IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ROKU, INC. and VIZIO, INC.,
Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

_____

Case IPR2021-01406
U.S. Patent No. 6,411,941 B1

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ANCORA TECHNOLOGIES, INC.'S REQUEST FOR DIRECTOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND OF THE CASE 3

- A. The ’941 Patent Significantly Advanced the State of the Art 3
- B. The Federal Circuit Rejected Three Different Attacks on the ’941 Patent 4
- C. Significant Companies Paid Large Sums to License the ’941 Patent 5

III. THE DIRECTOR SHOULD REVIEW AND REVERSE 7

- A. The Board Legally Erred in Finding Nexus Between the Low-Value [redacted] Licenses and the ’941 Patent 7
- B. Settlement Timing Is Not “Affirmative Evidence” of Nexus 11
- C. The Board Improperly Inverted the Burden of Proof 12

IV. THE BOARD ALSO ERRED IN FINDING THE LOW-VALUE LICENSES COUNTERBALANCED THE HIGH-VALUE LICENSES 13

V. THE DIRECTOR SHOULD TERMINATE THE PROCEEDINGS 14

VI. CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Alcon Research, Ltd. v. Apotex Inc.,
790 F. Supp. 2d 868 (S.D. Ind. 2011),
aff'd in part and rev'd in part, 687 F.3d 1362 (Fed. Cir. 2012) 13
Ancora Techs. v. HTC Am., Inc.,
908 F.3d 1343 (Fed. Cir. 2018) 4, 5, 15
Ancora Techs., Inc. v. Apple, Inc.,
744 F.3d 732 (Fed. Cir. 2014) 4, 5, 15
Ancora Techs., Inc. v. Roku, Inc.,
140 F.4th 1351 (Fed. Cir. 2025) ..... passim
Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.,
776 F.2d 281 (Fed. Cir. 1985) 13
Bosch Auto. Serv. Sols., LLC v. Matal,
878 F.3d 1027 (Fed. Cir. 2017) 10
ClassCo, Inc. v. Apple, Inc.,
838 F.3d 1214 (Fed. Cir. 2016) 13
Cole Kepro Int'l, LLC v. VSR Inds., Inc.,
695 Fed. Appx. 566 (Fed. Cir. 2017) 9, 10
Dabico Airport Sols. Inc. v. Axa Power Aps,
IPR2025-00408, 2025 WL 1710857 (PTAB June 18, 2025).....14
EWP Corp. v. Reliance Universal Inc.,
755 F.2d 898 (Fed. Cir. 1985) 9, 10
HTC Corp. v. Ancora Techs. Inc.,
CBM2017-00054, Paper 7 (PTAB Dec. 1, 2017) 15
In re Antor Media Corp.,
689 F.3d 1282 (Fed. Cir. 2012) 9, 10
Intel Corp. v. Advanced Cluster Sys., Inc.,
IPR2025-00794, 2025 WL 2369638 (PTAB Aug. 14, 2025) 15
Interactive Comm. Int'l., Inc. v. Blackhawk Network, Inc.,
IPR2024-00465, Paper 40 (PTAB Oct. 9, 2025).....1
Iron Grip Barbell Co. v. USA Sports, Inc.,
392 F.3d 1317 (Fed. Cir. 2004) 9, 10
Medtronic, Inc. v. Teleflex Innovations S.à.r.l.,
IPR2020-00127, Paper 107 (PTAB June 7, 2021),
aff'd 70 F.4th 1331, 1341 (Fed. Cir. 2023) 9
Pennsylvania R. Co. v. Chamberlain,
288 U.S. 333 (1933) 12

Samsung Elecs. Co. v. Ancora Techs., Inc.,
IPR2020-01184, Paper 11 (PTAB Jan. 5, 2021) 15
SAP Am., Inc. v. Valtrus Innovations Ltd.,
IPR2025-00414, 2025 WL 1909114 (PTAB July 10, 2025).....15
Siemens Mobility, Inc. v. Iancu,
825 Fed. Appx. 867 (Fed. Cir. 2020) 9, 10, 11
Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling U.S., Inc.,
699 F.3d 1340 (Fed. Cir. 2012) 8
WMS Gaming, Inc. v. Int'l Game Tech.,
184 F.3d 1339 (Fed. Cir. 1999) 13

Statutes

35 U.S.C. 316(e) 12

Other Authorities

Interim Processes for PTAB Workload Management,
USPTO Director's Memorandum (March 26, 2025) 15

