HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALLVOICE DEVELOPMENTS US, LLC, Plaintiff, v. MICROSOFT CORP., Defendant.	CASE NO. C10-2102 RAJ ORDER

I. INTRODUCTION

This matter comes before the court pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995), to construe the disputed claim terms of United States Patent 5,799,273 ("the '273 Patent"). The Defendant has also filed a motion for partial summary judgment (Dkt. # 109). After conducting a *Markman* hearing and hearing oral argument on the Defendant's motion (Dkt. # 109), and carefully considering the parties' briefs and supporting materials, the court now enters the following order on claim construction and GRANTS IN PART and DENIES IN PART the Defendant's motion for partial summary judgment (Dkt. # 109).

II. BACKGROUND

Plaintff Allvoice Developments US, LLC ("Allvoice") filed this patent infringement action alleging that Defendant Microsoft Corporation ("Microsoft") infringed several claims of the '273 Patent. The '273 Patent describes an invention that connects a speech-recognition engine with a user's text-processing application, via an interface application program ("IAP"), which allows a user to write by speaking into a microphone rather than typing on a keyboard.

In the prior art systems described in the '273 Patent, the speech-recognition engines would record the user's speech and convert it into recognized words, which would be displayed to the user on the computer screen in a dictation window. If the user saw a misrecognized word in the dictation window, the user could play back the voice recording and make corrections in the dictation window, and the speech-recognition engine would then incorporate the corrections to optimize its accuracy over time. In order to transfer the text from the dictation window to a text-processing application, such as Word, the user would have to cut and paste the text from the dictation window into a Word document.

The '273 Patent sets out to improve what it identifies as a major disadvantage of the prior art systems: cutting and pasting the text from the dictation window eliminated the connection between the speech recording and the text, meaning that if the user made corrections in the Word document (rather than in the dictation window), the speech-recognition engine could not incorporate those corrections to improve its speech-recognition models. As a solution to this problem, the '273 Patent adds an IAP to "control the flow of text into the text processing application, to control the flow of updating information from the text processing application to the speech recognition application and for maintaining links between the text and the audio data." '273 Patent at 5:7-14. The IAP creates and stores "link data," which allows the user to play back the stored audio data corresponding to the words in the text processing application, and any

corrections made in the text processing application can be incorporated by the speech-recognition engine to update and improve accuracy.

The '273 Patent has been challenged by multiple competitors in the past, but certain aspects of the '273 Patent have been found valid by the United States Court of Appeals for the Federal Circuit. *See Allvoice Computing, Plc. v. Nuance Commc'ns, Inc.*, 504 F.3d 1236 (Fed. Cir. 2007). But in this lawsuit, Allvoice contends that Microsoft has made, used and sold the Windows XP and Windows Vista operating systems, which include software that Microsoft calls "Text Services Framework" — and Allvoice argues that the Text Services Framework violates the '273 Patent.

Microsoft filed a motion for partial summary judgment, requesting that the court find certain claims of the '273 Patent to be invalid, indefinite or otherwise insolubly ambiguous. The court will now consider that motion, and then will turn to construe the remaining terms.

III. ANALYSIS

A. Legal Standards on Summary Judgment.

Summary judgment is appropriate if the moving party establishes that there is no genuine dispute of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). On a motion for summary judgment, the court must draw all inferences from the admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party must initially show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The opposing party must then show a genuine issue of fact for trial. *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In the context of patent cases specifically, invalidity challenges are questions of law suitable for summary judgment. *See AT&T Corp. v. Excel Comm., Inc.*, 172 F.3d 1352, 1355 (Fed. Cir. 1999). To prevail on such a motion, a defendant must establish the invalidity of the claims at issue by clear and convincing evidence. *See Minnesota Mining and Mfg. Co. v. Chemque Inc.*, 303 F.3d 1294, 1301 (Fed. Cir. 2002).

