**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ALLVOICE DEVELOPMENTS US, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 6:09-CV-366 LED**
MICROSOFT CORPORATION,	§	
	§	
Defendant.	§	
	§	
	§	

**MICROSOFT'S MOTION TO STAY PENDING COMPLETION OF THE
INTERFERENCE PROCEEDING INVOLVING THE PATENT-IN-SUIT**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

I.   INTRODUCTION

Defendant Microsoft Corporation ("Microsoft") respectfully submits this motion to stay the present litigation.[1]   The U.S. Patent and Trademark Office (PTO) has declared an interference proceeding involving the patent being asserted in this litigation by Plaintiff ("Allvoice").   The interference was requested by a company called Advanced Voice Recognition Systems, Inc. ("AVR"), who contends that it was the first to invent the subject matter claimed by Allvoice's patent.   Microsoft is now caught in the middle of a fight between Allvoice and AVR, each of whom contends to be entitled to the claims that have been asserted against Microsoft.

Allvoice and AVR will now litigate at the PTO to determine which of them should have actually been awarded the patent claims at issue in this case.   The PTO has already declared that AVR is the "Senior Party" in the interference, which means that AVR is presumed to be the first inventor.   Moreover, the PTO's own statistics show that the Senior Party prevails in the vast majority of interference proceedings.   Consequently, the patent claims currently being litigated in this Court most likely do not belong to Allvoice.

The fight between Allvoice and AVR needs to be resolved before either of them engages Microsoft in a dispute.   Without a stay, Microsoft could face a manifestly unjust scenario that is unique to the interference context.   If Allvoice loses at the PTO, all of the claims at issue in this litigation could be canceled and awarded to AVR, who might then sue Microsoft, just as

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[1] Microsoft also currently has two transfer motions pending before the Court [*see* Dkt. Nos. 15 & 23], and has filed a motion for a hearing regarding those transfer motions.   Because Microsoft believes the proper venue for this action is the Western District of Washington, Microsoft requests that transfer to that district be granted, whereupon the Western District of Washington can rule upon the present motion to stay.   If transfer is granted, the Court need not address this motion to stay.   However, if the Court is inclined to keep this case in the current forum, Microsoft requests that the Court order a stay pending completion of the interference proceeding.

Allvoice has done.   Therefore, by proceeding to trial in this case, and if Microsoft were to lose, Microsoft could be compelled to pay damages to Allvoice, only to see Allvoice's patent claims canceled by the PTO and a new patent awarded to AVR.   At that point, Microsoft would have just litigated against, and potentially paid damages for, an invalid patent.   AVR could then bring suit on its new patent, asserting identical claims against Microsoft in a second, duplicative suit— and potentially extract a second damages award as well.   To make matters worse, because AVR is not a party to the present litigation, AVR would not be bound by any prior judgment or by any positions taken by Allvoice.   A stay is required to prevent the extremely unfair and wasteful outcome of Microsoft facing back-to-back suits, brought by two different plaintiffs, but asserting the identical claims.

Although this outcome would be unfair, it is far from unlikely.   Significantly, AVR's patent application has been accorded the benefit of a filing date that is <u>10 months</u> prior to Allvoice's filing date.   This places the burden on Allvoice to overcome the presumption that AVR, as the first to file, was also the first to invent.   The party who is first to file already prevails in the vast majority of interference proceedings, but AVR's significant 10-month lead time will only make Allvoice's challenge that much more difficult.   Moreover, the prospect of AVR suing Microsoft or demanding a license if it were to win the interference is by no means farfetched.   AVR has already issued press releases regarding the interference stating that its business strategy is to "pursue license agreements" and "defend its patents through appropriate infringement and interference proceedings."   [Exh. A (Press Release) at 1]

There are additional, compelling reasons for granting a stay.   Allowing the PTO to make a priority determination will greatly simplify and streamline the issues in this case.   Because <u>all</u> <u>seventeen claims asserted by Allvoice are subject to the interference</u>, the PTO's ruling could

2

dispose of this case in its entirety. Even if some of Allvoice's claims did survive, this Court would have the benefit of the PTO's guidance in examining the asserted claims and the prior art involved in this case. It would be a waste of the parties' time and money, as well as an ineffective use of judicial resources, to litigate the same issues in this Court and before the PTO at the same time.

