A You have to know the address. Memory has 22 addresses. Right? So to find it, you need to 23 know -- you need to locate the address for the 24 memory in question. 25 Q And that address would be similar to a file	Page 25 1 of all of that. Talking about a physical disk, 2 bites of information are stored at various 3 locations. A file is a completely different thing. 4 File is something that wraps all of that. File is 5 something a programmer sees. 6 Q In the BIOS how is that information stored, 7 whether it be in ROM or EEPROM? 8 MR. CLAASSEN: Objection. Vague. 9 THE DEPONENT: How is what information stored? 10 Q BY MR. LORELLI: Any information. Is there 11 a file system? 12 A It would probably depend on particular BIOS 13 implementation but generally probably not. File 14 systems are created by operating systems, and the 15 operating system hasn't even run yet. 16 Q So the BIOS still has addresses to store 17 information. 18 A Well -- 19 Q I'm sorry, the -- 20 A BIOS is a set of instructions that are 21 stored in a memory. 22 Q And how are those instructions located? 23 A On most computing devices the hardware is 24 programmed to power on, go to a specific address in 25 the BIOS and start executing those instructions.

Page 26 1 Q Do you agree that the claims of the '941 2 patent used BIOS memory as memory to store data? 3 A (Deponent reviewing document.) 4 To the extent a licensed record or a key is 5 data, then I would agree to that. 6 Q Let's go to paragraph 54 in your 7 declaration, sir. It's Exhibit No. 7. 8 A Okay. 9 Q Can you read into the record the second 10 sentence of paragraph 54. 11 A "The claims describe the use BIOS 12 memory as memory to store data." 13 Q Do you agree with that sentence? 14 A I wrote it, so I agree. 15 Q And do you also agree that there's nothing 16 in the claims that specifies how to write data into 17 BIOS memory? 18 A (Deponent reviewing document.) 19 I would agree to that. 20 Q You also would agree that the specification 21 discloses EEPROM manipulation commands as the 22 mechanism to set up a verification structure in the 23 erasable non-volatile memory area of the BIOS; 24 correct? 25 MR. CLAASSEN: Objection to form.	Page 28 1 Q And that is the portion of the BIOS that's 2 the erasable non-volatile memory area of the BIOS; 3 correct? 4 A EEPROM is erasable memory, yes. 5 Q So you will agree with me, sir, that the 6 specification discloses using EEPROM manipulation 7 commands to set up the verification structure in the 8 erasable non-volatile memory area of the BIOS; 9 correct? 10 MR. CLAASSEN: Objection to form. 11 THE DEPONENT: Well, in the paragraph we just 12 read it doesn't say to set up a verification 13 structure. It's describing some basic operations. 14 Q BY MR. LORELLI: Does it say to store the 15 licenses? 16 MR. CLAASSEN: Objection to form. 17 THE DEPONENT: (Deponent reviewing document.) 18 It does say to add licenses, yes. 19 Q BY MR. LORELLI: What's in a verification 20 structure, sir? 21 A (Deponent reviewing document.) 22 It's a structure of information that is 23 required to do verification of the program. 24 Q And the claim calls for it having a license 25 record; correct?
Page 27 1 THE DEPONENT: (Deponent reviewing document.) 2 Well, I would agree that the invention -- 3 summary of the invention does describe using EEPROM. 4 But column 6 is -- in the detailed description 5 describes the setting up process of a verification 6 structure, and there it doesn't mention EEPROM 7 commands. 8 Q BY MR. LORELLI: So let's go to where it 9 does mention it. You said that was in the summary 10 of the invention? 11 A Yes. 12 Q And I'm looking at column 1, line 65 13 through column 2, line 9. 14 MR. CLAASSEN: Just to be clear, we've now 15 switched to Exhibit No. 1? 16 MR. LORELLI: Correct. 17 THE DEPONENT: Okay. 18 Q BY MR. LORELLI: Are you familiar with that 19 portion of the specification, sir? 20 A I am. 21 Q And would you agree with me that that 22 portion of the specification discloses using EEPROM 23 manipulation commands to add, modify or remove 24 licenses? 25 A That's what the spec says, yes.	Page 29 1 A At least one license record, yes. But it 2 doesn't say what "setting up" means. 3 Q Would you agree that using EEPROM 4 manipulation commands are conventional techniques to 5 write to the erasable non-volatile memory area of 6 the BIOS? 7 MR. CLAASSEN: Objection to form. 8 THE DEPONENT: (Deponent reviewing document.) 9 They're not invented because they already 10 have been developed by others and used. But they're 11 not easy to use, and the specification doesn't tell 12 you how to use them or what they are. 13 Q BY MR. LORELLI: So you -- they're not -- 14 let me back up a question. 15 Is it your opinion that those EEPROM 16 manipulation commands are conventional techniques? 17 A (Deponent reviewing document.) 18 I would agree they're conventional 19 techniques. 20 Q But you say they're not easy to use. What 21 did you mean by that, they're not easy to use? 22 A They're fairly low level. And low level -- 23 Q What does that mean, sir? 24 A "Low level" means that the programmer has 25 to deal with a lot of details than they would from

Page 30 1 higher-level routines. 2 Q Are you familiar with standards to write 3 information to the erasable non-volatile memory area 4 of the BIOS as of 1998? 5 A (Deponent reviewing document.) 6 I believe there are some specifications 7 that do describe how to do that. 8 Q And in fact you testified that one of skill 9 in the art would know of those specifications, 10 right, as of 1998? 11 A One of skill in the art would know where to 12 look for those specifications. 13 Q And one of skill in the art would know how 14 to use those specifications, right, sir, as of 1998? 15 A It would be obvious to a person of ordinary 16 skill in the art how to do that. 17 Q Not asking about obviousness, sir. Would 18 one of ordinary skill in the art know how to use 19 these specifications with regards to writing to the 20 erasable non-volatile memory area of the BIOS in 21 1998? 22 MR. CLAASSEN: Objection to form. 23 THE DEPONENT: I believe I answered the 24 question. 25 Q BY MR. LORELLI: And what was the answer,	Page 32 1 above that. So I use BIOS and use those structures, 2 but I don't write drivers for BIOS or other... 3 Q When you say you use those structures, what 4 did you mean? What structures do you use? 5 A I've taught how to use BIOS in operating 6 system classes, how to access it, what it is, how 7 it's implemented, those kinds of things. 8 Q And what structures were you referring to 9 in BIOS in your earlier answer? 10 A Which earlier answer? 11 Q When you were talking about writing BIOS, 12 or using BIOS. 13 A I'm sorry, was it the question you just 14 asked? 15 Q Yes. Two questions ago. I'll ask it 16 again. 17 When you discussed interacting with 18 structures of the BIOS, what structures are you 19 referring to? 20 A I'm talking about explaining the different 21 implementations, flash memory, different ways it is 22 implemented and describing that to students. 23 Q And when you teach about how to access it, 24 how do you access it? 25 A I describe sort of different high-level
Page 31 1 sir? 2 A It would have been obvious to one of 3 ordinary skill in the art how to do that. 4 Q I'm not asking about obviousness, sir. My 5 question didn't have an obviousness component to it. 6 I'm asking would one of ordinary skill in 7 the art know how to use the specifications in 1998 8 to write to the erasable non-volatile memory area of 9 the BIOS? 10 MR. CLAASSEN: Objection. Asked and answered. 11 THE DEPONENT: If a person of ordinary skill in 12 the art was given those specifications, the answer 13 is yes. There are no specifications alluded to in 14 the '941 patent. 15 Q BY MR. LORELLI: Do you know what EEPROM 16 manipulation commands are, sir? 17 A It's a set of commands to operate on 18 erasable read-only memory. 19 Q Have you ever written such a manipulation 20 command? 21 A I don't write software at that level, yes 22 [sic]. So no. 23 Q You work on software at the higher level; 24 right? 25 A I work in operating systems and layers	Page 33 1 approaches to doing that. We don't actually do it 2 in class, but I talk about different ways of 3 flashing BIOS memory, those sorts of things. 4 Q I was asking about accessing, not flashing. 5 What do you teach about accessing BIOS memory? 6 A I teach that it can be accessed and here's 7 different methods of doing it. We don't actually do 8 it. 9 Q So your students are expected to be able to 10 access them based on your high-level description? 11 A My students are expected to understand the 12 process, not necessarily reproduce it. 13 Q Have you ever used the term "agent" before 14 in your classes? 15 A I've been teaching for over 25 years. I 16 would imagine the term came up. We've read in many 17 classes research papers that probably have used that 18 term. 19 Q And how is that term used in your field, 20 sir? 21 A In my opinion it is used essentially as a 22 nance [sic] for software. It's a marketing term. 23 It has -- any software one could describe as an 24 "agent," and I've seen that happen. 25 Q So you're saying it's a word to describe

1 software?