A "means-plus-function" claim limitation allows a patentee to express a claim limitation in terms of the means of performing a particular function without reciting a corresponding structure:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be constructed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. § 112, ¶ 6 (hereinafter "§ 112, ¶ 6"). The above provision allows a patentee to recite a more generic claim in terms of an invention's means. *Biomedino, L.L.C. v. Waters Techs. Corp.*, 490 F.3d 946, 948 (Fed. Cir. 2007). And "in return for generic claiming ability, the applicant must indicate in the specification what structure" accomplishes the recited means. *Id.*

The use of the word "means" in claim language gives rise to a presumption that the patentee intends to invoke § 112, ¶ 6. *Id.* at 950. If, however, the claim also recites sufficient structure, then the § 112, ¶ 6 presumption is rebutted. *Envirco Corp. v. Clestra Cleanroom, Inc.*, 209 F.3d 1360, 1364 (Fed. Cir. 2000). If a court concludes that a claim limitation is a means-plus-function limitation, it must undertake a two-step process: "1) the court must first identify the function of the limitation; and 2) the court must then look to the specification and identify the corresponding structure for that function." *Biomedino*, 490 F.3d at 950. The scope of a means-plus-function claim is limited to the

corresponding structure and equivalents thereto. *See Med. Instrumentation & Diagnostics Corp. v. Elekta*, 344 F.3d 1205, 1210 (Fed. Cir. 2003).

B. To the Extent that the '273 Patent Claims Software Instructions Alone, Those Claims are Invalid.

Patentable subject matter is "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof[.]" 35 U.S.C. § 101. If an invention does not qualify as a process, machine, manufacture, or composition of matter, no patent is available for that invention. *See Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 483 (1974). Even if an invention falls into one of those categories, one of three judicially-recognized exceptions (for laws of nature, physical phenomena, and abstract ideas) may apply. *See Research Corp. Tech., Inc. v. Microsoft Corp.*, 627 F.3d 859 (Fed. Cir. 2010). Thus, the § 101 threshold test is a two-step inquiry: (1) Does the invention qualify under one of the four statutory categories? (2) Does the invention fall into one of the judicially created exceptions? If the answer to both questions is yes, then the invention is not patentable – but the invention is also not patentable if the answer to the first question is no. *See Research Corp. Tech.*, 627 F.3d at 867-68.

According to Microsoft, Claims 60-68 fail the first step of the threshold test because they describe software instructions that do not fall into any of the four statutory categories. Allvoice argues in rebuttal that those claims are sufficiently tied to a "manufacture": "a current dictated document (and associated intermediate prepared materials) using a speech recognition interface software application." Pltf.'s Opp'n (Dkt. # 114) at 25. Allvoice also contends that the claims could represent a "process," because two steps are identified: "1) determining the text positions and using link data . . . to identify any references to corresponding audio data, and 2) using those references to cause the audio data to be retrieved and played back." Pltf.'s Opp'n at 26.[1]

[1] Though Allvoice objects to Microsoft's raising the § 101 challenges at this time (before discovery is closed) "based on the unfounded position that software has become *per se*

The court rejects both of Allvoice's attemps to find Claims 60-68 as describing either a "manufacture" or a "process." Regarding "manufacture," Allvoice attempts to characterize Claims 60-68 as describing an invention that *produces* a manufacture, rather than the manufacture itself. *See* Pltf.'s Opp'n at 25 ("In short, Claims 60-68 recite limitations *that produce* a dictated document . . .). But the software that produces a manufacture is not a manufacture itself because, as Allvoice itself contends, the claims themselves are "directed solely to the interface application," without hardware limitations. *See* Pltf.'s Br. (Dkt. # 107) at 18. But it is precisely that lack of hardware limitations that renders Claims 60-68 unpatentable because without limiting structure, the claims are not limited to manufactures or any other § 101 category. Thus, the court rules that as a matter of law, to the extent that the '273 Patent claims software instructions alone in Claims 60-68, those claims are invalid.

C. To the Extent that the '273 Patent's Means-Plus-Function Claims Do Not Disclose Corresponding Algorithms, They are Indefinite.

The parties agree that Claims 1-27, 52-55, 65, 69-70, and 75-76 contain means-plus-function limitations governed by 35 U.S.C. § 112(6). According to Microsoft, the limitations for "means for monitoring,"[2] "means for selectively disabling,"[3] "editor link means for linking . . . using the link data,"[4] and "means for receiving . . . audio data" or

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unpatentable," the court finds this characterization of Microsoft's position to be misleading. Microsoft does not argue that software is *per se* unpatentable, but argues that software instructions *alone* are unpatentable – and has noted that it does not challenge other software-related claims in the '273 Patent where they are tied to a statutory category. *See* Def.'s Reply (Dkt. # 119) at 2. Furthermore, Allvoice has not explained how further discovery would aid the court's § 101 inquiry, and thus the court finds no reason not to consider the threshold issue at this time.

[2] The claims at issue referencing this limitation are Claims 1-27, 65, 75-76.

[3] The claims at issue referencing this limitation are Claims 10-11, 19-20, 52-55.