Further, Allvoice would not experience any real prejudice from having this litigation stayed pending completion of the interference. Allvoice has already conceded that it does not sell any products that compete with Microsoft, which means that its standing in the market would not be harmed by a stay. Finally, this case is still in its early stages. Discovery has just begun and does not close for another year, the claim construction process has not even begun, and trial is almost a year and a half away. As a result, there is an opportunity now to stay this litigation and allow the PTO to resolve the fundamental issue of whether Allvoice has any entitlement to the claims it has asserted.

II.   BACKGROUND

Allvoice commenced this action on August 14, 2009, alleging that Microsoft infringed U.S. Patent No. 5,799,273 ("the 273 patent"). The 273 patent generally relates to the field of dictation software and speech recognition systems. In its complaint, Allvoice accuses various functionalities within Microsoft's Windows XP and Windows Vista operating systems of infringing the 273 patent. [Compl. at ¶ 11] Windows XP was commercially released in 2001, approximately 8 years before Allvoice brought this action. Windows Vista first shipped in 2006, roughly 3 years before Allvoice filed its complaint.

The discovery and trial schedules are outlined in the Discovery Order and Docket Control Order that have been entered in this case. Document production has just begun and, to date, no depositions have been noticed or scheduled. With respect to written discovery, no

interrogatories or requests for admission have been issued by either party.   Also, Allvoice has

served its Infringement Contentions and Microsoft has served its Invalidity Contentions.

Discovery closes one year from now, on March 2, 2011.   [Docket Control Order (Dkt. No. 39)

at 1]

The parties have not yet begun the claim construction process.   The initial exchange of

proposed terms for construction is set for June 18, 2010, and the *Markman* hearing is scheduled

to take place approximately 8 months from now, on November 4, 2010.   [*Id*. at 3, 5]   Neither

party has filed any summary judgment motions or other dispositive motions.   Trial in this matter

has been scheduled for July 11, 2011, approximately 16 months from now.   [*Id*. at 1]

Earlier this month, on March 9, 2010, the PTO declared an interference between

Allvoice's 273 patent and a pending patent application assigned to AVR.   [Exh. B (Declaration

of Interference) at 3]   AVR, the company that requested the interference, is not affiliated with

either Microsoft or Allvoice.   All of the claims being asserted by Allvoice in this case (claims

60-75, & 77) are subject to the interference.   [*Id*. at 4]

An interference is a contested proceeding that is declared when two different parties

have applied for a patent covering the same patentable invention.   [*See* 37 C.F.R. § 41.203;

MPEP § 2301.03]   The declaration of interference means that the claims of AVR's interfering

patent application are "patentable but for a judgment in the contested case," i.e., but for the

pending interference.   [37 C.F.R. § 41.101; *see also* MPEP § 2303]   The Board of Patent

Appeals and Interferences ("BPAI") will conduct a proceeding to examine issues of patentability

and determine priority of invention.   The prevailing party is awarded the patent, and the claims

of the losing part are retroactively canceled.   [*See* 35 U.S.C. § 135(a)]

AVR's pending application lists Douglas Holt as the primary inventor, and claims priority to U.S. Patent No. 5,960,447 ("the Holt patent"), which also lists Mr. Holt as the primary inventor. The filing date of the Holt patent, and thus the priority date of AVR's interfering application, is November 13, 1995. [*See* Exh. B (Declaration of Interference) at 4] The filing date of the 273 patent is September 27, 1996, over 10 months after the filing of the Holt patent. [*Id*. at 3] Because AVR was the first to file, it is the "Senior Party," and is presumed to have been the first to invent. Allvoice, the "Junior Party," bears the burden of proving priority and overcoming this presumption. [37 C.F.R. §§ 41.201, 41.207(a)] The BPAI has disclosed that the Senior Party prevails in 75% of interference proceedings. *See Edwards v. Strazzabosco*, 58 U.S.P.Q 2d 1836, 1840 (B.P.A.I 2001) ("…approximately 75% of all senior parties involved in an interference prevail").

