<u>ANCORA TECHNOLOGIES, INC. v. APPLE, INC.</u>, Appeal No. 2013-1378 (Fed. Cir. March 3, 2014).  Before Rader, <u>Taranto</u>, and Chen.  Appealed from N.D. Cal. (Judge Rogers).

<u>Background</u>:

Ancora owns a patent with claims directed to a method for preventing unauthorized software use by checking whether software is operating within a license.  Ancora sued Apple alleging that the products running Apple's iOS operating system infringed Ancora's patent.

Apple argued that the term "program" should not be given its ordinary meaning because examples in the specification and statements by the applicant during prosecution limit "program" to an application program.  The district court agreed with Apple and construed the claim term "program" as being limited to application programs, i.e. those that rely on an operating system in order to run, thus excluding the operating system itself.  Based on this construction, the district court found that Apple's products did not infringe Ancora's patent.  Ancora appealed.

<u>Issue/Holding</u>:

Did the district court err in its finding that the term "program" should be limited to application programs? Yes, reversed and remanded.

<u>Discussion</u>:

A claim term should be given its ordinary meaning, unless the patentee has made clear its adoption of a different definition or otherwise disclaimed that meaning.  The Federal Circuit found that nothing in the claims, specification, or prosecution history displaces the ordinary meaning of the term "program," which encompasses both operating systems and the applications that run on them.

The Federal Circuit found that because claim 1 refers to the software as a "program," whereas independent claim 18, recites a "method for accessing an application software program," the difference in terminology reinforces the adoption of the ordinary meaning of the term "program." in claim 1.  In addition, although the specification discusses verifying "application" programs, the Federal Circuit found that the specification makes clear these examples are not limiting and the specification generally refers to the to-be-verified software generically as "software program," "software," or "program."

Furthermore, the Federal Circuit found that the Applicants' statements in the prosecution history do not require that the program being verified be an application program.  The Federal Circuit also found that the Examiner's statement containing the reasons for allowance was not the applicant's statement and cannot be used to limit the term "program" to application programs. Finally, the Federal Circuit found that because the prosecution history did not limit the to-be verified program to being verified before being loaded in memory, the term "program" does not exclude the running operating system that the verification system is dependent on.