2 **A I'm saying many people in -- certainly in**
 3 **the '90s time frame tended to sprinkle the pixie**
 4 **dust "agent" on any software to make it seem more**
 5 **exciting, more marketable. But at the end of the**
 6 **day it was just software.**

7 Q So in your experience with the term "agent"
 8 it was used to refer to software; correct?

9 **A In my specific experience, generally**
 10 **speaking it referred to software. Occasionally**
 11 **there are papers that talk about, you know, hardware**
 12 **agents. Generally speaking the term was referring**
 13 **to some kind of software.**

14 Q Let me ask you to pull up Exhibit No. 9
 15 that was previously marked, sir.

16 MR. CLAASSEN: Marc, if you're switching to
 17 another exhibit, can we take a two-minute bathroom
 18 break?

19 MR. LORELLI: Certainly. You guys want to take
 20 ten minutes?

21 THE DEPONENT: That's fine.

22 MR. LORELLI: That's okay?

23 MR. CLAASSEN: Yeah.

24 MR. LORELLI: We'll meet back at whatever 30 is
 25 for you. 9:30?

1 MR. CLAASSEN: Yes. Sounds good.

2 MR. LORELLI: Thank you.

3 (Recess taken from 9:20 a.m. to
 4 9:30 a.m.)

5 Q BY MR. LORELLI: Dr. Weissman, I asked you
 6 to pull up Exhibit No. 9, which is your more recent
 7 declaration.

8 **A I got it.**

9 Q Paragraph 5 -- let me back up.
 10 Paragraph 3 references your earlier HTC
 11 declaration; correct?

12 **A Yes, it does.**

13 Q And that declaration has a claim
 14 construction section that we went at least partially
 15 through; right?

16 **A It did.**

17 Q And we had talked about "agent" at some
 18 length; right?

19 **A We had questions about "agent," yes.**

20 Q And you identified some other terms that
 21 were I think vague or something along those lines;
 22 right? Terms that didn't have a clear meaning was
 23 your language.

24 **A Yeah.**

25 Q You identified some of those for me.

1 **A We did talk about some additional terms,**
 2 **yes.**

3 Q Paragraph 5 in your Exhibit 9 states:

4 "In forming my opinions, I've reviewed
 5 the '941 patent, the prosecution history of
 6 the '941 patent (including the reexamination
 7 file history), the August 26...declaration of
 8 Ian Jestice, and the documents cited by
 9 Mr. Jestice."

10 Do you see that?

11 **A Yes, I do.**

12 Q When you reviewed all of those items, was
 13 there anything about your current -- I'm sorry, the
 14 previous declaration that you wanted to change
 15 except for the stuff that's identified in Exhibit 9?

16 **A No, there's not.**

17 Q In your HTC declaration for the CBM you had
 18 said that "agent" could mean software, hardware or
 19 any combination; right?

20 **A Under BRI standard, yes.**

21 Q Under a District Court standard is that
 22 true?

23 **A As I say in the declaration, I'm generally**
 24 **agreeing with Dr. Jestice that it's software**
 25 **generally. And that's -- I would agree to that.**

1 Q And you know what software is, sir; right?

2 **A I do.**

3 Q What is it?

4 **A It's instructions that are used to program**
 5 **a computer, that run a computer.**

6 Q And that's well known in your art; correct?

7 **A The term "software" is well -- people all**
 8 **believe they have an understanding.**

9 Q In paragraph 8, can you tell me why you've
 10 included paragraph 8 in your declaration of
 11 Exhibit 9?

12 **A (Deponent reviewing document.)**

13 **Well, because this declaration relates --**
 14 **or restates opinions from the CBM declaration. That**
 15 **is what is being disclosed in paragraph 8.**

16 Q But you just told me that that applied for
 17 broadest reasonable interpretation, not for District
 18 Court interpretation; correct?

19 **A I did say that. Here I'm really talking,**
 20 **broadly speaking, outside the context of Pickler**
 21 **(phonetic) patent.**

22 Q Even though you say "claim 1" in the first
 23 sentence, that was a typo perhaps?

24 **A No, it wasn't a typo. But the second**
 25 **sentence says "The term 'Agent...' I'm talking,**

1 **you know, the term "agent" broadly speaking.**

2 Q You're not talking about the term "agent"
3 in claim 1 of the '941 patent; is that -- am I
4 right?

5 **A I'm speaking about "agent" broadly. That**
6 **would be to say its hardware and software is the**
7 **BRI, meaning applied in the CBM declaration. In**
8 **the -- in this declaration for the District Court,**
9 **this claim construction declaration, I'm agreeing**
10 **that it could be software and generally it would be**
11 **software.**

12 Q Now, tell me for -- and you agree that the
13 specification discloses EEPROM manipulation commands
14 for the agent; correct?

15 MR. CLAASSEN: Objection to form.

16 THE DEPONENT: I think we went through this. I
17 think the specification talks about EEPROM
18 manipulation routines, but it doesn't mention
19 "agent" at all. So there's no discussion of
20 "agent."

21 Q BY MR. LORELLI: I know there's no use of
22 the term "agent," which you've told me generally
23 would be software; correct?

24 **A "Agent" is generally -- I would agree to**
25 **say that "agent" is generally software.**

1 Q And you'll agree with me that EEPROM
2 manipulation commands is software that writes to the
3 erasable non-volatile memory area of the BIOS as
4 disclosed in the specification?

5 **A That may be what EEPROM manipulation**
6 **commands do in some general abstract -- in some**
7 **sense. But the patent doesn't say the agent is**
8 **using those in some sort of algorithmic way to**
9 **achieve any goals. It's not even saying anything**
10 **about an agent.**

11 Q If you were to -- well, you're one of skill
12 in the art; right?

13 **A At least, yes.**

14 Q And you've read the '941 patent; right?

15 **A Yes, I have.**

16 Q You've read the claims.

17 **A Yes, I have.**

18 Q And in fact you've read the prosecution
19 history in detail; right?

20 **A Yes, I have.**

21 Q And that examiner understood what the term
22 "agent" meant in the claims, right, in order to
23 allow the patent?

24 MR. CLAASSEN: Objection to form.

25 THE DEPONENT: He allowed the patent to go

1 through. I don't know what the examiner felt or
2 thought beyond that.

3 Q BY MR. LORELLI: You've reviewed the
4 reexamination file history; right?

5 **A Yes, I have.**

6 Q The reexamination examiners must have
7 understood what the claims meant in order to allow
8 that reexamination to go through; right?

9 **A I don't know what they understood, but they**
10 **did allow the claims to go through.**

11 Q You've also reviewed the Ancora/Apple
12 Federal Circuit decision; right?

13 **A Yeah, I have reviewed it, yes.**

14 Q You've reviewed the District Court claim
15 construction order from Ancora/Apple; right?

16 **A Yes, I have.**

17 Q And you've reviewed the Federal Circuit
18 decision in the Ancora/HTC case; right?

19 **A I have, yes.**

20 Q In all of the reading did you ever find
21 anything where the term "agent" was not understood?

22 MR. CLAASSEN: Objection to form.

23 THE DEPONENT: Sitting here I can't recall if
24 there was any language to that effect in any of the
25 back and forth.

1 Q BY MR. LORELLI: In fact, the examiner
2 identified the term "agent" to mean software
3 program; right?

4 MR. CLAASSEN: Objection to form.

5 THE DEPONENT: I don't recall the agent -- the
6 examiner identifying "agent" in any particular
7 manner in the written record.