The Holt patent is one of the prior art references Microsoft is relying upon in its Invalidity Contentions. [Exh. C (Microsoft's Invalidity Contentions) at 4] Microsoft contends that the Holt patent anticipates each and every one of the asserted claims.

III.   LEGAL STANDARD

"A district court has inherent power to control its own docket, including the power to stay proceedings." *Spa Syspatronic, AG v. Verifone, Inc.*, 2008 WL 1886060 at *1 (E.D. Tex. Apr. 25, 2008). The determination of whether to grant a stay "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). Although it appears that the Eastern District of Texas courts have never squarely decided the precise issue raised by this motion—whether a stay pending the completion of an interference proceeding involving the patent-in-suit is warranted—one of its sister courts has ruled on such a motion. In *Bayer AG v. Novartis Crop Prot., Inc.*, 2000 WL 1124513, at *2 (M.D. La. Jun. 29, 2000), the court explained that courts "should consider the

possible damage, hardship and inequities to the parties to the lawsuit and the relationship of the

stay to the fulfillment of judicial objectives of simplification of the issues in question and trial of

the case."

In the context of motions to stay pending other proceedings before the PTO, such as

reexamination, it is well-established in this district that "courts primarily consider three factors:

(1) whether a stay will unduly prejudice or present clear tactical disadvantage to the nonmoving

party; (2) whether a stay will simplify the issues in question and the trial of the case; and (3)

whether discovery is complete and whether a trial date has been set." *Spa Syspatronic*, 2008

WL 1886020, at *1.

IV.   ARGUMENT

A.   A Stay is Necessary to Prevent the Unjust Result of Both Allvoice and AVR Suing Microsoft on Identical Claims

Microsoft is now caught in the middle of a fight between Allvoice and AVR that needs to

be resolved before this case proceeds further.   If this litigation is not stayed pending completion

of the interference, both Allvoice and AVR could very well end up suing Microsoft in two

different suits based on identical patent claims.

Allvoice and AVR each contends to have been the first to conceive of the subject matter

covered by the asserted claims, and thus each contends to have the right to enforce these claims.

As a result, the need for a stay pending an interference proceeding is even more compelling than

a stay pending reexamination.   In contrast to a reexamination, the interference proceeding is

designed to determine which of multiple competing parties is legally entitled to the invention in

the first place.[2]   Also, in a reexamination, Allvoice would not be deemed the "Junior Party" and

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[2] It is also possible that the BPAI could invalidate either or both parties' claims, as opposed to simply deciding the interference solely on the basis of priority.   35 U.S.C. § 135(a) ("The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine

bear the burden of proving priority in order to save its claims. Without staying the current litigation, Microsoft could face a trial and potential judgment in this litigation, only to see the PTO later cancel Allvoice's claims and grant a patent to AVR covering the identical subject matter. *See* 35 U.S.C. § 135(a). In such a scenario, Microsoft would have had to defend itself against, or even pay damages to, a plaintiff who, as it turned out, had no right to assert the patent in the first place. To compound the unfairness, Microsoft could then be dragged into court on the identical claims yet again, but this time by AVR, who would not be bound by the prior result or the positions taken by Allvoice during this litigation.

There is a real probability of these manifestly unfair outcomes actually coming to pass. AVR is the Senior Party because it was the first to file and thus enjoys the statutory presumption of being the first to invent. *See* 37 C.F.R. § 41.207. The Senior Party prevails in approximately 75% of interference proceedings before the BPAI. *See Edwards*, 58 U.S.P.Q 2d at 1840. Such a high likelihood of the asserted claims being canceled clearly weighs in favor of staying this matter, something courts in the Eastern District have expressly held in the reexamination context. *See, e.g., Spa Syspatronic*, 2008 WL 1886020, at *3 ("Historically, the PTO has eliminated, amended or otherwise limited the claims in over 70% of reexamined patents. The fact that some of the claims are likely to change favors staying the case."); *Alza Corp. v. Wyeth*, 2006 WL 3500015, at *2 (E.D. Tex. Nov. 21, 2006) ("Statistically, 71% of reexamination proceedings result in amended or cancelled claims. Therefore, as a matter of judicial efficiency and economy, it makes sense to await the conclusion of the reexamination").

