DRP_PTABDecision@uspto.gov
Tel: 571-272-7822

Paper 89
Date: September 18, 2026

PUBLIC REDACTED VERSION

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD. AND NINTENDO OF AMERICA INC.,
Petitioner,
v.
ANCORA TECHNOLOGIES, INC.,
Patent Owner.

IPR2021-01338
Patent 6,411,941 B1

ROKU, INC. AND VIZIO, INC.,
Petitioner,
v.
ANCORA TECHNOLOGIES, INC.,
Patent Owner.

IPR2021-01406
Patent 6,411,941 B1

Before KALYAN K. DESHPANDE, *Chief Administrative Patent Judge*, MICHAEL W. KIM, *Vice Chief Administrative Patent Judge*, and ALYSSA A. FINAMORE, *Acting Vice Chief Administrative Patent Judge*.

DESHPANDE, *Chief Administrative Patent Judge*.

DECISION
Delegated Director Review of Final Written Decision on Remand
37 C.F.R. § 42.75(f)

I. INTRODUCTION

In IPR2021-01338, Nintendo Co., Ltd. and Nintendo of America Inc. ("Nintendo") filed a Petition requesting an *inter partes* review of claims 1−3, 6−14, and 16 ("the challenged claims") of U.S. Patent No. 6,411,941 B1 (Ex. 1001, "the '941 patent"). *See* Paper 1.[1] In IPR2021-01406, Roku, Inc. and Vizio, Inc. ("Roku") filed a Petition requesting an *inter partes* review of the challenged claims of the '941 patent. IPR2021-01406, Paper 3. On January 22, 2026, the Board found that Petitioners[2] had shown, by a preponderance of the evidence, that all of the challenged claims are unpatentable in the Final Written Decisions on Remand (Paper 71; IPR2021-01406, Paper 74 (collectively, "Remand Decisions")).

Ancora Technologies, Inc. ("Patent Owner") filed a request for Director Review for each of the Remand Decisions. Paper 74; IPR2021-01406, Paper 77 (collectively, "DR Requests"). Petitioners filed a Response to each of the DR Requests. Paper 77; IPR2021-01406, Paper 82. The Director delegated Director Review of the Remand Decisions to this Delegated Rehearing Panel "to review the Remand Decisions and to determine whether, as instructed by the [Federal Circuit], the Board correctly decided nexus for the low-value licenses and properly weighed the

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[1] Unless otherwise noted, all citations are to the record in IPR2021-01338 and to the public versions of documents, if available.
[2] We refer to the petitioners from both cases, Nintendo Co., Ltd. and Nintendo of America Inc. in IPR2021-01338 and Roku, Inc. and Vizio, Inc. in IPR2021-01406, collectively as "Petitioners."

probative value of the high- and low-value licenses, as objective indicia of nonobviousness." Paper 79 ("DRP Order") 7; *see* Paper 80 (DRP Identification Order).

For the reasons discussed below, we determine that the evidence of record does not support the Board's findings as to the unpatentability of claims 1−3, 6−14, and 16, and, accordingly, modify the Remand Decisions to reflect that Petitioners have not proven by a preponderance of the evidence that claims 1−3, 6−14, and 16 are unpatentable.

II. ANALYSIS[3]

On appeal, the United States Court of Appeals for the Federal Circuit ("Federal Circuit") vacated and remanded the initial Final Written Decisions in these proceedings. The Federal Circuit determined that the Board erred in applying the court's precedent on nexus to the licensing evidence that was offered as objective indicia of nonobviousness. *Ancora Techs., Inc. v. Roku, Inc.*, 140 F.4th 1351, 1354 (Fed. Cir. 2025). Accordingly, we consider the licensing evidence as objective indicia of nonobviousness in the overall obviousness analysis. *See Adapt Pharma Operations Ltd. v. Teva Pharms. USA, Inc.*, 25 F.4th 1354, 1372 (Fed. Cir. 2022) ("Objective indicia 'must always when present be considered' in the overall obviousness analysis.").

As instructed by the Federal Circuit, we first review whether the objective indicia have a nexus to the'941 patent. *Ancora Techs.*, 140 F.4th at 1361, 1364. The Federal Circuit further instructed that "[u]nlike products, which may incorporate numerous features beyond those claimed or

[3] A detailed recital of the background of the proceedings leading to this stage can be found in the DRP Order. *See* DRP Order 2–4.

described in a patent and therefore may require careful parsing to establish a nexus, actual licenses to the subject patent do not demand the same, as they are, by their nature, directly tied to the patented technology." *Id.* at 1362 (citing *LaserDynamics, Inc. v. Quanta Comput., Inc.*, 694 F.3d 51, 79 (Fed. Cir. 2012)).