8 Q BY MR. LORELLI: Do you recall HTC
9 identifying the "agent" as a software routine to the
10 Federal Circuit?

11 MR. CLAASSEN: Objection to form.

12 THE DEPONENT: I recall -- I recall that and I
13 believe I stated that.

14 Q BY MR. LORELLI: You stated that where?

15 **A I believe in the declaration.**

16 Q Could you point me to that?

17 **A I'm sorry, it was in the opposing -- I**
18 **think it was in the opposing declaration. I know I**
19 **saw it somewhere.**

20 Q And you don't disagree with it.

21 **A It's in the record.**

22 Q And in that declaration Mr. Jestice says
23 the EEPROM manipulation commands are what's
24 disclosed as the agent that writes to the erasable
25 non-volatile memory area of the BIOS; correct?

Page 42 1 MR. CLAASSEN: Objection to form. 2 THE DEPONENT: I can't recall if that's what he 3 said, but I disagree with it. 4 Q BY MR. LORELLI: Where in your declaration 5 do you say you disagree with that? 6 A (Deponent reviewing document.) 7 I say in paragraph 14 that EEPROM 8 manipulation commands does not refer to any specific 9 software routine. So to the extent an "agent" is 10 specific software, I don't see that the agent -- 11 disclosure of the agent performing, you know, a 12 specific software routine using EEPROM commands. 13 Q Because the term "agent" isn't used in the 14 specification. Is that what your opinion's based 15 on, sir? 16 A That and that there's no disclosure of a 17 software routine, an algorithm that is using those 18 commands to accomplish the function of goals of the 19 claims. 20 Q Would a person of ordinary skill in the art 21 know that these EEPROM manipulation commands refer 22 to conventional techniques? 23 A (Deponent reviewing document.) 24 They would know they're conventional, but 25 they would need the details in order to know how to	Page 44 1 conventional technique; that's your opinion? 2 A (Deponent reviewing document.) 3 As I said earlier, I'm not an attorney. 4 But in a means-plus-function claim I've been 5 informed that the structure performing that function 6 must be disclosed. And as I've said, it is not 7 disclosed. 8 Q Let's break this down a little bit. You 9 agree with me that the term "means" does not appear 10 in the '941 patent claims; correct? 11 A The word "means" does not appear, yes. But 12 that's not necessarily required for means plus 13 function. 14 Q Do you know that that creates a presumption 15 against your opinion? 16 A Well, I understand we -- I have to make a 17 case as to -- that it is in the absence of the term 18 "means" we have to provide evidence of its arguments 19 for that, that is functional [sic]. 20 Q If the claim language said a software 21 program for setting up the verification structure, 22 would you find that to be a means-plus-function 23 claim as well? 24 MR. CLAASSEN: Objection. Incomplete 25 hypothetical.
Page 43 1 write a software routine to form an algorithm using 2 them. 3 Q Do you agree with me, sir, that a patent 4 need not teach and preferably omits what is known to 5 those of ordinary skill in the art? 6 A I generally understand that to be true. In 7 the '941 patent, however, my understanding is that 8 the claims are written in a functional manner and 9 the requirement is that a structure for those 10 functions be disclosed. And that is what I'm noting 11 is absent. 12 Q Let me see if I've got this right, 13 Dr. Weissman. You believe that because of the use 14 of the term "agent" the '941 was required to put in 15 a specific set of instructions for the EEPROM 16 manipulation commands; is that fair? 17 MR. CLAASSEN: Objection to form. 18 THE DEPONENT: Because the steps -- the claim 19 steps performed by the agent are provided in purely 20 functional terms and the term "agent" is broadly 21 understood to be software, it is required that the 22 patent describe the details of that software and how 23 it works and the algorithmic aspects of that 24 software. 25 Q BY MR. LORELLI: Even if it's a	Page 45 1 THE DEPONENT: I hate to sort of venture an 2 opinion off the cuff, but very likely. 3 Q BY MR. LORELLI: If the claim language was 4 using software code to set up a verification 5 structure, would you have the opinion that that was 6 a means-plus-function limitation as well? 7 A Again, the same answer, provided that what 8 we're talking about is software code to carry out 9 some functional steps, so, for example, in claim 1. 10 Q So is that a "yes"? 11 A It's a "yes." 12 Q And you would hold those opinions even if 13 the functional step is conventional in the art; 14 correct? 15 A My understanding is even if it is 16 conventional, it is still -- the patent still has to 17 link to that structure and explain what that 18 structure is, at least provide a linkage to it. 19 Q So a patent needs to teach and cannot omit 20 things that are well known in the art. That's your 21 opinion, sir? 22 MR. CLAASSEN: Objection. Improperly 23 characterizes the witness's testimony. 24 THE DEPONENT: As I said, my understanding isn't 25 a claim that is means plus function. Claim written

Page 46 1 in functional terms as to very high level functions 2 that are being carried out. 3 The patent needs to provide either in the 4 claims themselves or absent that in the 5 specification what is the structure for 6 carrying out -- you know, what is performing those 7 steps and how is it performing those steps. And the 8 patent needs -- 9 Q BY MR. LORELLI: Even if it's conventional? 10 Even if it's conventional, sir? 11 A (Deponent reviewing document.) 12 My understanding is the structure has to be 13 made explicit. 14 Q What structure is there for a software 15 code? There's no structure to software code, is 16 there? 17 A I would disagree with that. A software 18 code is -- in the vast majority of cases has a 19 structure. It has sort of routines that describe 20 the details of how they carry out various functions. 21 They can represent algorithms that describe how to 22 solve a problem. So there certainly can be and is 23 structure in, you know, many, many software 24 routines. 25 Q But in your view, though, you can't claim	Page 48 1 Would that be acceptable to you? 2 A I don't know. I haven't done that 3 analysis. 4 Q Well, you're an expert. You're opining on 5 this issue. Would that be indefinite or would that 6 be acceptable? 7 MR. CLAASSEN: Objection. Improper 8 hypothetical. 9 THE DEPONENT: I don't -- I don't have an 10 opinion on that right now. I don't know how to 11 answer that. 12 Q BY MR. LORELLI: So I can't put software 13 code in the claim and you can't tell me whether I 14 can put manipulation commands in there. How am I 15 supposed to know what claim's acceptable or not to 16 you? 17 A Either you put it in the claim or you put 18 it in the specification. You describe the operation 19 of the software, what it's doing. Right? 20 Completely. You're telling me what it is, what are 21 the steps, what algorithm is being used. 22 It's not enough to say, well, it might use 23 these manipulation routines. What are those 24 manipulation routines? How are they being used? I 25 need the details, if it's functional, if the claim
Page 47 1 software that performs a function -- 2 MR. CLAASSEN: Objection. 3 Q BY MR. LORELLI: -- without it being 4 112(6)? 5 MR. CLAASSEN: Objection. Mischaracterizes the 6 witness's testimony. 7 THE DEPONENT: My understanding is you have to 8 supply enough details for what the software is doing 9 and how it's doing it, such as an algorithm, in 10 order to be able to point to structure. 11 Q BY MR. LORELLI: So, sir, it's your 12 testimony that someone cannot claim software to 13 perform a function without invoking 112(6); is that 14 true? 15 A That's a broad question. I don't know how 16 to answer that question. I was just sort of asked 17 in the context of this patent, these claims. And my 18 judgment in '941, the way these claims are written, 19 the meaning of "agent" -- or construction of agent, 20 potentially, I don't find structure. Broadly 21 speaking I don't know how to answer that question. 22 Q What if the claim was written using EEPROM 23 manipulation commands to set up a verification 24 structure in the non-erasable -- I'm sorry, in the 25 erasable non-volatile memory area of the BIOS?	Page 49 1 is written in a functional manner. That's my 2 understanding. 3 Q Do you know the type of claim that's at 4 issue in the '941 patent? 5 MR. CLAASSEN: Objection. Vague. 6 THE DEPONENT: I believe claims 1 and 2 are what 7 are being accused. 8 Q BY MR. LORELLI: Do you know that claim 1 9 is a method claim? 10 A It is a method claim. 11 Q Do you know of any difference between a 12 method claim and an apparatus claim, sir? 13 A My general understanding -- not legal 14 understanding -- as to "method" is how to do 15 something as a sequence of things that have to be 16 carried out for the -- to meet the invention, to 17 meet the claim. "Apparatus" I imagine is a thing, 18 something that you can hold, you can point to. 19 Q A structure, if you will. 20 A Structure. Yeah. 21 Q So for a method there are steps; right? 22 A That's correct. 23 Q And in the claim 1 of the '941 patent there 24 are four steps; right? 25 A There are four steps, limitations, whatever