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questions of patentability.") However, this does not change the underlying fact that the issue of which party, if any, is legally entitled to the asserted claims remains unresolved until the completion of the interference proceeding.

Moreover, AVR's pending application has been accorded the benefit of the Holt patent's filing date, which is over 10 months prior to the filing date of Allvoice's 273 patent. [Exh. B (Declaration of Interference) at 4] AVR's large lead-time in the priority fight makes cancellation even more likely, similarly increasing the odds that Allvoice and Microsoft are currently litigating invalid claims before this Court. It also increases the odds of Microsoft facing a new, duplicative suit brought by AVR, that seeks new damages, based on the same exact patented subject matter already asserted by Allvoice. A stay should be granted to avoid the unnecessary and unfair costs of multiple suits, and potentially multiple damages awards, based on a single set of patent claims.

B.   A Stay Will Greatly Simplify the Issues in this Case

Staying the case will undoubtedly streamline the issues for this Court to decide and for the parties to try. All of the claims asserted in this case are subject to the interference. If Allvoice does not prevail in the interference, which is a likely result, all of the asserted claims could be canceled by the PTO, rendering the present litigation moot. Courts have often granted stays pending the outcome of a parallel interference proceedings when, as here, the PTO's determination could dispose of the case altogether. For example, in *Wireless Spectrum Tech., Inc. v. Motorola Corp.*, 2001 WL 32852, at *2 (N.D. Ill Jan. 12, 2001), the court ruled that a stay pending completion of the interference was warranted because "[i]f the PTO with its unique expertise determines that all or some of the [patent] claims are invalid, that determination will either dispose of the case entirely or at least aid the Court in adjudicating this case." Similarly, in *Bayer*, the district granted a stay and explained that "if the patent held by [plaintiff] Bayer is held to be invalid in the Interference proceeding, this case may be disposed of in its entirety." *Bayer*, 2000 WL 1124513, at *3.

Even if some or all of Allvoice's claims do end up surviving the interference proceeding, the parties, and the Court, would still have wasted their resources by having the same invalidity and prior art issues litigated in two forums. For example, the Holt patent, which Microsoft has relied on in its Invalidity Contentions, is the very same patent that AVR is using to establish its priority date. The disclosure of the Holt patent will be thoroughly examined during the interference proceeding, while the parties and the Court conduct their own, duplicative examination here in this litigation. Preventing this unnecessary duplication of efforts has, for decades, been a predominate reason for courts to stay litigations pending completion of an interference proceeding. *See e.g., NL Chemicals, Inc. v. S. Clay Prods., Inc.*. 1989 WL 214495 (D.D.C. Nov. 20, 1989) ("Rather than duplicate the efforts of the PTO, the most prudent course to follow is to permit the PTO, which possesses substantially more technical expertise than this Court in these areas, to proceed to a final decision in [the interference]."); *Childers Foods, Inc. v. Rockingham Poultry Mktg. Co-op, Inc.*, 203 F. Supp. 794, 796 (W.D. Va. 1962) ("Certainly, it seems wasteful and extravagant for litigants to be required to proceed in two different forums, where the issues, while not identical, are so similar."); *Research Corp. v. Radio Corp. of Am.*, 181 F. Supp. 709, 711 (D. Del. 1960) ("…litigation in two tribunals at the same time is a luxury not compatible with the efficient administration of justice.").

A stay would also allow the Court to benefit from the PTO's unique expertise with the relevant technology and with evaluating the issues of validity and priority. The interference record will enrich the prosecution history of the 273 patent and will certainly assist the Court in deciding any invalidity or claim construction issues that remain after completion of the interference. The Eastern District courts have expressly recognized that a benefit of staying a case pending reexamination is that "[a]ll prior art presented to the Court will have been first

considered by the PTO, with its particular expertise," but the observation applies with equal force to interference proceedings as well. *Echostar Techs. Corp. v. Tivo, Inc.*, 2006 WL 2501494, at *4 (E.D. Tex. July 14, 2006) (granting stay and noting that "to the extent the reexamination proceeding reaffirms the claims at issue, the Court will then have the benefit of the PTO's expert analysis of the prior art that allegedly invalidates or limits the claims."). The benefit of the guidance provided by the PTO's evaluation of the 273 patent, the Holt patent, and any related invalidity issues is amplified by the fact that <u>all of the asserted claims</u> in this case are involved in the interference. *See Spa Syspatronic*, 2008 WL 1886020, at *3 ("The PTO's guidance will also have a greater probability of simplifying the issues…because all of the patents and claims that are the subject of this litigation will be before the PTO during the reexamination.").