Regulations

37 CFR § 42.75 1

LIST OF EXHIBITS

EXHIBIT NO.	TITLE
1001	U.S. Patent No. 6,411,941 to Mullor et al. ("'941 Patent")
1002	Image File Wrapper of U.S. Patent No. 6,411,941 ("File History")
1003	Declaration of Andrew Wolfe, Ph.D. ("Wolfe Decl.")
1004	U.S. Patent No. 4,658,093 ("Hellman")
1005	U.S. Patent No. 5,892,906 ("Chou")
1006	U.S. Patent No. 5,933,498 ("Schneck")
1007	Reserved
1008	Reserved
1009	Reserved
1010	Reserved
1011	Claim Construction Order, *Ancora Techs., Inc. v. Apple Inc.*, No. 4:11-cv-06357 (N.D. Cal. Dec. 31, 2012) (ECF No. 107).
1012	Final Claim Constructions of the Court, *Ancora Techs., Inc. v. LG Elecs., Inc.*, No. 1:20-cv-00034 (W.D. Tex. June 2, 2020) (ECF No. 69).
1013	Supplemental Claim Construction Order, *Ancora Techs., Inc. v. LG Elecs., Inc.*, No. 1:20-cv-00034 (W.D. Tex. Aug. 19, 2020) (ECF No. 93).
1014	Joint Claim Construction and Prehearing Statement, *Ancora Techs., Inc. v. TCT Mobile (US), Inc.*, No. 8:19-cv-2192 (C.D. Cal. July 17, 2020) (ECF No. 49)
1015	European Patent Application No. EP 0766165A2 ("'165 Application")
1016	U.S. Patent No. 5,724,425 ("'425 Patent")
1017	U.S. Patent No. 6,138,236 ("'236 Patent")
1018	U.S. Patent No. 5,802,592 ("'592 Patent")
1019	U.S. Patent No. 5,835,594 ("'594 Patent")
1020	Telephonic Markman Hearing, *Ancora Techs., Inc. v. TCT Mobile (US), Inc., et al.*, No. 8:19-cv-2192 (C.D. Cal. Oct. 15, 2020) (ECF No. 60)
1021	Telephonic Markman Hearing, *Ancora Techs., Inc. v. TCT Mobile (US), Inc., et al.*, No. 8:19-cv-2192 (C.D. Cal. Oct. 15, 2020) (ECF No. 69)
1022	Complaint, *Ancora Techs., Inc. v. TCL Corp., et al.*, No. 4:19-cv-00624 (E.D. Tex. Aug. 27, 2019) (ECF No. 1)

1023	U.S. Patent No. 5,734,819 ("Lewis")
1024	File Wrapper of *Ex Parte* Reexamination of U.S. Patent No. 6,411,941, Control No. 90/010,560 ("'560 Reexam File Wrapper")
1025	Order Re: Joint Stipulation Re Stay Pending *Inter Partes* Review, *Ancora Techs., Inc. v. Vizio, Inc.*, No. 2:21-cv-08534 (C.D. Cal.) (ECF No. 78)
1026	Order Granting Joint Motion to Stay Pending *Inter Partes* Review, *Ancora Techs., Inc. v. Roku, Inc.*, No. 6:21-cv-00737 (W.D. Tex.) (ECF No. 33)
1027	Order Granting Joint Motion to Stay Pending *Inter Partes* Review, *Ancora Techs., Inc. v. Nintendo Co., Ltd., et al.*, No. 6:21-cv-00738 (W.D. Tex.) (ECF No. 46)
1028	Board Email Authorizing Motion For Additional Discovery, May 27, 2022
1029	Plaintiff's Responsive Claim Construction Brief, *Ancora Techs., Inc., et al. v. LG Electronics, et al.*, Case No. 1:20-cv-00034-ADA (W.D. Tex., April 10, 2020) (ECF No. 50)
1030-1032	*Intentionally Left Blank*
1033	Declaration of Andrew Wolfe, Ph.D., in Support of Petitioners' Reply to Patent Owner's Response
1034	Transcript of the Deposition of Miki Mullor, July 12, 2022 (Confidential)
1035	Transcript of the Deposition of David Martin, Ph.D., July 14, 2022
1036	Plaintiff's Opening Claim Construction Brief, *Ancora Techs., Inc., et al. v. LG Electronics, et al.*, Case No. 1:20-cv-00034-ADA (W.D. Tex., March 20, 2020) (ECF No. 44)
1037	Denon DP-35F/DP-45F Instruction Manual, Nippon Columbia Co., Ltd.
1038	Excerpt from *Dictionary of Computing*, 4th ed., Oxford University Press, 1996
1039	U.S. Patent No. 5,568,552 to Davis
1040	Guttman, B., et al., *Computer Security*, National Institute of Standards and Technology, 1995)
1041	Kaliski, B., "PKCS #1: RSA Encryption," RFC 2313, The Internet Society, Network Working Group, March 1998
1042	U.S. Patent No. 5,724,425 to Chang et al.
1043	U.S. Patent No. 5,935,246 to Benson