Page 50 1 you want to talk about it. Yeah. 2 Q And those steps define a process, don't 3 they? 4 A (Deponent reviewing document.) 5 Well, "process" is a term that has a 6 meaning in computer science. So I would say the 7 steps describe kind of what the steps should be, so 8 kind of functionally what they are. So four 9 functional requirements. 10 Q So it's your opinion that the inventor of 11 the '941 patent couldn't patent his four-step 12 process without disclosing -- or without -- excuse 13 me -- requiring that the claim cover things that are 14 known to those skilled in the art are conventional? 15 MR. CLAASSEN: Objection. Mischaracterizes -- 16 MR. LORELLI: Let me ask that question one more 17 time. I'll save you, Brian. 18 Q It's your opinion that the inventor of the 19 '941 patent could not claim this four-step process; 20 correct? 21 A Well, they obviously did claim this 22 four-step process. 23 Q Well, but you say it's invalid, as 24 indefinite. 25 A Right.	Page 52 1 A Yes. By disclosing the details of the 2 software: How it works, who's performing it, what 3 are the algorithms. 4 Q So an algorithm is a multi-step process; 5 right? 6 A An algorithm is code that has a 7 mathematical basis that solves a particular problem 8 in a particular way containing details referring to 9 what computations are being done, what data 10 restrictions are being used and so on. So 11 algorithms have accompanying with them a lot of 12 detail, a lot of structure. 13 Q So the '941 inventor could not patent a 14 four-step process because they would have to include 15 a lot of detail and structure with regards to all 16 four of those steps; is that your testimony? 17 MR. CLAASSEN: Objection. Vague. 18 THE DEPONENT: My testimony is because "agent" 19 is used in the claims, and that is generally used to 20 refer to software or broadly speaking, then the 21 claims must provide specificity, even in a method 22 claim, as to how that software is carrying out those 23 steps and what software is carrying out those steps. 24 So either it's going to be in the claims or it needs 25 to be in the specification, and it's not. If it
Page 51 1 Q Right? 2 A Right. 3 Q So in your opinion the inventor could not 4 cover his inventive four-step process. 5 MR. CLAASSEN: Objection. Vague. 6 THE DEPONENT: In the earlier CBM declaration I 7 was asked to do analysis and concluded that claim 1 8 was invalid under various -- in various ways. 9 That's correct. 10 Q BY MR. LORELLI: Let's forget about all 11 your other opinions. Let's focus on your opinion 12 that "agent" is indefinite. 13 A Okay. 14 Q Okay? 15 It is your opinion that the '941 inventor 16 could not patent his four-step process as set forth 17 in claim 1 of the '941 patent. Is that your 18 opinion, sir? 19 MR. CLAASSEN: Objection. Vague. 20 THE DEPONENT: When you say "could not patent," 21 are you asking me is there a way to make this patent 22 valid? I don't understand your question. 23 Q BY MR. LORELLI: Is there a way to write a 24 claim that covers a process performed by software 25 that doesn't invoke 112(6)?	Page 53 1 were -- 2 Q BY MR. LORELLI: Could it be -- 3 A -- then that's a different story. 4 I'm sorry? 5 Q Could it be within the -- I'm sorry. Could 6 it be within the knowledge of one skilled in the 7 art? 8 MR. CLAASSEN: Objection. Vague. 9 THE DEPONENT: My understanding -- I said this 10 earlier -- is that for a means-plus-function claim, 11 which is what this is, if the actor is software, 12 there must be -- you cannot simply have software 13 running on a conventional computer. There has to be 14 a more detailed description of how that software 15 works, what algorithms it's using. That is my 16 understanding. 17 Q BY MR. LORELLI: Doctor, do EEPROM 18 manipulation commands, are they on a conventional 19 computer? 20 A Are they on a conventional computer? 21 Q Yeah. I'll make it even easier for you. 22 In 1998. 23 A Conventional computers that had EEPROM, if 24 they had EEPROM as opposed to just read-only memory, 25 they had EEPROM memories, then they had an ability

1 to presumably execute commands, manipulation
2 commands.

3 Q I'm sorry, your testimony is that
4 conventional computers in 1998 had EEPROM
5 manipulation commands on them? Is that your
6 testimony, sir?

7 MR. CLAASSEN: Objection. Mischaracterizes the
8 witness's testimony.

9 THE DEPONENT: My testimony is if a conventional
10 computer had an EEPROM memory, then it likely had
11 routines to manipulate that memory.

12 Q BY MR. LORELLI: Can you give me an
13 example?

14 A Example of what?

15 Q Well, you say that these general computers
16 had routines to manipulate that memory. What could
17 those general-purpose computers do?

18 A Well, general-purpose computers are
19 general-purpose computers. They will have a BIOS to
20 enable them to boot and execute hardware. So they
21 have ROM storing BIOS. They may have erasable
22 read-only memory.

23 Depends on the particular machine. And if
24 they have such memories, then there is some way in
25 which those memories can get used. Obviously that's

1 I can't remember offhand.

2 Q Let's go to Exhibit -- start with
3 Exhibit 12.

4 A Okay.

5 Q States on page 3:

6 "The specification describes a method
7 that it says overcomes those problems. In
8 particular, it discloses using the memory
9 space associated with the computer's basic
10 input/output system (BIOS), rather than other
11 memory space, to store appropriately
12 encrypted license information to be used in
13 the verification process."

14 Do you see that?

15 A Yes, I do.

16 Q Do you agree that that's a statement of
17 what the invention was?

18 A (Deponent reviewing document.)

19 I don't dispute that the patent describes
20 using the BIOS to store encrypted license
21 information. I don't dispute that.

22 MR. LORELLI: Did we mark Exhibit 11 already for
23 you there, sir?

24 MR. CLAASSEN: No.

25 MR. LORELLI: Madam Court Reporter, if we could

1 an obvious statement; right?

2 Q And how would you go about doing that as a
3 programmer?

4 A Well, as a programmer I would look for the
5 API that was needed for that particular chip set,
6 that particular read-only -- EEPROM memory. I would
7 have to go looking for that -- those documents. So
8 while the concept of EEPROM, having that in your
9 computer is conventional and the idea of reading and
10 writing to memory is conventional, the devil's in
11 the details. Right?

12 I would still need to go to find a
13 reference to tell me what the API is. How do I call
14 it? What parameters does it take? How do I get the
15 privilege to call it? You know, it may be
16 privileged memory and so forth. So I would need to
17 do some work, but I could do it. But it's --

18 Q So --

19 A Yeah. Done.

20 Q You've read the Federal Circuit opinions in
21 this case, right, for the '941 patent; right?

22 A I recall seeing them, yes.

23 Q They described the invention as -- what do
24 they describe the invention as?

25 A You would have to draw me to the document.

1 mark Exhibit 11, please.

2 (Plaintiff's Exhibit No. 11 was marked
3 for identification.)

4 Q BY MR. LORELLI: Could you -- do you know
5 what Exhibit 11 is, sir?

6 A It's the U.S. Court of Appeals Federal
7 Court [sic], Ancora versus HTC America. So it's an
8 appeal document.

9 Q Did you read this before?

10 A (Deponent reviewing documents.)

11 If it was cited by Justice in his
12 declaration, I have. Although sitting here I can't
13 recall.

14 Q I just would ask you to turn to page 3 and
15 let's read a sentence together. The last paragraph
16 on page 3, I believe it's the second sentence, it
17 says, quote:

18 "The inventive method uses a modifiable
19 part of the BIOS memory - not other computer
20 memory - to store the information that can be
21 used, when a program is introduced into the
22 computer, to determine whether the program is
23 licensed to run on that computer."