In sum, the circumstances of this case create a substantial likelihood that the PTO's interference findings will dispose of the asserted claims in their entirety. Staying the case while the PTO conducts its own proceedings will also spare the parties and the Court from needless litigation while giving the Court an opportunity to obtain the expert guidance of the PTO on any issues left to be tried. All of these considerations weigh strongly in favor of staying this case until the completion of the interference proceeding.

C.   Allvoice Will Not Be Prejudiced By a Stay

There is no indication that Allvoice would experience any prejudice by having this litigation stayed pending completion of the interference. Staying this case to allow the BPAI to conduct its interference proceeding would not prolong this case indefinitely. Statistics for 2009 show that, on average, interference proceedings before the BPAI were terminated in just 10 months. [Exh. D (2009 BPAI Performance Measures)] And over 93% of interference

proceedings conclude in under two years[3] [*Id*.]   These are not unreasonable periods of time,

especially considering the fundamental impact that the BPAI's decision will have on this case.

To the extent that the resolution of this litigation would be prolonged as a result of a stay,

Allvoice should not suffer any harm in the marketplace because it has already conceded it does

sell any products that compete with Microsoft.   In arguing for its version of the Protective

Order, Allvoice represented to this Court that 'Plaintiff is not a competitor of the Defendant, in

that, it does not promote or sell a competing product in the U.S. or elsewhere."   [Joint Mtn. for

Entry of P.O. (Dkt. No. 42) at 2]   Addressing this very issue, the *Spa Syspatronic* court clearly

explained that "the parties are apparently not direct competitors in the marketplace, and therefore

a stay is also unlikely to directly prejudice [Plaintiff's] standing in the market during the

remainder of the [patent's] life, making any harm from delay even less acute."   2008 WL

1886020, at *2.

Moreover, Allvoice waited eight years after the commercial release of the accused

Windows XP operating system (and three years after the release of Windows Vista) to file this

lawsuit.   Given these lengthy delays, Allvoice cannot credibly claim undue prejudice for

potentially having to push back its trial date.   Numerous district courts have held that delays in

bringing suit even shorter than Allvoice's eight year delay strongly militate against a finding of

prejudice. *See Insituform Techs., Inc. v. Liqui-Force Servs. (USA), Inc.*, 2009 WL 1469660, at

*3 (E.D. Mich. May 26, 2009) (granting stay pending reexamination and finding lack of

prejudice because "Plaintiffs knew of Defendant's allegedly infringing actions for almost six

years before commencing the current suit"); *Ingro v. Tyco Indus., Inc.*, 1985 WL 1649, at *3

(N.D. Ill. May 31, 1985) (granting stay pending reexamination and finding lack of prejudice

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[3] *See also* 37 C.F.R. § 41.200(c) ("Patent interferences shall be administered such that pendency
before the Board is normally no more than two years.").

because "plaintiff waited to commence litigation almost seven years after his first knowledge of alleged infringement").   The absence of any material prejudice or competitive harm to Allvoice, along with Allvoice's years of delay in filing this suit, weigh in favor of staying this matter.

D.   This Case is Still in its Early Stages

Microsoft has diligently moved for this stay during the early stages of this case.   The interference was just declared earlier this month on March 9, 2010.   While some initial discovery has been taken in this case, discovery is not set to close until a year from now on March 2, 2011.   No depositions have been noticed and no interrogatories or requests for admissions have been issued.   In addition, no dispositive motions have been filed and the claim construction process has not even begun.   The parties are still several months away from the initial exchange of proposed terms for construction, and the *Markman* hearing is scheduled for November 4, 2010, nine months from now.   Finally, the current trial date, set for July 11, 2011, is still almost one and a half years away.   As a result, staying the case at this point in the litigation still allows for the most efficient and appropriate use of the parties' and the Court's resources.   *See, e.g., DataTreasury Corp. v. Wells Fargo & Co.*, 490 F. Supp. 2d 749, 755 (E.D. Tex. 2006) ("This case presents a proper situation in which to grant a stay pending reexamination because…Defendants did not delay in moving for a stay, discovery is far from complete, and the scheduled trial date is approximately two years [away].").   The early stage of this litigation strongly weighs in favor of granting a stay.