1044 – 1049	*Intentionally Left Blank*
1050	[redacted] (Confidential)
1051	[redacted] (Confidential)
1052	[redacted] (Confidential)
1053	[redacted] (Confidential)
1054	[redacted] (Confidential)
1055	Petitioner's Demonstratives (Public)
1056	Petitioner's Demonstratives (Confidential)
1057	Teleconference Transcript (8/15/2025)
2001	Microsoft Corporation's Request for *Ex Parte* Reexamination Image File Wrapper, Control No. 90010560
2002	*Ancora Techs., Inc. v. Apple, Inc.*, 744 F.3d 732 (Fed. Cir. 2014)
2003	Deposition Excerpts of Jon Weissman, *Ancora Techs., Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919 (W.D. Wa. Sep. 9, 2019)
2004	Declaration of Ian Jestice, *Ancora Techs., Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919 (W.D. Wa. Aug. 26, 2019)
2005	Brief of Appellees HTC America, Inc. and HTC Corporation, *Ancora Techs., Inc. v. HTC America, Inc., HTC Corp.*, Case No. 18-1404 (Fed. Cir. Apr. 23, 2018)
2006	Declaration of Jon Weissman, *Ancora Techs., Inc. v. HTC America, Inc.*, Case No. 2:16-cv-01919 (W.D. Wa. Sep. 4, 2019)
2007	Terplan, Kornel, Morreale, Patricia, THE TELECOMMUNICATIONS HANDBOOK, CRC Press, 2000
2008	COMPUTER USER'S DICTIONARY, Microsoft Press, 1998
2009	MICROSOFT COMPUTER DICTIONARY FOURTH EDITION, Microsoft Press,1999
2010	PC MAGAZINE ENCYCLOPEDIA, available at https://www.pcmag.com/encyclopedia (excerpt, definition of "Agent")
2011	U.S. Patent No. 6,411,941 File History with Beeble White Paper
2012	Joint Claim Construction Chart, *Ancora Techs., Inc. v. TCT Mobile (US) Inc., Huizhou TCL Mobile Commc'n Co., Ltd., and Shenzhen TCL Creative Cloud Tech. Co., Ltd.*, Case No. 8:19-cv-02192 (Dkt. #49, 49-1, 49-2)
2013	Declaration of Dr. David Martin, Ph.D., *Sony Mobile Commc'ns AB, Sony Mobile Commc'ns, Inc., Sony Elecs. Inc., and Sony*

	Corp. v. Ancora Techs., Inc., IPR2021-00663, Ex. 2015 (PTAB Apr. 23, 2021)
2014	U.S. Patent No. 6,189,146 (Misra)
2015	U.S. Patent No. 5,479,639 (Ewertz)
2016	Decision Denying Institution of Inter Partes Review, *Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. v. Ancora Technologies, Inc.*, IPR2020-01184
2017	Declaration of Ian Jestice, *Ancora Technologies Inc. v. LG Electronics Inc., LG Electronics U.S.A. Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.*, Case No. 1:20-cv-00034 (Dkt. # 44-8)
2018	Declaration of Dr. David Martin (May 3, 2022)
2019	U.S. Patent No. 5,892,900 (Ginter)
2020	U.S. Patent No. 5,734,819 (Lewis)
2021	U.S. Patent No. 6,153,835 (Schwartz)
2022	*Ancora Techs. Inc. v. Apple, inc.*, Case No. 4:11-cv-06357 (Dkt. # 171-3) [Apple Inc.'s N.D. Cal. L.R. 3-3 (Invalidity) Disclosures]
2023	Petition, *HTC Corp. v. Ancora Techs. Inc.*, Case No. CBM2017-00054, Paper 1 (PTAB May 26, 2017)
2024	Institution Decision, *HTC Corp. v. Ancora Techs. Inc.*, Case No. CBM2017-00054, Paper 7 (PTAB Dec. 1, 2017)
2025	Croucher, "The BIOS Companion" (1997) (Excerpts)
2026	Transcript of Deposition of Dr. Andrew Wolfe (April 22, 2022)
2027	Joint News Release (February 14, 2005)
2028	March 25, 2022 Email from Board regarding IPR2021-01338 and IPR2021-01406
2029	[redacted] (Confidential)
2030	Declaration of Miki Mullor
2031	[redacted] (Confidential)
2032	[redacted] (Confidential)
2033	Reserved
2034	Reserved
2035	AIPLA statistics
2036	Reserved
2037	[redacted] (Confidential)