[4] The claims at issue referencing this limitation are Claims 15-27, 54-55.

"means for storing . . . audio data"[5] lack corresponding algorithms in the specification and are therefore indefinite. *See Aristocrat Techs Australia Pty Ltd. v. Int'l Game Tech.*, 521 F.3d 1328, 1335 (Fed. Cir. 2008) (holding that a claim directed to software function is indefinite unless it is supported by a corresponding algorithm in the specification).

In opposition, Allvoice contends that all of these disputed claims recite an interface application means, and that the claims "illustrate the relationship between the 'determining,' forming,' 'monitoring' and 'updating' functions of the interface application." Pltf.'s Opp'n at 7. While it may be true that the relationship between these functions is explained in those cited portions of the specification, no algorithm beyond that functional language is disclosed.

As to "means for monitoring," the court agrees with Microsoft that none of Allvoice's six citations to "algorithms" cited in the '273 Patent actually amount to algorithms for the monitoring function. *See* Figures 4, 6, 7, 8B, 14A, 14B. None of them mention "monitoring" nor identify any corresponding structure for that function. Implications within those figures that some sort of "monitoring" must occur is not sufficient corresponding structure for purposes of Section 112(6). *See Default Proof Credit Card Sys., Inc. v. Home Depot U.S.A., Inc.*, 412 F.3d 1291 (Fed. Cir. 2005) ("A structure disclosed in the specification qualifies as 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim.")

Regarding "means for selectively disabling," the court agrees with Microsoft that no corresponding algorithm is disclosed in the '273 Patent. Allvoice's citations to algorithms are instead references to a restatement of the functional language at issue, and they do not disclose specific corresponding structure. *See Finisar Corp. v. DirecTV*

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[5] The claims at issue referencing these two limitations are Claims 1-27, 52-55, 69-60, 75-76.

Group, Inc., 523 F.3d 1324, 1340 (Fed. Cir. 2008) (holding that restating a function is insufficient to provide an algorithm or description of corresponding structure).

With respect to "editor link means for linking the audio data to word positions using the link data," the court agrees with Microsoft that no corresponding algorithm is disclosed in the '273 Patent. Furthermore it appears from Allvoice's arguments in opposition that the "editor link means" is superfluous: Allvoice points to structure (S102 in Figure 13) associated with the "data reading means" for the "editor link means," and does not identify any editor link structure. Furthermore, as Microsoft notes, the function of this limitation appears to be superfluous, because if the link data already connects the audio data to the recognized words, it is unclear what function in S102 is served by the "editor link means."

Finally, as to the means for "receiving" and "storing" audio data, the court agrees with Microsoft that no corresponding algorithm is disclosed in the '273 Patent. Allvoice points to steps in three Figures of the '273 Patent, but those steps do not link an algorithm or structure with the functions of receiving or storing audio data. While a person of ordinary skill in the art may devise many different ways to accomplish the functions at issue, without any specific corresponding structure, it is nonetheless an indefinite claim because the boundaries of the claim are imprecise. *See Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1341 (Fed. Cir. 2008) ("Without any corresponding structure, one of skill simply cannot perceive the bounds of the invention.").

Thus, the court finds that these means-plus-function claims lack the requisite corresponding structure and are thus invalid for indefiniteness.

D. The Court Grants in Part and Denies in Part Microsoft's Motion Regarding Indefiniteness Based on Insolubly Ambiguous Claims.

Patent claims that are insolubly ambiguous are invalid as indefinite. *See Datamize LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). Microsoft

contends that a number of the claims in the '273 Patent are insolubly ambiguous, and the court will address each category of allegedly insoluble claims in turn.

1. The Method Claims at Issue are Not Insolubly Ambiguous.

According to Microsoft, Claims 37, 38, 45, 56-57, and 59 are indefinite because they "recite method elements that appear to claim the capability of a system to perform a step, rather than actually setting forth that step as [a] clear claim requirement." Def.'s Mot. at 18. The example cited by Microsoft is an excerpt of Claim 56, which includes the following language:

> 56. A data processing method comprising:
> receiving recognition data and corresponding audio data from a speech recognition engine . . . ,
> . . . storing the audio data for the period of time as an audio message associated with the file;
> . . . allowing a user to select whether to read and playback said audio message associated with said file.

According to Microsoft, the last limitation provides merely a capability, rather than a true method step.