V.   CONCLUSION

For the foregoing reasons, Microsoft respectfully requests that the Court grant this motion to stay pending completion of the interference proceeding currently before the PTO.

DATED: March 25, 2010   Respectfully submitted,

                                       /s/   *Eric H. Findlay*
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                                       Brian Craft (SBN: 04972020)
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                                       **ATTORNEYS FOR DEFENDANT
                                       MICROSOFT CORPORATION**

13

CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 25th day of March, 2010.

/s/ Eric H. Findlay
Eric H. Findlay

CERTIFICATE OF CONFERENCE

Counsel have complied with the meet and confer requirement in Local Rule CV-7(h). The motion is opposed. The personal conference required by the rule was conducted by telephone on March 22, 2010. Counsel for Microsoft Corporation participating in that conference were David Lender and Paul Torchia from Weil, Gotshal & Manges LLP. Counsel for Allvoice Developments US, LLC participating in the conference was Chris Perque from Gardere Wynne Sewell LLP. The discussion has conclusively ended at an impasse over staying this litigation pending the completion of the PTO's interference proceeding, leaving an open issue for the Court to resolve.

/s/ *Paul Torchia*
Paul Torchia

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ALLVOICE DEVELOPMENTS US, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 6:09-CV-366 LED**
MICROSOFT CORPORATION,	§	
	§	
Defendant.	§	
	§	
	§	

ORDER

On this day came on to be considered Microsoft's Motion to Stay Pending Completion of the Interference Proceeding Involving the Patent-In-Suit, and the Court being of the opinion that the same should be GRANTED, it is therefore,

ORDERED, ADJUDGED and DECREED that this action is stayed pending completion of Patent Interference No. 105,746.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ALLVOICE DEVELOPMENTS US, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	**CIVIL ACTION NO. 6:09-CV-366 LED**
MICROSOFT CORPORATION,	§	
	§	
Defendant.	§	
	§	
	§	

**DECLARATION OF STEVEN KALOGERAS IN SUPPORT OF MICROSOFT'S
MOTION TO STAY PENDING COMPLETION OF THE INTERFERENCE
PROCEEDING INVOLVING THE PATENT-IN-SUIT**

I, Steven Kalogeras, hereby declare:

1.   I am an attorney with the law firm of Weil, Gotshal & Manges LLP, counsel of record for Microsoft Corporation in the above-captioned matter.   I submit this declaration based on personal knowledge and following a reasonable investigation.   If called upon as a witness, I could competently testify to the truth of each statement herein.

2.   Exhibit A is a true and correct copy of a press release entitled, "Advanced Voice Recognition Systems, Inc. Announces Declaration of Interference by the United States Patent and Trademark Office," dated March 15, 2010.

3.   Exhibit B is a true and correct copy of Declaration of Interference, Patent Interference No. 105,746, dated March 9, 2010.

4.   Exhibit C is a true and correct copy of the cover pleading to Microsoft's Invalidity Contentions, dated March 17, 2010.

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2

5.   Exhibit D is a true and correct copy of United States Patent and Trademark Office's Fiscal Year 2009 BPAI Performance Measures, dated December 30, 2009.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 25, 2010   */s/ Steven Kalogeras*
                                                       Steven Kalogeras

2

EXHIBIT A

Back

Ads by Google   Press Release   Frequencies   FCC Fre

Advanced Voice Recognition Systems, Inc. Announces Declaration of Interference by the United States Patent and Trademark Office

2010-03-15 13:26:06 -

Advanced Voice Recognition Systems, Inc (AVRS), (OTCBB: AVOI) www.avrsys.com : cts.businesswire.com/ct/CT?id=smartlink&url=http%3A%2F%2Fwww .. today announced that the United States Patent and Trademark Office (USPTO) has declared an interference between its application serial number 09/351,542 as Senior Party and U.S. Patent 5,799,273, owned by Allvoice Developments LTD ("Allvoice") as Junior Party.