24 Do you see that?

25 A I do.

Page 58 1 Q Is any part of the inventive method related 2 to how the modifiable part of the memory is 3 modified? 4 A Are you asking in that sentence are they 5 pointing to any method or any -- 6 Q Correct. 7 A -- specifics? 8 Q Yeah. 9 A (Deponent reviewing document.) 10 It's a very high-level statement. There's 11 not any information in it, other than they've said 12 it's inventive in their opinion. 13 Q Can we go to page 4. And why don't you 14 read into the record the first sentence of that 15 paragraph. 16 A "Using BIOS memory, rather than other 17 memory in the computer, improves computer 18 security, the patent indicates, because 19 successfully hacking BIOS memory (i.e., 20 altering it without rendering the computer 21 inoperable) is much harder than hacking 22 the memory used by the prior art to store 23 license-verification information." 24 Q Dr. Weissman, you did that great but I 25 wasn't specific. I'd like you to read the first	Page 60 1 Q -- they've linked using E²PROM manipulation 2 commands with the setting up of the verification 3 structure; correct? 4 MR. CLAASSEN: Objection. Improper 5 hypothetical. And mischaracterizes the read 6 statement. 7 THE DEPONENT: (Deponent reviewing document.) 8 Could you read back the question? 9 Q BY MR. LORELLI: Sure. 10 We spent some time earlier today talking 11 about column 1, line 65 through column 2, line 5 of 12 the patent. 13 Do you recall that, sir? 14 A Yes, I do. 15 Q And that's where the patent discloses 16 E²PROM manipulation commands; right? 17 A It describes the use of those. 18 Q Yes. And do you see here the Federal 19 Circuit saying that the method calls for storage of 20 a license record in the verification structure? Do 21 you see that? 22 A Yes, I do. 23 Q And do you see that it links that 24 verification structure with the E²PROM manipulation 25 commands in the specification?
Page 59 1 sentence of the first full paragraph. 2 A On page 4? 3 Q Yes. 4 A Okay. I'm confused. I read what I thought 5 was the first sentence at the top of page 4. 6 Q The first full paragraph. Starts "More 7 specifically." 8 A Oh, below. Okay. The whole thing? 9 Q Just the first sentence. 10 A "More specifically: The method calls 11 for storage of a license record in a 12 'verification structure' created in a 13 portion of BIOS memory that, unlike the 14 ROM of the BIOS, 'may be erased or 15 modified' - for example, an Electrically 16 Erasable Programmable Read Only Memory 17 (E²PROM), which may be altered by 'using' 18 E²PROM manipulation routines [sic]." 19 Q Could you read the citation? 20 A Column 1, line 65 through column 2, line 5. 21 Q And that's the specification; correct? 22 A That is the specification. 23 Q So the Federal Circuit -- you know what 24 Federal Circuit is; right? 25 A Yes, I do.	Page 61 1 MR. CLAASSEN: Objection. Mischaracterizes the 2 quotation. 3 THE DEPONENT: (Deponent reviewing document.) 4 It says the storage of a license record in 5 the verification structure can be created in a 6 portion of the BIOS memory, for example, EEPROM 7 memory. 8 Q BY MR. LORELLI: And the Federal Circuit is 9 referencing the specification for that statement; 10 correct? 11 A Yes, they are. 12 Q And the Federal Circuit is linking the 13 E²PROM manipulation commands with the setting up of 14 the verification structure; correct? 15 MR. CLAASSEN: Objection. Mischaracterizes the 16 quotation. 17 THE DEPONENT: It doesn't say "setting up." It 18 just merely says "The method calls for storage of a 19 license record in a 'verification structure'..." So 20 one could read that as a verification structure 21 already has been set up. It doesn't say "setting 22 up." 23 Q BY MR. LORELLI: Do you know the difference 24 between "setting up" and "storing," sir, if any? 25 A Included in that would be, you know, how

Page 62 1 are -- in what structure are you storing this 2 information. The setup would include, could 3 include, must include a description of, you know, 4 how are you -- where are you writing and storing 5 this data? How are you doing it? Perhaps the kinds 6 of data structures being used. How are they 7 initialized? There's none of that detail, as I said 8 earlier. 9 Q After reading this portion of the Federal 10 Circuit opinion, do you stand by your opinion that 11 the patent does not disclose using EEPROM 12 manipulation commands to set up the verification 13 structure in the erasable non-volatile memory area 14 of the BIOS? 15 MR. CLAASSEN: Objection. Mischaracterizes the 16 witness's testimony. 17 THE DEPONENT: (Deponent reviewing documents.) 18 I would agree that the patent is saying, 19 and it's just being basically referred to here, 20 that -- the patent is saying EEPROM commands can be 21 used somehow in this setup process. But it doesn't 22 give you enough information. It doesn't give you 23 the detail that the claims require. 24 Q BY MR. LORELLI: And you -- but you do 25 agree that writing to that area of the BIOS is	Page 64 1 that sentence? 2 A Well, Jestice was referring to E²PROM 3 manipulation commands. So that's the commands I 4 believe he was referring to. 5 Q Now, if we just look at that first sentence 6 in paragraph 15. Do you agree with Mr. Jestice? 7 A (Deponent reviewing document.) 8 I would agree broadly that memories have, 9 like E²PROM, have manipulation commands. But one 10 would have to look to a specific reference, a 11 specific API to figure out how to make a software 12 routine using them. And that's what's not in the 13 '941. 14 Q Because you don't dispute the statement of 15 Mr. Jestice; right? You reference the prosecution 16 history. We'll get to that in a second. But you 17 don't dispute the statement in the first sentence of 18 paragraph 15; is that right? 19 A (Deponent reviewing document.) 20 I don't dispute it to the extent that "well 21 known" refers to "conventional." They're known that 22 there are these types of commands for memory. 23 Q I'm sorry, you agree with it because there 24 are well-known conventional commands for this type 25 of memory. I think we just were flipped on our --
Page 63 1 conventional; correct? 2 A It's conventional in the sense it's not 3 inventive. But how to do it you would need to get 4 an API, you'd need to look at other documents, 5 because it is very detailed. 6 Q And one skilled in the art would know how 7 to do that; right? 8 A They would know how to do that, but the 9 patent doesn't provide the linkage for them. It 10 doesn't say which API, which details to use. It 11 doesn't give you a roadmap for doing that. 12 Q Can we go to your declaration that's 13 Exhibit 9? 14 A Yes. 15 Q Specifically paragraph 15. And I'd like to 16 direct your attention only to the first sentence. 17 "Mr. Jestice further opines that 'Such 18 commands...are well-known to those skilled in 19 the art.'" 20 The first question for you, sir, is what 21 commands are you referring to here? 22 A I would have to see the Jestice declaration 23 to be able to know. It's his statement. 24 Q Well, it doesn't have a citation on it. Do 25 you know what you were referring to when you wrote	Page 65 1 A I said to the extent that "well known" 2 means that for memory in general there are commands, 3 read, write, erase, et cetera, and those exist. 4 Right? The devil's in the details. 5 Q Let me ask you this. Who wrote the rest of 6 paragraph 15? 7 A (Deponent reviewing document.) 8 I don't recall. It was written with myself 9 and attorneys. I don't recall who wrote specific 10 sentences, honestly. 11 Q Do you believe it, the rest of 12 paragraph 15? 13 A (Deponent reviewing document.) 14 That's what it says. I think there's a 15 typo. I think it's Office Action at 6, if I 16 remember. There may be just a citation error. 17 Q So you read this, because you knew there 18 was a typo. So you believe it -- 19 A I signed the declaration. 20 Q -- is that right? 21 A I support every -- I stand by every word in 22 the declaration. 23 MR. LORELLI: Madam Court Reporter, could we 24 mark Exhibit No. 2, please. It's the prosecution 25 history. So it's fairly thick.