2038	Proposed Protective Order
2039	Redline Relative To Standard Protective Order
2040	Reserved
2041	Reserved
2042	Barron's Dictionary of Computing and Internet Terms (5th Ed. 1996)
2043	Decision Granting Institution, Case No. IPR2020-01609, Paper 7 (PTAB Feb. 16, 2021)
2044	Free On-Line Dictionary of Computing (June 6, 1999), available at http://foldoc.org/bios
2045	U.S. Patent No. 5,684,951 (Goldman)
2046	Paul C. Kocher, *Timing Attacks on Implementations of Diffie-Hellman, RSA, DSS, and Other Systems*, Proceedings of 16th Annual Int'l Cryptology Conf. (Aug. 18–22, 1996)
2047	Ancora's Patent Owner Preliminary Response, Sony Mobile Communications AB v. Ancora Techs., Inc., Case No. IPR2021-0063, Paper 13 (PTAB Apr. 23, 2021)
2048	[redacted] (Confidential)
2049	[redacted] (Confidential)
2050	[redacted] (Confidential)
2051	Petition, Samsung Elecs. Co., Ltd. v. Ancora Techs., Inc., Case No. IPR2021-00583, Paper 1 (PTAB Feb. 23, 2021) (Confidential)
2052	Patent Owner's Oral Hearing Demonstratives

Patent Owner ("Ancora") respectfully requests Director Review and reversal of the Board's second Final Written Decision on Remand from the Federal Circuit. (Paper 74, "FWD2"). In the alternative, the Director should exercise its discretion to terminate this proceeding. *See* 37 CFR § 42.75; *Interactive Comm. Int'l., Inc. v. Blackhawk Network, Inc.*, IPR2024-00465, Paper 40 at 4 (PTAB Oct. 9, 2025). Ancora has filed a parallel and nearly identical Direct Request in IPR2021-01338.

I. INTRODUCTION

The Director should review and reverse FWD2. The Board first invalidated claims 1-3, 6-14, and 16 of U.S. Patent No. 6,411,941 ('941 patent) in 2023, concluding that each was obvious based on a combination of two references, Hellman and Chou, despite overwhelming evidence of commercial success by licensing. Paper 49 ("FWD1"). In particular, and critically, significant companies paid Ancora substantial royalties [redacted] to license *only* the '941 patent, including [redacted]. The Board ignored this evidence based on its conclusion that these licenses to *only* the '941 patent nevertheless lacked a nexus to the '941 patent.

Ancora appealed—and won. *Ancora Techs., Inc. v. Roku, Inc.* ("*Ancora III*"), 140 F.4th 1351 (Fed. Cir. 2025). Vacating FWD1, the Court held that the "Board appl[ied] an improperly heightened nexus standard" that "constitute[d] legal error." *Id.* at 1363-64. And the Court's instructions to the Board on remand were clear,

explicit, and emphatic: it held (1) that Ancora's actual licenses to the '941 patent, taken by "very substantial companies" paying "very substantial" royalties, are "highly probative" of non-obviousness; (2) that Ancora's "clear evidence that substantial license fees were paid for licenses to a specific patent late in a litigation should be given the significance that their magnitude deserves"; and (3) that "[t]hese licenses, taken by substantial parties paying substantial royalties to secure the right to practice the '941 patent, ***should have been given more, if not controlling, weight in the Board's obviousness determination***." *Id.* at 1362–64 & n.5 (cleaned up).

On remand, rather than following this clear guidance, the Board created a pretext to discount the licensing evidence the Federal Circuit deemed "highly probative" and reached the same obviousness conclusion—this time holding that two low-value settlements that Ancora [redacted] wiped out the substantial licensing evidence from major companies like [redacted]. It did so without any record evidence about the circumstances under which these settlements were executed. In so doing, the Board committed legal error—***again***. This time, rather than "apply[ing] an improperly heightened nexus standard" to Ancora's substantial licensing evidence, *id.* at 1363, the Board applied an unprecedented and improperly diluted nexus standard when concluding that the [redacted] licenses also had a nexus to the '941 patent's strength but were probative of ***obviousness***. This unprecedented legal error must be reversed.