A claim that claims both a system and a method for using a system is indefinite. *See IXPL Holdings v. Amazon.com*, 430 F.3d 1377 (Fed. Cir. 2005). In *IXPL Holdings*, a claim in the patent at issue recited both a system "wherein the predicted transaction information compromises both a transaction type and transaction parameters associated with that transaction type, *and the user uses the input means to either change the predicted transaction information or accept the displayed transaction type and transaction parameters.*" *Id.*, 430 F.3d at 1384. The court held that it was unclear "whether infringement of [the claim at issue] occurs when one creates a system" that allows the user to change/accept, or whether infringement occurs when the user actually uses the system to change/accept. *Id*.

Applying *IXPL Holdings*, Microsoft argues that a claim, like Claim 56, "allowing" a user to perform a step renders a claim ambiguous because it is "enough" (for

infringement purposes) that "the user must actually perform the step of playing back the audio message in order to practice the method, or whether it is enough that an accused system is merely provided with that capability, regardless of whether it is actually used." Def.'s Mot. at 19. Allvoice contends that the limitations are not ambiguous because it is clear, when the specification as a whole is considered, that the "allowing" claims require merely that a system provide the user with an opportunity with the capability at issue.

The court agrees that Allvoice's reading of the limitations at issue is not ambiguous, and that it is not unclear whether infringement depends on the user's decision to read or playback audio data or simply on possession of a system that allows a user to do so. *IXPL Holdings* "stand[s] for the narrow rule that a single claim may not purport to cover a system, independent of any use of the system, and simultaneously purport to cover a particular use of the system." *See Collaboration Props. V. Tandberg ASA*, 2006 WL 1752140 at * 7 (N.D. Cal. Jun. 23, 2006). The method claims at issue here do not cause such confusion, because they do not mention a user's action, but only that the system allows a user to take the action. Thus, the court finds that Microsoft has not met its burden to show that these claims are insolubly ambiguous.

2. The Phrase "Linking . . . Using the Link Data" is Not Insolubly Ambiguous.

Microsoft argues that Claims 40 and 58, and their dependents, are indefinite because they use the phrase "linking . . . using the link data," which is illogical in light of the '273 Patent's teaching that "linking" is the process that leads to the formation of "link data." Thus, Microsoft argues that the "linking" process cannot "use" the link data because it is creating it.

Allvoice contends that Microsoft's argument is inconsistent with the embodiment described in the specification, Figure 13. According to Allvoice, S102 and S103 in Figure 13 demonstrate that link data actually is used by the interface application to link the audio data to the word positions. S102 and S103 do not actually indicate, however,

that any "linking" occurs in those steps, or explain how "linking" uses "link data," and thus Allvoice's reference to those steps does not explain how "linking . . . using the link data" makes sense in light of the teachings of the specification. The court agrees with Microsoft that "linking . . . using the link data" is internally inconsistent and therefore insolubly ambiguous in light of the teachings of the specification.

E. Legal Standards on Claim Construction.

It is the obligation of the court to construe as a matter of law the meaning of language used in a patent claim. *Markman*, 52 F.3d at 979. In construing a patent's claim terms, a court must consider the intrinsic evidence in the record. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Intrinsic evidence includes the ordinary and customary meaning of the claim terms, the specification of the patent, and the patent's prosecution history. *Id.*

The ordinary and customary meaning of a term is defined by a person of ordinary skill in the art at the time of the invention. *Id.* The context in which a term is used can be "highly instructive" in resolving the meaning of the term. *Id.* at 1314. For example, if a claim has the term "steel baffle" it strongly implies that the term "baffle" does not inherently include objects made of steel. *Id.* Other claims in a patent may also provide valuable contextual cues for deciphering the meaning of a term. *Id.* If a limitation is present in a dependent claim, then there is a presumption that the limitation is not present in the parent claim. *Id.* at 1314-15.

The claims must also be read in light of the specification. *See Markman*, 52 F.3d at 979. The specification is always highly relevant to the meaning of a claim term: "Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). If the specification reveals a definition of a claim term that is different from how that term would otherwise be used, then "the inventor's lexicography governs." *See Phillips*, 415 F.3d at 1316. The court should take care, however, not to import limitations from the

specification into the claims. *Id.* at 1323. For example, even if the specification describes very specific embodiments, the claim terms should not be confined to those embodiments. *Id.*

