

The Hon. Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALLVOICE DEVELOPMENTS US, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 2:10-cv-02102-RAJ

**PLAINTIFF’S MOTION FOR  
RECONSIDERATION OF  
CONSTRUCTION OF “AUDIO  
IDENTIFIERS”**

NOTE ON MOTION CALENDAR:  
January 4, 2012

*PLAINTIFF’S MOTION FOR RECONSIDERATION OF  
CONSTRUCTION OF “AUDIO IDENTIFIERS”  
No. 2:10-cv-02102-RAJ*

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1 Plaintiff Allvoice respectfully requests reconsideration of the Court's Order on claim  
 2 construction entered on December 21, 2011, to correct a manifest error in the Court's  
 3 construction of "audio identifiers." The current construction, which calls for "audio data" to  
 4 be stored in a "file," is irreconcilable with the Court's separate holding in the same Order  
 5 rejecting that very limitation on "audio data" as "import[ing] onto the claim term the  
 6 limitations described in a specification's embodiments." Allvoice respectfully requests that  
 7 the Court modify its construction of "audio identifiers" to replace "file" with "storage  
 8 location" for consistency with its holding on "audio data."  
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## 10 I. ARGUMENT

### 11 A. This Motion for Reconsideration Is Appropriate Under the Local Rules.

12 Although motions for reconsideration are disfavored, they may be granted based on  
 13 "a showing of manifest error in the prior ruling." *See* Local Civil Rule 7(h). As discussed  
 14 herein, Allvoice believes the prior ruling reflects a manifest error in the construction of  
 15 "audio identifiers" because it includes limiting language irreconcilable with this Court's  
 16 considered rejection of such a limitation. Reconsideration is appropriate when a court's  
 17 conclusions are internally inconsistent. *See Harris v. Cochise County*, No. 08-cv-008, 2010  
 18 WL 960392, at \*2 (D. Ariz. Mar. 15, 2010) ("The Court's conclusions are inconsistent and,  
 19 because one purpose of a motion for reconsideration is to correct a manifest error of fact,  
 20 reconsideration is appropriate."). Therefore, this motion is proper under the local rules.  
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### 24 B. The Court Should Modify Its Construction of "Audio Identifiers" to Eliminate 25 the Incorrect Requirement That Audio Data Be Stored in a File.

26 On December 21, 2011, this Court entered an order on claim construction and  
 27 Microsoft's motion for partial summary judgment ("Order"). (ECF Doc. No. 166.) In that

1 Order, the Court addressed, among other things, the construction of two claim terms relevant  
2 to this Motion: “storage means for storing said audio data received from said input means”  
3 and “audio identifiers identifying audio components corresponding to each word” (the  
4 “audio identifiers” term). (Order at 14–15, 22–23.)

5 The parties’ dispute concerning “storage means for storing said audio data received  
6 from said input means” centered on Microsoft’s argument “that the audio data [must] be  
7 stored permanently” on “non-volatile disk storage that stores audio run time files.” (Order at  
8 23.) The Court rejected Microsoft’s proposed limitation that the audio data must be stored  
9 in files:  
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12 It is true that the specification contemplates that storage of the  
13 link data and audio data in non-volatile disk storage could  
14 allow for delayed corrections by another person on another  
15 machine, but the specification clearly states that this storage  
16 occurs in “one aspect of the present invention.” ’273 Patent at  
17 2:56; *see also* ’273 Patent at 6:30-34. The court will not  
18 import onto the claim term the limitations described in a  
19 specification’s embodiments. *See Phillips*, 415 F.3d at 1323.<sup>1</sup>

20 (*Id.*) Based on this analysis, the Court “adopt[ed] Allvoice’s proposed construction of the  
21 corresponding structure for this term: software instructions that store the audio data in  
22 memory.” (*Id.*) This correctly reflects an understanding that “audio data” can be stored in  
23 any medium that constitutes “memory” and is not limited to non-volatile storage as a “file.”

24 When construing “audio identifiers identifying audio components corresponding to  
25 each word,” however, the Court appears to have adopted Microsoft’s proposed construction

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27 <sup>1</sup> *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).

1 without recognizing its presumption that audio data is stored as a “file”—a presumption  
2 wholly inconsistent with the Court’s holding that the audio data need not be stored as a file.

3 As noted in the Order, the parties’ competing proposals were as follows:

4 Allvoice proposes that the “audio identifier” claim language  
5 should be construed to refer to “stored audio data for one or  
6 more recognized words.” On the other hand, Microsoft  
7 proposes constructing this phrase to mean “Identifiers that  
8 indicate, for each recognized word, (1) the file containing the  
9 corresponding audio component and (2) the position of the  
10 corresponding audio component within that file.”

9 (Order at 14–15.) The Order then framed the dispute as one of specificity: “The distinction  
10 between these constructions appears to be that Allvoice’s construction is less specific as to  
11 what the ‘audio data’ actually includes.” (*Id.* at 15.)