Page 66 1 (Plaintiff's Exhibit No. 2 was marked 2 for identification.) 3 Q BY MR. LORELLI: First I'd ask you to turn, 4 Doctor, to ANC145 [sic]. 5 A I'm there. 6 Q Do you see -- in the first line, do you see 7 how the terms "programs" and "agent" are used 8 interchangeably? 9 A I see the term "programs" and the 10 parenthetical "agent" in quotes next to it. 11 Q Do you know who wrote this? 12 A (Deponent reviewing document.) 13 It would likely be a patent examiner. 14 Q So the patent examiner equated "programs" 15 with "agent"? 16 A In this sentence he seems to be doing that. 17 Or she. Sorry. 18 Q Let's go to ANC149. And is this the office 19 action response that you were citing in paragraph 15 20 of your declaration? 21 A (Deponent reviewing documents.) 22 I'm not certain. I don't see the quote, 23 "the present invention proceeds against the 24 conventional wisdom in the art," unless I'm missing 25 it.	Page 68 1 seems to be somewhat of a contradiction. 2 Q Is the contradiction that you're trying to 3 highlight that the patent teaches one to do it, 4 whereas one skilled in the art would not do it 5 normally? 6 A (Deponent reviewing document.) 7 The patentee is saying it's inventive. 8 Right? Person of skill would not consider using the 9 BIOS for any operation to do this invention. And 10 Jestice's characterization is that such commands are 11 well known and implying that they would of course 12 want to use them. Right? That's what I'm -- that's 13 all I'm saying there, that they would use them. 14 Q I'm a little confused, sir. So maybe we 15 can break that down. 16 Mr. Jestice was saying that the 17 manipulation commands of EEPROM were well known to 18 those skilled in the art; right? 19 A That's what he says. 20 Q The prosecution history does not contradict 21 that; correct? 22 A Not -- it's contradicting the kind of 23 meaning behind that statement that Jestice was 24 making and his other kind of description that, you 25 know, the commands are well known and, you know,
Page 67 1 Q Let's go to page 6. 2 MR. CLAASSEN: Just to be clear, you're talking 3 about ANCC154; right? 4 MR. LORELLI: Correct. Thank you. 5 THE DEPONENT: Okay. I was on 150. 6 (Deponent reviewing document.) 7 Okay. I see it now. Yes. 8 Q BY MR. LORELLI: And I'm not disputing that 9 these quotes came from the Office Action. What I'm 10 trying to understand is where did the patentee say 11 that manipulation commands were not well known to 12 those skilled in the art, as your declaration 13 states? 14 A (Deponent reviewing documents.) 15 I mean, my reading of the Jestice report is 16 the way he describes those commands he is sort of 17 implying that therefore one would consider using 18 them to develop algorithms or to use them to -- you 19 know, for this invention. They would be -- the 20 person of ordinary skill would be drawn to doing 21 that. 22 What I'm saying is while they're well 23 known, the patentee is sort of saying that you 24 wouldn't be drawn to using the BIOS, that one of 25 ordinary skill would not consider it. So there	Page 69 1 they would be -- a person of skill would know how to 2 use them to carry out this and would choose to use 3 those commands to carry out the invention. 4 That's what I'm -- that's the implication 5 of his statement, and that's what I'm saying is 6 contradicted by the patentee's comments. Not 7 actually the literal words, that narrow set of words 8 in the Jestice quote, but just that quote and the 9 implication of that. 10 Q I don't -- when you say "the implication of 11 that," what do you mean, sir? 12 A Would it be possible to look at the Jestice 13 report? I don't remember exactly. 14 Q Sure. If it's not marked in front of you 15 yet -- 16 A I don't know that it is. 17 Q -- it is Exhibit 8 in the stack. 18 So Madam Court Reporter, if we can mark as 19 Weissman Exhibit 8 the Jestice declaration. 20 (Plaintiff's Exhibit No. 8 was marked 21 for identification.) 22 THE DEPONENT: (Deponent reviewing document.) 23 And, yeah, in column -- paragraph 14 of the 24 Jestice report -- declaration he's describing a 25 person of ordinary skill would understand using

Page 70 1 EEPROM manipulation commands such as those in the 2 DMI specification to perform a particular step in 3 the method. 4 And that's what I'm responding to here, 5 that contradiction. But the patentee is saying it 6 would not -- a person of ordinary skill would not 7 consider the BIOS for any operation. So I'm saying 8 there's a contradiction there. 9 Q BY MR. LORELLI: Right. You believe that 10 one of skill in the art would not use the BIOS for 11 license verification; correct? 12 A I'm just drawing the contradiction in, you 13 know, information coming from Ancora. You're asking 14 me -- you're asking me my own opinion? 15 Q Yes. 16 A No. A person of ordinary skill, 17 understanding the importance of security, would seek 18 to make the system as secure as possible and would 19 look to using some sort of EEPROM or some sort of 20 read-only memory storage. They would just need to 21 look at other documents to figure out how to do it. 22 Q Maybe the '941 patent would do that for 23 them? 24 A I don't come to that conclusion, no. 25 Q The '941 patent tells one who's skilled in	Page 72 1 art at the same time. 2 Q What prior art is that, sir? What prior 3 art are you referring to in your answer? 4 A The prior art that I described in the CBM 5 declaration. 6 Q And do you recall what that prior art was? 7 A I recall some of the references, yes. 8 Q Do you recall a DMI specification? 9 A I do. 10 Q What do you rely on the DMI specification 11 for? 12 A A person of ordinary skill would look to 13 standards to get specific details of how to do -- 14 how to access read-only memory, for example. 15 Q And how to write to it? 16 A And how to write to it. 17 Q Back to ANC154. That sentence that you 18 just read, the last sentence in that paragraph is: 19 "An ordinary skilled artisan would not 20 consider the BIOS as a storage medium to 21 preserve application data for at least two 22 reasons." 23 Do you see that? 24 A I do. 25 Q And the next paragraph starts "First."
Page 71 1 the art to use EEPROM manipulation commands to use 2 the erasable portion of the BIOS; correct? 3 A But it doesn't tell me any sort of details 4 of what that API is and doesn't tell me how do I put 5 them together to perform an algorithm. I would have 6 to just do that on my own with what I can figure out 7 from prior art in putting it together. That '941 8 itself doesn't provide a roadmap for that, in my 9 opinion. That's what I've testified to. 10 Q Now, let's go back, if we could, to 11 Exhibit 2, ANC154. 12 A Okay. 13 Q You had quoted from that first full 14 paragraph about "the present invention proceeds 15 against conventional wisdom in the art." 16 Do you see that? 17 A Yes. 18 Q Do you agree with that statement? 19 A (Deponent reviewing document.) 20 Other art that predates the '941 patent 21 proposed this invention. That still might make it 22 nonconventional potentially. My statement is -- you 23 know, the purported invention in '941 may still be 24 proceeding against conventional wisdom, but it's -- 25 it's been -- it was obvious in light of other prior	Page 73 1 Could you take a moment and read that paragraph? 2 A The entirety of it? Or just the first 3 sentence? 4 Q Yes. The paragraph that starts with the 5 word "First." 6 A (Deponent reviewing document.) 7 Okay. I see that. 8 Q What does that paragraph mean to you as the 9 first reason that one of skill in the art would not 10 consider the BIOS as storage medium? 11 A That the operating system doesn't support 12 that functionality standardly because it doesn't 13 recognize it as a hardware device. 14 Q The -- I'm sorry. The operating system 15 does not recognize BIOS as a hardware device; 16 correct? 17 A That's what that first sentence is saying. 18 Q Do you agree with that? And when I say 19 "that," I mean your answer. 20 MR. CLAASSEN: Objection. Vague. 21 Q BY MR. LORELLI: Sure. Do you agree -- let 22 me back up. 23 You said that the BIOS doesn't recognize -- 24 I'm sorry -- the OS doesn't recognize the BIOS as a 25 storage device -- I'm sorry, as a hardware device.