The prosecution history of a patent is the last piece of intrinsic evidence that a court should consider when construing the claims of the patent. *Id.* at 1317. The prosecution history provides evidence of how the U.S. Patent and Trademark Office ("PTO") and the inventor understood the patent. *Id.* A court, however, should be aware that the prosecution history represents the ongoing negotiation between the PTO and the applicant, rather than the final product. *Id.* As such, the prosecution history may lack the clarity of the specification and may not be as useful for claim construction purposes. *Id.* In certain instances, however, the prosecution history may provide guidance of an applicant's intent to specifically limit the scope of a given claim term. *Id.*

Extrinsic evidence is the last category of evidence a court may consider when construing patent claims. *Id.* Such extrinsic evidence includes expert and inventor testimony, dictionaries, and learned treatises. *Id.* On its own, extrinsic evidence is unlikely to be reliable in guiding the court's claim construction. *Id.* at 1319. Instead, extrinsic evidence should be considered in the context of the intrinsic evidence. *Id.* A court may also use extrinsic evidence to determine how a person of ordinary skill in the art would understand the claimed invention. *Id.*

A "means-plus-function" claim limitation allows a patentee to express a claim limitation in terms of the means of performing a particular function without reciting a corresponding structure:

> An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be constructed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

35 U.S.C. § 112, ¶ 6 (hereinafter "§ 112, ¶ 6"). The above provision allows a patentee to recite a more generic claim in terms of an invention's means. *Biomedino, L.L.C. v. Waters Techs. Corp.*, 490 F.3d 946, 948 (Fed. Cir. 2007). And "in return for generic claiming ability, the applicant must indicate in the specification what structure" accomplishes the recited means. *Id.*

The use of the word "means" in claim language gives rise to a presumption that the patentee intends to invoke § 112, ¶ 6. *Id.* at 950. If, however, the claim also recites sufficient structure, then the § 112, ¶ 6 presumption is rebutted. *Envirco Corp. v. Clestra Cleanroom, Inc.*, 209 F.3d 1360, 1364 (Fed. Cir. 2000). If a court concludes that a claim limitation is a means-plus-function limitation, it must undertake a two-step process: "1) the court must first identify the function of the limitation; and 2) the court must then look to the specification and identify the corresponding structure for that function." *Biomedino*, 490 F.3d at 950. The scope of a means-plus-function claim is limited to the corresponding structure and equivalents thereto. *See Med. Instrumentation & Diagnostics Corp. v. Elekta*, 344 F.3d 1205, 1210 (Fed. Cir. 2003).

F. The Disputed Claim Terms.[6]

1. "interface application program means" and "interface application program"; "speech-recognition interface"; and "second application program"[7]

According to Allvoice "interface application program" either requires no construction, or should be construed to mean "software for communications between a speech engine and a processing application in a manner that provides for the operations recited" in claim 28. Furthermore, Allvoice contends that "speech-recognition interface"

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[6] This order addresses only the ten most important disputed claim terms, as identified by the parties in compliance with Local Patent Rule W.D. Wash. PR 132.

[7] These claim terms are found in claims 1, 15, 28, 51, 60, 64, 69, 71, 73, 75, 77.

(in claim 60) does not impart any additional limitations on the claim beyond what is provided in the body of the claim.

Microsoft urges the court to construe these claim terms to mean "An application, external to the text processing application, that maintains information about the positions of recognized words in a text processing application." Joint Chart (Dkt. # 157-1) at 1. Microsoft bases its proposed construction in part on positions it claims Allvoice took in prior litigation, wherein the district court construed the '273 Patent to describe the IAP as "external" to the text processing application. *See* Def.'s Br. (Dkt. # 108) at 4.

It is true that in prior litigation, Allvoice proposed and the court construed "speech recognition interface" to mean an interface that is "external to the different computer related applications." *See* Def.'s Br., Ex. A ¶ 27. But in this litigation it does not appear that Allvoice disputes that the IAP is separate from the text processing application — it seems that Allvoice merely objects to the inclusion of the word "external" in the court's construction, given that "external" does not appear in the claim language itself.

Yet it is clear from the wording of claim 28 that the IAP is separate from the text processing application, and Allvoice "agrees that the interface application is not the text processing application itself, nor the speech engine." Pltf.'s Reply (Dkt. # 115) at 1. Furthermore, the court finds that neither the '273 Patent itself nor the appellate record in this case indicate that the IAP must "occupy its own memory area," as proposed by Microsoft. The court finds that Allvoice's proposed alternative construction most closely reflects the teaching of the '273 Patent, and thus construes these terms to refer to "software for communications between a speech engine and a processing application in a manner that provides for the operations recited in claim 28."

