

ANCORA TECHNOLOGIES, INC. v. ROKU, INC., Appeals Nos. 2023-1674, 2023-1701 (Fed. Cir. June 16, 2025). Before Lourie, Reyna, and Hughes, per curiam. Appealed from PTAB.

Background:

Ancora Technologies, Inc. ("Ancora") owns a patent relating to software-based products that prevent hackers from copying a software program that was licensed for use on a computer. Roku filed petitions for IPR of the Ancora patent, and the PTAB issued a decision determining the claims at issue to be unpatentable due to obviousness. The PTAB based its analysis in part on giving little weight to licensing evidence as objective indicia of nonobviousness as part of its analysis of secondary considerations. The PTAB found that Ancora did not establish whether these licenses resulted directly from the unique characteristics of the claimed subject matter and thus, concluded that Ancora failed to show a nexus between the challenged claims and the licenses. The PTAB reasoned that because large portions of the license were redacted, it was impossible to discern what was licensed and on what terms. Ancora appealed.

Issue/Holding:

Did the PTAB err in rejecting Ancora's evidence of secondary considerations of nonobviousness? Yes, reversed and remanded.

Discussion:

The Federal Circuit held that the PTAB applied a more exacting nexus standard than what the case law surrounding licensing evidence requires. The Federal Circuit stated that the standard used by the PTAB to review the licensing evidence was too strict and that the patent at issue was clearly the subject of the license. The Federal Circuit reasoned that, "unlike products, which have many features beyond those claimed or described in the patent and therefore require careful parsing to establish a nexus, actual licensing to the subject patent does not demand the same, as they are, by nature, directly tied to the patented technology."

The Federal Circuit also nullified the PTAB's notion that a single patent needed to be the sole motivation for entering into a licensing agreement, stating that "nexus law does not require a particular patent to be the only patent being licensed or the sole motivation for entering into a license." The Federal Circuit held that the patent at issue was the subject of the license and other patents that may have been part of the license did not detract from the nexus inquiry.

Further, litigation settlements, which resulted in the licensing of the patent at issue, were said by the Federal Circuit to be particularly probative of a nexus between the patent and licensing in view of their late introduction in litigation. The Federal Circuit also found that since the cost of licensing far exceeded the cost of litigation, it was highly probative in determining the required nexus. Ultimately, the Federal Circuit held that the PTAB erred in its secondary consideration analysis regarding licensing and vacated and remanded.