Further, even beyond the Board's repeated errors, its disregard of the Federal Circuit's guidance, and the clear evidence of the '941 patent's non-obviousness—this *inter partes* review also should never have been instituted at all. When Ancora received the '941 patent in 2002, it provided a foundational innovation enabling secure updating of wireless-device firmware via over-the-air updates that became a must-have invention upon the widespread adoption of smartphones and connected smart devices. The '941 patent has since survived battle after battle: 10 district court litigations, 11 proceedings (8 IPRs and 3 reexaminations) before the Patent Office (other than the two remaining IPRs), and 3 trips to the Federal Circuit.

At the time of institution, the '941 patent had been in force for almost 20 years, been licensed to eight companies, and earned over [redacted] in royalties. These facts are not mere settled expectations that favor Ancora. They are clear evidence that the instant *inter partes* review proceedings have placed substantial and unnecessary burdens on Ancora and the patent's owner/inventor, Miki Mullor. The America Invents Act was enacted to *balance* innovation and predictability—not to give infringers an arsenal to lodge serial attacks on a transformative patent.

II. BACKGROUND OF THE CASE

A. The '941 Patent Significantly Advanced the State of the Art

The '941 patent offers methods to identify and restrict an unauthorized software program's operation. The patent's solution provided a more secure and less

costly approach that improved over prior methods of verifying and/or restricting a program's operation on a computer. The prior software-based method of writing a license signature to volatile memory was vulnerable to hackers, and the prior hardware-based method required additional inconvenient and costly hardware, which was ill-suited to handling software downloaded over the internet. The '941 patent improved over both with a solution that "makes use of the existing computer hardware" by "using the memory space associated with the computer's basic input/output system (BIOS), rather than other memory space, to store appropriately encrypted license information to be used in the verification process." *Ancora Techs., Inc. v. Apple, Inc.* ("*Ancora I*"), 744 F.3d 732, 733 (Fed. Cir. 2014).

The patent did something the closest prior art never considered: "using an agent to set up a verification structure in the erasable, non-volatile memory of the BIOS." '941 Patent col. 6 l. 64-67 (claim 1). The claimed method improved over the prior methods in an unexpected way: "a structure containing a license record is stored in a particular, modifiable, non-volatile portion of the computer's BIOS, and the structure in that memory location is used for verification." *Ancora Techs. v. HTC Am., Inc.* ("*Ancora II*"), 908 F.3d 1343, 1348 (Fed. Cir. 2018).

B. The Federal Circuit Rejected Three Different Attacks on the '941 Patent

Over an 11-year period, the '941 patent has been invalidated on three separate occasions, only to have the Federal Circuit reject each attack on appeal.

First, in 2014 the Federal Circuit rejected Apple's initially-successful indefiniteness challenge to the claim terms "volatile memory" and "non-volatile memory," reversing the district court and holding that the "claim language and the prosecution history leave no unreasonable uncertainty about the boundaries of the terms at issue." *Ancora I*, 744 F.3d at 737.

Second, in 2018, the Federal Circuit rejected HTC's initially-successful challenge to the patent's eligibility under § 101. Reversing the district court's § 101 ruling in HTC's favor, the Court stated that "the claimed advanced is a concrete assignment of specified functions among a computer's components to improve computer security, and this claimed improvement in computer functionality is eligible for patenting." *Ancora II*, 908 F.3d at 1344.

Third, in 2025 the Federal Circuit vacated the Board's first FWD in this proceeding, ruling the Board's nexus finding "constituted legal error" and stating that the Board should have given Ancora's objective evidence of non-obviousness "significant if not controlling weight." *Ancora III*, 140 F.4th at 1364.

Despite the Federal Circuit's repeated affirmance of the '941 patent's validity, the Board on remand again (and in error) found Ancora's claims obvious.

C. Significant Companies Paid Large Sums to License the '941 Patent

Over the same period, "substantial parties pa[id] substantial royalties to secure the right to practice the '941 patent." *Ancora III*, 140 F.4th at 1364. [redacted]

[redacted] Each litigation addressed only the ’941 patent with a single independent claim. And each license exceeded the cost of litigation: a median of $4M for litigations with more than $25M at issue (Ex. 2035). Ancora also reached two low-value agreements with [redacted], each of which resolved litigation and IPRs. But the record contains ***no evidence*** about the parties’ motivations to reach these two agreements.