2. "audio identifiers identifying audio components corresponding to each recognized word"

Allvoice proposes that the "audio identifier" claim language should be construed to refer to "stored audio data for one or more recognized words." On the other hand,

Microsoft proposes constructing this phrase to mean "Identifiers that indicate, for each recognized word, (1) the file containing the corresponding audio component and (2) the position of the corresponding audio component within that file." The distinction between these constructions appears to be that Allvoice's construction is less specific as to what the "audio data" actually includes.

The court finds that Microsoft's more specific definition is consistent with the teachings of the '273 Patent. *See, e.g.*, '273 Patent at 2:56-63, 6:1-5; 6:20-34. Thus, the court adopts Microsoft's proposed construction and construes this term as "Identifiers that indicate, for each recognized word, (1) the file containing the corresponding audio component and (2) the position of the corresponding audio component within that file."

3. "said link data comprising the audio identifiers and the determined positions of corresponding recognized words"

Allvoice proposes construing this phrase to mean "Link data includes references to the positions of recognized words in the text of a processing application, which are associated with references to the corresponding audio for those words." Microsoft construes the term to mean "Link data, which is stored in the interface application memory, includes the character positions of recognized words [or characters] in the text processing application and the corresponding audio identifiers for those words [or characters]."

The central dispute between the parties as to this term is whether the "positions" of the recognized words means "character positions." Allvoice urges the court to avoid Microsoft's narrower construction involving "character positions," given that "character positions" does not encompass the "position" of recognized words in, for example, a spreadsheet (which would involve column and row position, or cell number). Allvoice directs the court to consider that the specification "expressly mentions" document types other than text-processor documents, including spreadsheet, presentation, and e-mail applications. *See* '273 Patent 2:45-51.

But Microsoft directs the court to consider another section of the '273 Patent, which teaches that "character positions" are used to link recognized words with the corresponding audio component in word-processing documents *or* spreadsheets. *See* '273 Patent at 2:46-55. Furthermore, the court agrees with Microsoft that the '273 Patent teaches, in multiple places, that the link data includes "character position." *See* '273 Patent at 9:7-12, 19-24, 62-67. The court finds that Microsoft's proposed construction is most consistent with the teachings of the '273 Patent, and thus construes "link data" to mean "Link data, which is stored in the interface application memory, includes the character positions of recognized words [or characters] in the text processing application and the corresponding audio identifiers for those words [or characters]."

4. "means, independent of the computer-related application, for determining positions of the recognized words in the computer-related application"

The parties agree that this term is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6, and that the claimed function is "The IAP determines the positions of recognized words in the text processing application program." Joint Chart at 4. According to Allvoice, the corresponding structure is "IAP software instructions that obtain or calculate the positions of recognized words in the text of the processing application, as input or selected in that application." Microsoft proposes that the corresponding structure is "(1) an interface application that occupies its own memory area and is external to the text processing application; and (2) interface application software instructions for determining the positions of the recognized words in the text processing application."

The second part of Microsoft's proposed structure appears to be indistinguishable from Allvoice's proposed structure. Thus, the court will now consider whether the first part of Microsoft's corresponding structure should be included in the construction of the term. As discussed previously, the court does not construe the IAP reference to require

externality but simply independence. As to whether the IAP must occupy its own memory area, Allvoice contends that such a construction is inconsistent with the teaching of the specification because the '273 Patent teaches that the Windows 3.1, 3.11, NT and 95 operating systems could be used in the preferred embodiment (see '273 Patent at 6:35-36). Because a person skilled in the art would understand that Windows 3.1 used a common memory area to store and run applications, the skilled artisan would know that a separate memory area was not necessary.

Microsoft contends, however, that Allvoice's position in the *Nuance* litigation included a representation that "the interface and its link data occupy separate parts of computer memory from those occupied by the word-processing program and its files." Def.'s Br. (Dkt. # 108), Ex. H at 9. Allvoice represents that "occupy[ing] separate parts," as used in *Nuance*, does not mean that that the IAP must operate in its *own* memory area, but only that the IAP must store the link data in its memory structure, not in the document of the text processing application.

The court finds that Allvoice's proposed interpretation of "separate" (as opposed to "own") correctly interprets the *Nuance* opinion (see *Allvoice*, 504 F.3d at 1243) and more clearly reflects the teachings of the '273 Patent. *See, e.g.*, '273 Patent at 5:37-67. Thus, the court construes the claim language at issue as follows: (1) an interface application that is independent from the text processing application and stores link data in separate memory structure; and (2) interface application software instructions for determining the positions of the recognized words in the text processing application.