Nintendo does not contest that the high-value licenses with [redacted], [redacted] (Exs. 2031, 2032, 1050) have a nexus to the '941 patent but, rather, implicitly assumes that there is a nexus between these high-value licenses and the '941 patent. *See, e.g.*, Paper 60, 6–9 (arguing about the weight to be given the high-value licenses, without addressing nexus); Paper 66, 3–4; Paper 77, 5 (discussing nexus of high-value licenses to the '941 patent relative to nexus for low-value licenses). Roku, on the other hand, argues that Patent Owner has not established that the value of the high-value licenses "could be attributed to the strength of the '941 patent," and, thus, Patent Owner has not established a nexus. IPR2021-01406, Paper 63, 6–7.[4] Further, Roku asserts that at least some portion of the value of the high-value licenses "are likely [] attributable to other factors having nothing to do with the patent." *Id.*

We disagree. As the Federal Circuit guides us: "Regarding the first license, the '941 patent was the only patent identified by patent number in the license agreement . . . . [T]he second and third licenses . . . also only specifically identify the '941 patent by U.S. patent number on the face of the agreements." *Ancora Techs.*, 140 F.4th at 1362; *see* DRP Order 2.

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[4] Roku later contradicts its earlier position by arguing that the low-value licenses are entitled to nexus for the same reasons as the high-value licenses. IPR2021-01406, Paper 82, 5–6.

Although the license agreements identify that other patents may be included, the ’941 patent is the only patent expressly identified. *See, e.g.*, Exs. 1050, 2031, 2032. “Clearly, the ’941 patent was the subject of the license.” *Ancora Techs.*, 140 F.4th at 1362. Accordingly, although “[t]here are many reasons why a company chooses to settle litigation by taking a license,” as argued by Roku (IPR2021-01406, Paper 63, 6), we determine that the high-value licenses have a nexus to the ’941 patent.

Having determined that the high-value licenses have a nexus to the ’941 patent, we weigh their probative value as evidence of nonobviousness. The Federal Circuit characterized the high-value licenses with [redacted] as being with “licensees [that] are very substantial companies and the royalties they paid were also very substantial.” *Ancora Techs.*, 140 F.4th at 1364 n.5. The court reviewed the licenses themselves, the facts surrounding their timing, the related litigations, and the licensees’ knowledge of the relevant prior art. *Id.* at 1362–63. The court explained that these licenses, “taken by substantial parties paying substantial royalties to secure the right to practice the . . . patent, should have been given more, if not controlling, weight” in the obviousness determination. *Id.* at 1364.

At the Federal Circuit’s instruction, we also have considered the licenses themselves, the facts surrounding their timing, the related litigations, and the licensees’ knowledge of the relevant prior art and determine that the high-value licenses should be given substantial weight in the obviousness determination. *Ancora Techs.*, 140 F.4th at 1364. For example, as the Federal Circuit noted, the settlements resulting in the high-value licenses were reached [redacted] wherein the license payments “far

exceeded the cost of litigation." *Id.* at 1363. Further, based on the timing of the settlements [redacted] were aware tha [redacted] *inter partes* review ("IPR") had been instituted on the Hellman and Chou combination [redacted] and that other "copycat" petitions and motions for joinder were pending (*see, e.g.*, IPR2021-00663, Papers 1, 4). [redacted] would have been aware that [redacted] as joined with [redacted] IPR and could proceed to trial [redacted] We have also considered that [redacted] and that [redacted]. Finally, we also find that the high-value licensees were aware of the prior art at issue here, both Hellman and Chou. *See, e.g.*, Paper 32, 25 (Petitioner acknowledging tha [redacted] were aware of Hellman and Chou).

Furthermore, the high-value licensees settled their disputes for substantial lump sums o [redacted] due in full within a short time of signing the agreements (the first within 21 days and the other two within 45 days). Exs. 2032, 4; 2031, 4; 1050, 4. These high-values licenses weigh substantially towards nonobviousness.

Petitioners argue that these high-value licenses may be given more weight if they had been taken outside of litigation, if Patent Owner had provided evidence concerning the "allegedly infringing community" and how the licenses cover that community, and if information were provided on how the licenses break down on a "per-unit" basis. Paper 60, 6–8; Paper 77, 8–10; IPR2021-01406, Paper 63, 7–9. We are not persuaded. In other words, Petitioners argue the weight that should be given to the high-value licenses by identifying things that they are not, rather than what they are.