Criticizing the Board’s no-nexus finding, the Federal Circuit stated candidly: “Suffice it to say that [Ancora’s high-value] licensees are very substantial companies and the royalties they paid were also very substantial.” *Ancora III*, 140 F.4th at 1362 n.5. It explained that the high-value “license payments also far exceeded the cost of litigation, and the defendants were fully aware of the relevant prior art.” *Id.* at 1363. It noted that “clear evidence that substantial license fees were paid for licenses to a specific patent late in a litigation should be given the significance that their magnitude deserves.” *Id.* at 1363. And it went so far as to hold that these high-value agreements “should have been given more, if not controlling, weight in the Board’s obviousness determination.” *Id.* at 1364.

The only two questions the Federal Circuit left unresolved were: (1) whether Ancora’s low-value licenses [redacted] had ***any*** nexus to the ’941 patent, and, if so, (2) whether those licenses had any “probative value” at all and should

weigh against Ancora's high-value licenses far exceeding the cost of litigation.

On remand, despite a total lack of evidence to contextualize [redacted] licenses, the Board erroneously found that these two agreements (1) had a nexus to the '941 patent, and (2) weighed ***so strongly against*** Ancora's high-value licenses as to completely negate their significance in the obviousness analysis.

This was error. Ancora requests Director Review and reversal of the Board's legally erroneous analysis, or, in the alternative, termination of the proceeding.

III. THE DIRECTOR SHOULD REVIEW AND REVERSE

The Board erred three times over: *first*, in assuming nexus based on the fact that the [redacted] agreements covered the '941 patent; *second*, in basing its nexus finding on speculation, not evidence; and *third*, when shifting the burden to Ancora to *disprove* nexus, rather than requiring Petitioners to *prove* it themselves.

A. The Board Legally Erred in Finding Nexus Between the Low-Value [redacted] Licenses and the '941 Patent

The Board's entire analysis of nexus for the low-value license agreements is contained in a single sentence: "Per the Federal Circuit's instructions here, the low-value licenses convey rights to the '941 patent, just as do their high-value counterparts; ***therefore, a nexus is shown***." Paper 74 at 62. This is error.

Contrary to the Board's reasoning, the Federal Circuit did not hold that a license's single-patent status automatically confers nexus. Instead, the Court held that a license's single-patent scope "*supports* a nexus finding," but is not conclusive.

Ancora III, 140 F.4th at 1363. In addition, there must also be evidence demonstrating that the economic value of the license exceeds "litigation costs," which is "the appropriate comparator for evaluating the significance of the magnitude of licensing payments." *Id.* ; *see Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling United States, Inc.*, 699 F.3d 1340, 1353 (Fed. Cir. 2012); *Ancora III*, 140 F.4th at 1363 ("litigation costs [are] the appropriate comparator for evaluating the significance of the magnitude of licensing payments").

For the high-value licenses, nexus is law of the case. The Federal Circuit held that the high-value licenses have a nexus to the '941 patent's non-obviousness: "clear evidence that substantial license fees were paid for licenses to a specific patent late in a litigation should be given the significance that their magnitude deserves. And while 'it is often cheaper to take licenses than to defend infringement suits,' that is certainly not the case here." *Ancora III*, 140 F.4th at 1363 (quoting *Iron Grip*, 392 F.3d at 1324).

But a finding of nexus cannot be made for the low-value licenses unless there is evidence tying the license value to the strength of the patent. There is no such evidence here, and the Board cited none in reaching its nexus finding.

The precedent governing nexus is clear: "The mere existence of a license, without evidence that the license was entered into because of the merits of the claimed invention, is of limited probative value because it is often 'cheaper to take

a license than to defend infringement suits.' *Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d 1317, 1324 (Fed. Cir. 2004)." *Medtronic, Inc. v. Teleflex Innovations S.à.r.l.*, IPR2020-00127, Paper 107 at 38 (PTAB June 7, 2021), *aff'd* 70 F.4th 1331, 1341 (Fed. Cir. 2023); *see In re Antor Media Corp.*, 689 F.3d 1282, 1293–94 (Fed. Cir. 2012) (mere existence of licenses is insufficient to merit consideration as licenses may be entered into "as a business decision to avoid litigation, because of prior business relationships, or for other economic reasons"); *Cole Kepro Int'l, LLC v. VSR Inds., Inc.*, 695 Fed. Appx. 566, 572 (Fed. Cir. 2017) (same rationale as *Antor*).

That a less-than-the-cost-of-litigation license lacks probative value holds true regardless of which party seeks to rely on the license, or whether the license resolved district court litigation, IPR litigation, or both. In each case, it remains true that "Parties may enter into licenses because of business judgments, to avoid litigation, and for other reasons unrelated to obviousness." *Siemens Mobility, Inc. v. Iancu*, 825 Fed. Appx. 867, 874 (Fed. Cir. 2020), citing *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985) (licensing programs "sometimes succeed because they are mutually beneficial to the licensed group or because of business judgments that it is cheaper to take licenses than to defend infringement suits, or for other reasons unrelated to the unobviousness of the licensed subject matter.").