5. "means for forming link data linking the audio data to the recognized words" and "interface application program means compromising . . . means for forming link data linking the audio data to the recognized words"

The parties agree that this term is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6. The parties disagree about both the function and the corresponding structure for this claim language.

According to Allvoice, the function of this term is "The interface application associates a portion of the audio data with at least one of the recognized words," and the corresponding structure is the "IAP software instructions that associate in its memory a reference to the text positions of one or more recognized words with a reference to their corresponding audio data." Microsoft contends that the function of this term is "Building a data structure, which is stored in the interface application memory, that includes the character position of each recognized word in the text processing application and the corresponding audio identifier for the word." Microsoft's proposed corresponding structure has two parts: "(1) An interface application that occupies its own memory area and is external to the text processing application; and (2) interface application software instructions for building a data structure in the interface that saves the character position of each recognized word in the text processing application and location information on where the voice signals for the respective word are stored."

For reasons explained in previous sections, the court adopts Microsoft's proposed function because the court finds that the '273 Patent teaches that the link data is stored in the IAP memory and tracks the character position of the recognized words. The court also finds Microsoft's proposed construction of the corresponding structure is consistent with what is disclosed in the intrinsic record, with modification to the first part (as consistent with the court's construction of other terms): (1) an interface application that is independent from the text processing application and stores link data in separate memory structure; and (2) interface application software instructions for building a data structure in the interface that saves the character position of each recognized word in the text processing application and location information on where the voice signals for the respective word are stored.

6. "output means for outputting the recognized words into at least any one of the plurality of different computer-related applications to allow processing of the recognized words as input text"

The parties agree that this term is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6, and that the claimed function is "The interface application outputs recognized words to one of a plurality of different text processing applications." Joint Chart at 6.

Regarding corresponding structure, Allvoice proposes that the structure is "IAP software instructions that use Dynamic Data Exchange ("DDE") or other Windows messages to send the recognized words to a text processing application and the text processing application forms the words into a word string." Microsoft suggests that the corresponding structure has two parts: "(1) an interface application that occupies its own memory area and is external to the text processing application; and (2) interface application software instructions that use DDE messages to send the recognized words to a text processing application, and the text processing application forms the words into a word string."

As in previous sections, the court will modify the first part of Microsoft's proposed construction of the structure to read: (1) an interface application that is independent from the text processing application and stores link data in separate memory structure. The second part of Microsoft's proposed structure is nearly identical to Allvoice's proposed structure: the parties' dispute is centered around whether the messages used to send the recognized words to the text processing application must be DDE messages or whether "other Windows messages" should be included as equivalents. According to Microsoft, the correct construction would include "DDE messages" and equivalents, but that because the specification does not include any other messages other than DDE messages, the court's construction should not specifically reference other structures that may or may not be equivalent. Allvoice contends that the specification does reference other Windows messages indirectly via its references to the Windows

operating systems 3.1, 3.11, NT and 95, and thus the court should find that "other Windows messages" are equivalent to DDE messages.

It may be true that "other Windows messages" are equivalents of DDE messages, but the court agrees with Microsoft that the specification only discloses DDE messages. *See* '273 Patent at 7:3-7. Thus, a proper construction of this term would include "DDE messages" as the corresponding structure disclosed in the specification, plus equivalents. *See Med. Instrumentation & Diagnostics Corp. v. Elekta*, 344 F.3d 1205, 1210 (Fed. Cir. 2003) (holding that the scope of a means-plus-function claim is limited to the corresponding structure and equivalents thereto). Whether other Windows messages may qualify as an equivalent is a question of fact not before the court at this time. *See IMS Tech., Inc. v. Haas Automation, Inc.*, 206 F.3d 1422, 1429-30 (Fed. Cir. 2005). Thus, the second part of the court's construction of this term is "(2) interface application software instructions that use DDE messages to send the recognized words to a text processing application, and the text processing application forms the words into a word string," and equivalents.

7. "means for monitoring changes in the positions of the recognized words" and "interface application program means compromising . . . means for monitoring changes in the positions of the recognized words"

The parties agree that this term is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6, and that the claimed function is "The IAP monitors for changes in the positions of the recognized words in the text processing applications." Joint Chart at 7. Microsoft argues that this claim term is indefinite because the corresponding algorithm is not identified in the specification. The court agrees with Microsoft's position, as indicated *supra* III.C, and thus need not address this claim term further.