Page 74 1 Do you agree that as of 1998 operating 2 systems did not recognize BIOS as a hardware device? 3 A It's true that most did not. I don't know 4 if it's true of all operating systems. For example, 5 embedded operating systems may well have done that. 6 Probably did that. 7 Q But you don't know sitting here today? 8 A I would guess some do. But I don't have 9 one to give you. 10 Q Let's go to the next paragraph that says 11 "Second." Can you take a moment and read the 12 paragraph that starts with the word "Second." 13 A (Deponent reviewing document.) 14 Okay. 15 Q And what is your takeaway from the 16 paragraph that starts with the word "Second" as a 17 reason why a skilled artisan would not consider BIOS 18 as a storage medium for license information? 19 A They're saying because there's no file 20 system in the BIOS, that that would make the BIOS 21 less attractive as a storage medium for license 22 data. That's what they're saying. 23 Q And when they say the "file system," it's a 24 file system accessible to the OS; correct? 25 A Correct.	Page 76 1 used to store things. No quibbling there. 2 Q Is it fair to say that that paragraph 3 simply refers to BIOS doesn't have a file system 4 that's accessible to the OS? 5 A (Deponent reviewing document.) 6 That's one of the points they're trying to 7 make. Although, you don't necessarily need a file 8 system interface to write data to memory storage 9 devices. I mean, databases do it. You don't 10 necessarily need a file system to put data on a 11 storage device. It's easiest to do it that way, but 12 it's not necessary. 13 Q Well, are you familiar with BIOS chips that 14 had a file system on them? 15 A Sitting here I'm not aware of those 16 particularly, no. But I don't need a file system to 17 write data. 18 Q I'm sorry? 19 A But I don't need a file system necessarily 20 to write data. 21 MR. LORELLI: Could we take a ten-minute break? 22 And I will not go another hour with you, 23 Dr. Weissman, so you can plan things. But I do have 24 a little bit more. 25 THE DEPONENT: I appreciate the heads up.
Page 75 1 Q BIOS memory is used to store information 2 and it has been for years; correct? 3 MR. CLAASSEN: Objection. Vague as to time. 4 Q BY MR. LORELLI: For decades. 5 A BIOS can store information. And by the 6 way, that information can be persistent much like a 7 file system. So I'm not sure I'm agreeing with the 8 full -- you know, the full meaning of this 9 paragraph. 10 Q Right. That BIOS can have a file system. 11 That's your testimony? 12 A No. That BIOS could -- the BIOS memory can 13 store data persistently. 14 Q I understand that. But what are you saying 15 with regards to the file system? 16 A Well, I'm saying if the point they're 17 trying to make is that, oh, you know, the file 18 system is -- the appeal of the file system is that 19 it is storing data persistently, which means it will 20 survive power reboots and such, that can still be 21 obtained with a BIOS -- BIOS read-only memory. 22 Q And it has been for years before the '941 23 patent; right? 24 A BIOS memory has been used -- yeah, it's 25 been used for -- ever since it was created it's been	Page 77 1 (Recess taken from 10:48 a.m. to 2 11:02 a.m.) 3 (Mr. Kiang is not present.) 4 MR. LORELLI: Back on. 5 Q Dr. Weissman, if I could ask you to turn to 6 Exhibit 8, which is the Jestice declaration. 7 A I'm here. 8 Q And specifically paragraph 13. And I want 9 to see -- you agree with the last statement in 10 paragraph 13 that "'Agent' is well-understood in the 11 art as a software program or routine"; correct? 12 A I don't know if I would agree that it is 13 "well understood." I would say it is used often 14 synonymously with software, at least in the terms of 15 the 1998 time frame. 16 Q I'm sorry, it just broke up on me a little 17 bit. It's used what? 18 A It's often used in the sense of a technical 19 marketing term for software. So it is often used -- 20 especially in that time frame, 1998, often used to 21 mean some sort of software. I don't know about 22 "well understood," because it's a very broad term. 23 But it's -- people have used it for various types of 24 software. 25 Q And have you looked at the various computer

1 dictionaries and their definition of the term
2 "agent"?

3 **A Oh, have I done that?**

4 Q Yes.

5 **A I've seen some, yes.**

6 Q And they all refer to it as a program of
7 some sort; correct?

8 **A Vast majority do. There may be some that**
9 **refer to it as hardware. But I would agree that the**
10 **vast majority would certainly refer to it as some**
11 **kind of software.**

12 MR. LORELLI: Madam Court Reporter, could we
13 mark in the folder Exhibit 13 as Weissman
14 Exhibit 13.

15 (Plaintiff's Exhibit No. 13 was marked
16 for identification.)

17 Q BY MR. LORELLI: Do you have it, sir?

18 **A I do.**

19 Q I'll represent to you that Exhibit 13 is
20 some pages from the Microsoft Press Computer User's
21 Dictionary. And I'll ask you to turn to the first
22 page and ask you whether you see the term "agent."

23 **A I do.**

24 Q Do you see how it refers to a program that
25 performs a background task?

1 **A I do.**

2 Q Now I'd like you to turn to the next
3 page -- actually, we can skip the next page. So two
4 pages ahead, page 103. Do you see that, page 103?

5 **A I do.**

6 Q Can you read for me what is the definition
7 for the term "device."

8 **A "A generic term for a computer**
9 **subsystem. Printers, serial ports, and**
10 **disk drives are often referred to as**
11 **devices; such subsystems frequently**
12 **require their own controlling software,**
13 **called device drivers."**

14 Q Can you turn to the next page, which is
15 127. And can you read for me the first definition
16 of "element."

17 **A "Any stand-alone item within a**
18 **broader context. For example, a picture**
19 **element (pixel) is one single dot on a**
20 **computer screen or in a computer graphic."**

21 Q So you agree with me that at least this
22 dictionary identifies "element" and "device" as
23 anything but yet "agent" is a program.

24 **A (Deponent reviewing document.)**

25 **Well, I'm not sure I would agree that**

1 **"element" or "device" are described as anything.**

2 **But "agent" is described as a program.**

3 MR. LORELLI: Let me ask you to go --

4 Can we mark, please, Exhibit 10.

5 (Plaintiff's Exhibit No. 10 was marked
6 for identification.)

7 Q BY MR. LORELLI: Dr. Weissman, can you
8 identify Exhibit 10 for us, please?

9 **A It is a document submitted in New York --**
10 **in the United States Court of Appeals for the**
11 **Federal Circuit, Ancora versus HTC America. And**
12 **it's an appeal.**

13 Q And it's submitted by HTC? You'll see it
14 on the front page in the bold in the middle.

15 **A "Brief of Appellees, HTC America."**

16 MR. CLAASSEN: Marc, this appears to be an
17 excerpt, just to be clear for the record. This is
18 not the entire document.

19 MR. LORELLI: That is correct.

20 Q And I'd like to direct your attention to
21 page 22, which is I think one of only a few pages in
22 there.

23 **A Yes.**

24 Q And I'd like you to read into the record
25 the last two sentences on the bottom of page 22.

1 **A "In contrast, the '941 Patent claims**
2 **are not directed to how to accomplish**
3 **setting up a verification structure in**
4 **BIOS. The claims simply direct an agent**
5 **(for example [sic], a software routine) to**
6 **do it without further explanation."**

7 (Mr. Kiang enters the deposition room.)