Instructive is *Iron Grip,* where the Federal Circuit explained that "[o]ur cases

specifically require ***affirmative evidence of nexus*** where the evidence of commercial success presented is a license, because it is often 'cheaper to take licenses than to defend infringement suits.'" 392 F.3d at 1324 (emphasis added). Similarly, in *Bosch Auto. Serv. Sols., LLC v. Matal*, the Federal Circuit scuttled reliance on two licenses that "were admittedly entered into for the express purpose of settling litigation," where "[t]here [wa]s no evidence in the record that these agreements arose out of a recognition and acceptance of the merits of the claimed invention, rather than solely to avoid the costs of defending against further litigation." 878 F.3d 1027, 1038 (Fed. Cir. 2017).

As in *Iron Grip* and *Bosch*, there is no "affirmative evidence of nexus." The record contains no evidence that the [redacted] agreements relate to the strength of the '941 patent so as to rule out their being taken for any other business, relationship, or economic reasons. *Id.*; *Antor*, 689 F.3d at 1293–94; *EWP*, 755 F.2d at 907; *Cole Kepro*, 695 Fed. Appx. at 572; *Siemens*, 825 Fed. Appx. at 874. And because the record lacks any "affirmative evidence" of nexus, all that the Board relied on to establish nexus—and all that Petitioners presented—was an ***assumption*** that the timing of the [redacted] licenses supported an inference of nexus. But as explained below, this is not "affirmative evidence" of nexus. It is pure speculation, which cannot satisfy Petitioners' evidentiary burden.

B. Settlement Timing Is Not "Affirmative Evidence" of Nexus

In finding a nexus between the low value licenses and the '941 patent's strength, the Board resorted to speculation by *assuming* that the timing of the [redacted] licenses constituted proof that Ancora believed the '941 patent was weak in the face of the Hellman-Chou combination. This finding is legal error.

The Board relied on a detailed litigation history of the '941 patent relative to the timing of the [redacted] licenses to assume these licenses carry some evidentiary weight regarding obviousness, concluding that because the [redacted] licenses occurred after the Board instituted trial in both the [redacted] IPRs that these licenses weigh "somewhat significantly" in favor of obviousness. FWD2 at 51-60. But a litigation-to-licensing timeline is not evidence of nexus, and no decision from any tribunal holds that it is.

For good reason. A litigation-to-licensing timeline establishes nothing about ***why*** parties entered an agreement. And it sheds no light on whether the parties "enter[ed] into licenses because of business judgments, to avoid litigation, and for other reasons unrelated to obviousness." *Siemens*, 825 Fed. Appx. at 874.

At most, the timing of Ancora's settlements could offer one speculative inference that Ancora would "rather settle for very little or zero" than face an obviousness challenge based on the Hellman–Chou combination. FWD2 at 59. But an equally plausible inference—indeed the ***more*** plausible inference—is that Ancora

saw limited upside to continuing expensive IPR battles [redacted]. What makes this latter inference ***more*** plausible is that Petitioners' IPR is based on the identical Hellman-Chou combination asserted by [redacted]. Had Ancora believed these grounds were deadly, it would not have continued to litigate against Petitioners in this IPR and would have offered a walk-away license to scuttle these proceedings entirely. The fact that Ancora did not do so permits the at-least-equally plausible inference that Ancora believed its patent was strong but concluded that litigation against [redacted] presented limited economic upside, which was outweighed by IPR litigation costs and a remote possibility of invalidation.

C. The Board Improperly Inverted the Burden of Proof

Although the Board's finding is not based on "affirmative evidence" of nexus (just speculation), the Board's conclusion also violates core principles of evidentiary equipoise under a preponderance of the evidence standard. It is axiomatic that if the record "give[s] equal support to each of two inconsistent inferences . . . judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other." *Pennsylvania R. Co. v. Chamberlain*, 288 U.S. 333, 339 (1933). Here, Petitioners bear the burden of proving obviousness by a preponderance of the evidence. 35 U.S.C. 316(e). And given Petitioners' evidentiary shortcomings, judgment must go against Petitioners.

The Board did not acknowledge that Petitioners, as proponents of the low-

value licenses, bear the burden to establish those agreements' nexus to the patent. Instead, and in error, the Board held "[t]he ***patentee*** 'bears the burden of showing that a nexus exists.'" FWD2 at 43 (citing *WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1359 (Fed. Cir. 1999)). Although this is true when the ***patent owner*** relies on particular objective evidence of non-obviousness, Ancora is not the proponent of the [redacted] licenses. Petitioners are.