Accordingly, based on the arguments and evidence discussed above, and the instructions that the Federal Circuit issued to us, we find that these high-value licenses have a nexus to the ’941 patent and weigh significantly in favor of a conclusion of nonobviousness.

Petitioners argue that the low-value license [redacted] (Exs. 1051, 1052) have a nexus to the ’941 patent for the same reasons as the high-value licenses. Paper 66, 3–4; Paper 77, 5; IPR2021-01406, Paper 82, 5–6. Specifically, Petitioners argue that nexus exists because “only . . . the ’941 patent [is] the subject of the license.” Paper 66, 4. We agree with Petitioners for the same reasons discussed above.

Having determined that the low-value licenses have a nexus to the ’941 patent, we weigh their probative value against that of the high-value licenses.[5] Petitioners argue that the licensees knew about the relevant prior art and “the low-value licenses demonstrate [Patent Owner’s] own reluctance to risk the financial consequences of having the ’941 patent invalidated by the Hellman/Chou combination.” Paper 66, 4.

We find that Petitioners’ specific assertions concerning Patent Owner’s “reluctance to risk the financial consequences” are not supported by evidence. Paper 66, 4. We find that the probative value of the low-value

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[5] Patent Owner argues that “[t]he Federal Circuit has *never* concluded that lower-value licenses weigh in favor of an *obviousness* finding or undercut the *non-obviousness* conclusion to be drawn from higher-value licenses.” Paper 57, 9 (bolding omitted). However, the Federal Circuit expressly instructed us to consider “the probative value of [the low-value] licenses and weigh that against the [high-value] licenses produced by Ancora in support of its argument of commercial success as objective indicia of nonobviousness.” *Ancora Techs.*, 140 F.4th at 1364.

licenses is insufficient to outweigh the significant probative value of the high-value licenses. When the licensing evidence is considered collectively, we find that it is strong evidence of nonobviousness. As discussed above, the high-value licenses involve licensees that entered into high-value licenses with knowledge of the prior art, Hellman and Chou, which are also at issue here. As such, the licensing evidence as whole weighs significantly in favor of a conclusion of nonobviousness.

Weighing all of the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966), we conclude that the strong evidence of nonobviousness outweighs the evidence obviousness. Petitioners, therefore, have not shown that the challenged claims of the '941 patent are unpatentable.

III. CONCLUSION

For the reasons discussed above, we do not sustain the Board's determination that Petitioners have shown that the challenged claims are unpatentable. The following table summarizes the results after this Director review decision:

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not shown Unpatentable
1, 2, 11, 13	103(a)	Hellman, Chou		1, 2, 11, 13
1–3, 6–14, 16	103(a)	Hellman, Chou, Schneck		1–3, 6–14, 16
Overall Outcome				1–3, 6–14, 16

IV. ORDER

Accordingly, it is ORDERED that

The Final Written Decisions on Remand (IPR2021-01338, Paper 71; IPR2021-01406, Paper 74) are modified to conclude that claims 1−3, 6−14, and 16 of U.S. Patent No. 6,411,941 B1 have not been proven to be unpatentable;

The Final Written Decisions on Remand are maintained in all other respects;

Parties seeking judicial review of this final written decision must comply with the notice and service requirements of 37 C.F.R. § 90.2;

This Decision is filed under seal, designated as "For Board and Parties Only" as it discusses and cites to the documents under seal; and

Within five (5) business days from the entry of this Decision, Patent Owner and Petitioners shall jointly file a proposed redacted version of this Decision, the Final Written Decision on Remand in IPR2021-01338 and the Hearing Transcript (IPR2021-01338, Paper 50; IPR2021-01406, Paper 51), for public entry into the record.

IPR2021-01338 (Patent 6,411,941 B1)
IPR2021-01406 (Patent 6,411,941 B1)

FOR PETITIONER in IPR2021-01338:

Jessica C. Kaiser
Kyle R. Canavera
Tara Kurtis
PERKINS COIE LLP
kaiser-ptab@perkinscoie.com
canavera-ptab@perkinscoie.com
kurtis-ptab@perkinscoie.com

FOR PETITIONER in IPR2021-01406:

Lestin Kenton
Dohm Chankong
Richard Crudo
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
lkenton-ptab@sternekessler.com
dchankong-ptab@sternekessler.com
rcrudo-ptab@sternekessler.com
Vincent M. Ferraro
KELLEY DRYE & WARREN LLP
vferraro@kelleydrye.com

FOR PATENT OWNER:

Mark A. Borsos
Karen J. Wang
FITCH, EVEN, TABIN & FLANNERY LLP
mborsos@fitcheven.com
kwang@fitcheven.com