12 The Order adopted Microsoft’s construction with the following explanation:

13 The court finds that Microsoft’s more specific definition is  
14 consistent with the teachings of the ’273 Patent. *See, e.g.*,  
15 ’273 Patent at 2:56-63, 6:1-5; 6:20-34. Thus, the court adopts  
16 Microsoft’s proposed construction and construes this term as  
17 “Identifiers that indicate, for each recognized word, (1) the file  
18 containing the corresponding audio component and (2) the  
19 position of the corresponding audio component within that  
20 file.”

21 (Order at 15.) This explanation appears to draw from Microsoft’s argument about “audio  
22 identifiers” in its opening claim construction brief, in which Microsoft argued: “The patent  
23 explains, and Allvoice does not dispute, that the purpose of the audio identifier is to pinpoint  
24 the precise location, among all of the stored audio data, of the audio associated with specific  
25 words selected by the user in the text processing application.” (Microsoft Corp.’s Claim  
26 Construction Br., ECF Doc. No. 108, at 29 (emphasis added).)

1 In adopting Microsoft's construction, the Court determined that "audio identifiers"  
2 should be more specific. However, in addition to setting forth a more specific definition,  
3 Microsoft's construction added a presumption that the audio data is stored in a "file," a  
4 requirement that the Court soundly rejected, in a different section of the Order, as an  
5 improper attempt to import limitations from the specification. (Order at 23.)  
6

7 Although Allvoice believes its original proposal was correct, Allvoice does not  
8 request reconsideration of that aspect of the Court's construction that requires further  
9 specificity concerning "audio identifiers." Rather, this Motion is limited to the Court's  
10 adoption of Microsoft's language that presumes that the audio data is stored in a "file." The  
11 Court was correct in rejecting the limitation elsewhere in its Order, and it should also be  
12 rejected with regard to "audio identifiers."  
13

14 The Court's own reasoning makes this clear. Citing *Phillips*, the Court recognized  
15 the need to "take care . . . not to import limitations from the specification into the claims.  
16 For example, even if the specification describes very specific embodiments, the claim terms  
17 should not be confined to those embodiments." (Order at 11–12.) Yet the passages of the  
18 specification cited in the Court's discussion of "audio identifiers" refer only to particular  
19 embodiments. For example, one passage states: "In one aspect of the present invention the  
20 link data and audio data can all be stored." ('273 Patent at 2:56–63.) That such data "can"  
21 be stored in a non-volatile medium in "one aspect" of the invention certainly does not  
22 suggest the claims require such storage. Similarly, the other passages discuss "storage of  
23 run time files" by one "specific embodiment" because "the storage [of] audio data requires a  
24 great deal of storage capacity." ('273 Patent at 6:1–5, 6:20–34.) As recognized by the  
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1 Court's Order, such language does not call for the importation of limitations from the  
2 specification into the claims. (Order at 23.) Indeed, where a "file" limitation exists in a  
3 claim, it is expressly stated; unlike other claims, claim 6 of the '273 Patent expressly  
4 requires storage of audio data in a "file." This is a strong indicator that such a limitation  
5 should not be read into other claims that do not expressly require it. *See Rodime PLC v.*  
6 *Seagate Tech., Inc.*, 174 F.3d 1294, 1305 (Fed. Cir. 1999) ("Had Rodime intended or desired  
7 to claim thermal compensation as a function of the positioning means in the asserted claims,  
8 it could have done it explicitly, as in claim 11. The absence of any such explicit language,  
9 however, shows that claims 3, 5, and 8 do not include the function of thermal  
10 compensation.").

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13 Allvoice respectfully submits that the Court's adoption of Microsoft's construction  
14 of "audio identifiers" without modification is manifest error, especially in light of the  
15 Court's separate holding that "audio data" need not be stored in a file. Allvoice also  
16 recognizes that the Court intended to adopt a construction that provides further specificity  
17 and does not request reconsideration of the Court's holding in that regard. A substitution of  
18 "storage location" for "file" in the construction would resolve the inconsistency with this  
19 Court's holding on "audio data" because "storage location" encompasses both volatile and  
20 non-volatile storage media. Accordingly, Allvoice requests that the Court modify its  
21 construction of "audio identifiers" as follows (with changes underlined): Identifiers that  
22 indicate, for each recognized word, (1) the storage location containing the corresponding  
23 audio component and (2) the position of the corresponding audio component within that  
24 storage location.

**II. CONCLUSION**

For the foregoing reasons, Allvoice respectfully requests that the Court modify its construction of “audio identifiers” to replace “file” with “storage location.”

Dated: January 4, 2012

Respectfully submitted,

By: /s/ Daniel J. Shih

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**CERTIFICATE OF SERVICE**

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I hereby certify that on January 4, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Daniel J. Shih  
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