Although the Board correctly recited the principle that the "***proponent*** [of the evidence in question] must establish [] nexus," FWD2 at 43 (citing *ClassCo, Inc. v. Apple, Inc.*, 838 F.3d 1214, 1220 (Fed. Cir. 2016)), it incorrectly held that it was Ancora's burden to disprove nexus. The opposite is true: "The party asserting invalidity . . . always retains the burden of persuasion on the issue of obviousness." *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 292 (Fed. Cir. 1985); *see Alcon Research, Ltd. v. Apotex Inc.*, 790 F. Supp. 2d 868, 925 (S.D. Ind. 2011), *aff'd in part and rev'd in part*, 687 F.3d 1362 (Fed. Cir. 2012) ("Defendants have the burden of proof with respect to all of the obviousness factors, including, where relevant, objective evidence of non-obviousness.").

IV. THE BOARD ALSO ERRED IN FINDING THE LOW-VALUE LICENSES COUNTERBALANCED THE HIGH-VALUE LICENSES

Even assuming nexus for the [redacted] agreements, the Board separately erred in finding that they counterbalanced the high-value agreements. First, the Board erred in holding that the high-value agreements carry only "***somewhat*** significant

weight." FWD2 at 60. The Federal Circuit explicitly held the opposite—stating that the high-value licenses "***should have been given more, if not controlling, weight*** in the Board's obviousness determination." *Ancora III*, 140 F.4th at 1363-64. The Board lacked authority to find otherwise. Second, the Board failed to establish how only two low-value agreements can fully outweigh the high-value agreements. Even if one were to consider all of the agreements together ([redacted]), the average sum paid per licensee is still over [redacted], well in excess of the $4M cost of litigation. EX2035, EX2031, EX2032, EX1050, EX1052, EX1053, EX1054, EX1051; PO Resp. 69; Pet. Reply 25-26. Third, neither the Federal Circuit nor the Board found the obviousness combination to be "strong." In contrast, Ancora's evidence of commercial success through licensing is "highly probative" and "substantial." *Ancora III*, 140 F.4th at 1362-64. The balance of evidence requires a holding of nonobviousness.

V. THE DIRECTOR SHOULD TERMINATE THE PROCEEDINGS

In the alternative, the Director should exercise its discretion to terminate.

First, Ancora has strong settled expectations. "[T]he longer the patent has been in force, the more settled expectations should be." *Dabico Airport Sols. Inc. v. Axa Power Aps*, IPR2025-00408, 2025 WL 1710857, at *1 (PTAB June 18, 2025). Here, the '941 patent has existed for "approximately 20 years, creating strong settled expectations." *SAP Am., Inc. v. Valtrus Innovations Ltd.*, IPR2025-00414, 2025 WL

1909114, at *1 (PTAB July 10, 2025).

Second, "repeated prior challenges weigh against institution." *Intel Corp. v. Advanced Cluster Sys., Inc.*, IPR2025-00794, 2025 WL 2369638, at *1 (PTAB Aug. 14, 2025); *see* Director's Memorandum, *Interim Processes for PTAB Workload Management* (March 26, 2025). Here, the '941 patent claims have survived: a prior CBM proceeding, *see* CBM2017-00054, Paper 7 (PTAB Dec. 1, 2017) (no reasonable likelihood of unpatentability); a prior IPR proceeding found to be "weak" when institution was discretionarily denied, *see* IPR2020-01184, Paper 11 at 24-27 (PTAB Jan. 5, 2021); a prior indefiniteness attack, *Ancora I*, 744 F.3d at 737; a prior § 101 attack, *Ancora II*, 908 F.3d at 1344; and the Board's first FWD in this petition, *Ancora III*, 140 F.4th at 1364. Enough is enough.

Third, these IPR proceedings have been underway since 2021. An appeal of the Board's legally erroneous FWD2 (whether by Ancora or Petitioners) means another 12 to 18 months of delay. That is too long. The IPR should be terminated.

VI. CONCLUSION

Ancora respectfully requests that the Director grant review and reverse the Board's FWD2 or exercise its discretion to terminate this proceeding.

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CERTIFICATE OF SERVICE

The undersigned certifies in accordance with 37 C.F.R. § 42.6(e) that on February 20, 2026, a copy of the foregoing Ancora Technologies, Inc.'s Request For Director Review was served via electronic mail on the attorneys listed below:

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