8 Q BY MR. LORELLI: Did you read that
9 verbatim?

10 **A I think so. Did I miss something?**

11 Q "EG" you replaced with something.

12 **A I'll read it again.**

13 **"In contrast, the '941 Patent claims are**
14 **not directed to how to accomplish setting up**
15 **a verification structure in BIOS. The claims**
16 **simply direct an agent (e.g., a software**
17 **routine) to do it without further**
18 **explanation."**

19 Q Sir, you agree that the agent step is one
20 step in a multi-step claim; correct?

21 **A (Deponent reviewing document.)**

22 **The patent is claiming that an agent**
23 **perform various steps.**

24 Q And in fact your declaration was used for
25 the CBM to complain that there was no description

Page 82 1 about how the agent worked in the claims and 2 therefore it should be invalid under Section 101; 3 correct? 4 MR. CLAASSEN: Objection. Relevance. 5 THE DEPONENT: I don't believe indefiniteness 6 was used for 101. I could be mistaken. 7 Q BY MR. LORELLI: No, sir. What I was 8 saying is that your opinion that there's no detail 9 in the claims with regards to what the agent does or 10 how the agent performs its task was one of your 11 complaints with regards to Section 101; correct? 12 A (Deponent reviewing document.) 13 Well, I have two sections: One talking 14 about the patent is not directed to patentable 15 subject matter, which my understanding is 101; and 16 then another section, the patent is indefinite 17 because the term "agent" is indefinite, essentially. 18 Q So you're looking at maybe page 19 for the 19 first part? 20 A Page 17 -- well, just the header. 21 Q So let's go to page 19. And you state -- 22 actually, it goes to page 20. In the sentence that 23 comes from paragraph 54 you state, quote: 24 "There is nothing in the claims that 25 specifies how to write data into BIOS memory	Page 84 1 quote: 2 "As requested by the Examiner during the 3 interview, a description of a specific 4 embodiment of the invention is attached 5 hereto." 6 Do you see that? 7 A Yes. 8 Q And have you reviewed that document? 9 MR. CLAASSEN: Objection. Vague as to "that 10 document." 11 THE DEPONENT: (Deponent reviewing document.) 12 Sitting here I don't recall that I've seen 13 that document. 14 Q BY MR. LORELLI: Can we go to paragraph -- 15 I'm sorry, Exhibit 9, your declaration? 16 A Okay. 17 Q And I'll ask you to go to paragraph 17. 18 And what are you referring to in paragraph 17? 19 A In the Jestice declaration he's referring 20 to a Beeble white paper, and I'm making some 21 statements about that. 22 Q And what Beeble white papers are you 23 referring to? 24 A (Deponent reviewing documents.) 25 It's the Beeble document that is on
Page 83 1 or read data from BIOS memory." 2 A That's what I wrote, yes. 3 MR. CLAASSEN: Just to be clear, we're talking 4 about Exhibit No. 7 now; right? 5 MR. LORELLI: That's correct, Brian. Thank you. 6 THE DEPONENT: That's what it says, yes. 7 Q BY MR. LORELLI: And you believe in that? 8 A I would add not only nothing in the claims, 9 but nothing in the specification either. 10 Q But yet Ancora was required to put such 11 limitations in their claims in order for it to be 12 valid, is your opinion; correct? 13 MR. CLAASSEN: Objection. Misstates the 14 witness's testimony. 15 THE DEPONENT: Either in the claims or in the 16 specification explaining the structure of how these 17 functional steps are carried out. 18 Q BY MR. LORELLI: Can we go to Exhibit 2, 19 please, sir? It's the prosecution history. It's 20 the thicker one that you have in front of you. 21 A Okay. 22 Q Do you see here, sir, that it says on 23 ANC129 -- so I'll give you a second to go to ANC129. 24 A Okay. 25 Q It says -- the second paragraph it says,	Page 85 1 pages 183 to 184 and then beyond in the ANCC record. 2 Q Is that in the prosecution history? 3 A (Deponent reviewing documents.) 4 Jestice is saying it's in the intrinsic 5 record. I note that the white paper is dated 2001, 6 which is after the submission of the patent 7 application. 8 Q And you noted that in your declaration; 9 right? 10 A Let me check. 11 (Deponent reviewing document.) 12 Yeah, that it was several years after the 13 filing date, yes. 14 Q And you reference it. So you reviewed that 15 white paper when you signed your declaration; right? 16 A I looked at it, yes. 17 Q Let's go to that white paper that's around 18 ANC183. Actually, let me ask you this, sir. 19 Do you dispute that this white paper that 20 includes ANC183 was in the intrinsic record? 21 A I have no opinion about that. I don't 22 know. 23 Q But you reviewed the white paper -- 24 A I looked at it. 25 Q -- correct?

Page 86 1 A Yes. 2 Q And you noted that it's dated 3 September 2001; right? 4 A Among other things, yes. 5 Q And you noted that it says "confidential" 6 on the footer. 7 A Every page says "confidential." 8 Q Did you review in the white paper where it 9 discusses the DMI specification? 10 A I noted that it did discuss a DMI 11 specification. I didn't poor into those details. 12 Q And what is the DMI specification again? 13 A It's a -- let me look at the details of 14 that. 15 (Deponent reviewing documents.) 16 I just want to get the precise words. 17 Q Sure. What are you looking at, though, 18 sir? What document? 19 A I'm sorry, I'm looking at my CBM 20 declaration. I just want to get the right words for 21 it. So it's a specification, defines the functions 22 that user applications could use to access the 23 general-purpose non-volatile memory to enable 24 non-BIOS services to use the general-purpose 25 non-volatile memory.	Page 88 1 MR. CLAASSEN: Objection to form. 2 THE DEPONENT: That's a complete hypothetical. 3 I don't know how to -- how to respond to that. I 4 don't know. 5 Q BY MR. LORELLI: Well, you're an expert, 6 sir. I'm allowed to ask hypothetical questions. 7 I'm allowed to ask any type of question, actually. 8 If the Beeble white paper was before the 9 examiner, the examiner was directed to the DMI 10 specification; fair? 11 MR. CLAASSEN: Objection. Calls for an improper 12 conclusion. 13 THE DEPONENT: Beeble document does refer to the 14 DMI. And if the examiner decides to pull it out, he 15 can do that. Or she. 16 Q BY MR. LORELLI: And the examiner allowed 17 the patent in its current form; correct? 18 A The current patent is valid. 19 (Nods head.) 20 So that was -- that was -- I mean, the 21 Patent Office agreed. 22 Q And then there was a reexamination. You're 23 familiar with that; correct? 24 A I am. 25 Q Who filed for that reexamination?
Page 87 1 Q Is it a standard that one can use to write 2 data to the BIOS? 3 A I believe it has -- it does describe how to 4 do that. 5 Q And in your declaration you say that that 6 standard was known as of the filing date? 7 A Yes, it was known as of the filing date. 8 Q And in fact in ANC183 it says that it's 9 been a standard that's been around for ten years? 10 A I'm sorry, you said it's in the Beeble 11 document? 12 Q ANC183, last paragraph. 13 A That's what it says -- that's what it said 14 in the Beeble document. 15 Q Well, do you know that for a fact, sir? 16 A I don't know if it's been ten years 17 exactly, but it predates the patent. 18 Q And you're aware that the examiner had this 19 white paper in front of him or her during 20 prosecution; right? 21 A As I said earlier, I'm not certain it's 22 part of the intrinsic record. I don't know. 23 Q If it was part of the intrinsic record, the 24 '941 patent would have been allowed in its current 25 form irrespective of the DMI specification; correct?	Page 89 1 A I believe that was Microsoft. 2 Q And are you aware that Microsoft said that 3 an "agent" means a software program to perform a 4 task? 5 A Yes, I am. 6 Q Do you have any opinion as to whether they 7 were right or wrong? 8 A As I think I've said earlier, "agent" is 9 broadly understood to be software. So I won't take 10 issue with that understanding. 11 MR. LORELLI: Dr. Weissman, thank you very much. 12 I know it was probably difficult for you to travel 13 on a Sunday. So I appreciate your time today. I've 14 got no further questions. 15 THE DEPONENT: Okay. 16 MR. CLAASSEN: No questions. 17 THE DEPOSITION OFFICER: Off the record? 18 MR. LORELLI: Yes. 19 (The deposition concluded at 11:26 a.m.) 20 --oOo-- 21 22 23 24 25

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I have read the foregoing deposition transcript
and by signing hereafter approve same.

EXECUTED this ____ day of _____, 2____,
at _____, _____.
(City) (State)

JON B. WEISSMAN, Ph.D.

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STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Catherine Elise Nadeau, Certified Shorthand
Reporter, Certificate No. 11528, for the State of
California, RPR, hereby certify:

I am the deposition officer that stenographically
recorded the testimony in the foregoing deposition;

Prior to being examined, the deponent was by me
first duly sworn;

The foregoing transcript is a true record of the
testimony given.

Dated: September 12, 2019.

Catherine Elise Nadeau

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Certified Shorthand Reporter No. 11528, RPR