8. "means for selectively disabling one of the receipt of the recognized words [or characters] by said processing application program means and the recognition of speech by said speech recognition engine for a period of time"

The parties agree that this term is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6, and that the claimed function is "Disabling the receipt of recognized words by the text processing application or the recognition of speech by the speech recognition engine." Joint Chart at 8. Microsoft argues that this claim term is indefinite because the corresponding algorithm is not identified in the specification. The court agrees with Microsoft's position, as indicated *supra* III.C, and thus need not address this claim term further.

9. "audio playback means for playing back any identified audio components in the order of the word positions in the word string or the processed word string" and "audio playback means for playing audio data associated with the recognized words"

The parties agree that this term is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6. Microsoft contends that the function of this term needs no construction, and the court agrees that the claim language is self-explanatory and notes that Allvoice's proposed construction ("The playback of the audio data associated with one or more recognized words") is essentially a restatement. Thus, the court need not construe the function.

As to the corresponding structure, Allvoice urges the court to limit the court's construction of the corresponding structure to software instructions, but Microsoft argues that the corresponding structure must include hardware and software instructions. Microsoft points to a portion of the specification that references a loudspeaker, and audio interface device, and a digital-to-analog signal converter (see '273 Patent at 5:14-25), and argues that because the specification indicates that the patented system includes those hardware components, those components are disclosed as the corresponding structure.

Allvoice argues that those hardware components are not necessary because it is the software instructions that cause the hardware to perform the functions identified. That may be true, but Allvoice does not explain how the audio data could be "played" without

the hardware components, and thus the court will construe the corresponding structure to include hardware for playing back audio. Though a loudspeaker, audio interface device, and signal converter are described in an embodiment of the invention, but the claim terms should not be limited to those described in a specification's embodiments. *See Phillips*, 415 F.3d at 1323. Thus, the court will not construe the corresponding structure of this term to include these specific hardware components, but will include "hardware for playing back audio" as corresponding structure.

Now turning to consider the scope of the software instructions corresponding to this term "cause the audio data to be retrieved and played back for one or more selected recognized words." Microsoft's proposed construction includes software instructions for "(1) determining the location of a selected word; (2) determining whether the word is a dictated one; (3) if dictated, determining the tag information in the link data; (4) fetching the audio from the run time files on non-volatile disk storage; and (5) instructing the engine application to play back the retrieved audio."

Allvoice argues that the only requirement for the software instructions is that the audio files are retrieved from memory. Allvoice objects to Microsoft's proposed structure, arguing that it, *inter alia*, "limits playback of audio to instructing the speech engine to play back retrieved audio," even though the specification also describes "playing back audio via a conventional multimedia sound card and speakers." Pltf.'s Br. (Dkt. # 107) at 10. Thus, the court agrees that the '273 Patent contemplates that there may be multiple ways to accomplish "the playback of the audio data," and therefore construes the corresponding structure as follows: (1) hardware for playing back audio, and (2) software instructions that cause the audio data to be retrieved and played back for one or more selected recognized words.

10. "storage means for storing said audio data received from said input means"

The parties agree that this term is a means-plus-function term governed by 35 U.S.C. § 112 ¶ 6, and that the claimed function requires no construction. The parties' dispute is limited to the corresponding structure. According to Allvoice, the structure is "software instructions that store the audio data in memory"; according to Microsoft, the structure is "non-volatile disk storage that stores audio run time files." Joint Chart at 10.

Microsoft argues that the specification requires that the audio data be stored permanently, so that a user can dictate a document and store it without correction, and then the audio data can be retrieved later (by a different person, and/or on a different machine). *See* '273 Patent at 2:56-63. It is true that the specification contemplates that storage of the link data and audio data in non-volatile disk storage could allow for delayed corrections by another person on another machine, but the specification clearly states that this storage occurs in "one aspect of the present invention." '273 Patent at 2:56; *see also* '273 Patent at 6:30-34. The court will not import onto the claim term the limitations described in a specification's embodiments. *See Phillips*, 415 F.3d at 1323. Thus, the court adopts Allvoice's proposed construction of the corresponding structure for this term: software instructions that store the audio data in memory.

IV. CONCLUSION

The court construes the disputed claims of the '273 Patent as described above, and GRANTS IN PART and DENIES IN PART the Defendant's motion for partial summary judgment (Dkt. # 109).

DATED this 21 day of December, 2011.

The Honorable Richard A. Jones
United States District Court Judge