Speech recognition provides for the conversion of speech into text.

AVRS' Patent #5,960,447 includes 42 claims covering a broad base of features applicable to existing Automatic Speech Recognition (ASR) products and markets. The patent describes a word tagging and editing system for speech recognition.

The AVRS application was accorded the benefit of a filing date of 13 November 1995. The Allvoice patent was accorded a filing date of 27 September 1996.

Walter Geldenhuys, President and CEO of AVRS, stated "Intellectual property is key to the success of AVRS. This application in interference was filed in July 1999. After years of hard work and the expenditure of significant resources, we have the declaration of an interference. When someone tries to take our property, without our permission through a license, we expect to take action to protect the interests of our shareholders and future licensees."

The business strategy of AVRS is to pursue license agreements or other strategic relationships with other companies and to support and defend its patents through appropriate infringement and interference proceedings.

FORWARD LOOKING STATEMENTS

Note: This news release and the Company's web site referenced in this news release contains "forward looking statements" within the meaning of the federal securities laws regarding the future plans and expected performance of AVRS that are based on assumptions that AVRS considers reasonable. These statements are subject to risks and uncertainties that could cause actual results and events to differ materially from those anticipated, including without limitation, the unpredictability of litigation and other contested actions, the availability of financing, general economic conditions and factors that are beyond the control of AVRS. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date of this release. AVRS undertakes no obligation to update publicly any forward-looking statements to reflect new information, events or circumstances after the date of this release or to reflect any change in the expectations of AVRS with respect to these forward-looking statements.

Advanced Voice Recognition Systems, Inc.Walter Geldenhuys,

480-704-4183President, CEO, CFO

Press release: www.pr-inside.com
Contact Information: email

EXHIBIT B

Mail Stop Interference
P.O. Box 1450
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Fax: 571-273-0042

Paper 1
Filed 9 March 2010

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

JOHN C. **MITCHELL**, ALAN J. HEARD,
STEVEN N. CORBETT, and NICHOLAS J. DANIEL
Junior Party
(Patent No. 5,799,273),

v.

DOUGLAS **HOLT**, MICHAEL K. DAVIS,
and JOSEPH H. MIGLIETTA
Senior Party
(Application No. 09/351,542).

_____

Patent Interference No. 105,746 (SCM)
(Technology Center 2600)

_____

DECLARATION - Bd.R. 203(b)[1]

_____

[1] "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1   **Part A. Declaration of interference**

2   An interference is declared (35 U.S.C. § 135(a)) between the above-

3   identified parties. Details of the application(s), patent (if any), reissue

4   application (if any), count(s) and claims designated as corresponding or as not

5   corresponding to the count(s) appear in Parts E and F of this DECLARATION.

6   **Part B. Judge managing the interference**

7   Administrative Patent Judge Sally C. Medley has been designated to

8   manage the interference. Bd. R. 104(a).

9   **Part C. Standing order**

10   A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this

11   DECLARATION. The STANDING ORDER applies to this interference.

12   **Part D. Initial conference call**

13   A telephone conference call to discuss the interference is set for **1:00**

14   **p.m. on 4 May 2010** (the Board will initiate the call).

15   No later than **four business days** prior to the conference call, each party

16   shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd.

17   R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

18   A sample schedule for taking action during the motion phase appears as

19   Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the

20   schedule prior to the conference call and to agree on dates for taking action. A

21   typical motion period lasts approximately eight (8) months. Counsel should be

22   prepared to justify any request for a shorter or longer period.

1 **Part E. Identification and order of the parties**

2   <u>Junior Party</u>   .
3
4   Named Inventors: JOHN C. MITCHELL, Devon, UK
5   ALAN J. HEARD, Devon, UK
6   STEVEN N. CORBETT, Devon, UK
7   NICHOLAS J. DANIEL, Devon, UK
8
9   Involved Patent: Patent No. 5,799,273, issued 25 August 1998,
10   based on Application No. 08/720,373, filed 27
11   September 1996
12
13   Title: Automated proofreading using interface linking
14   recognized words to their audio data while text is
15   being changed
16
17   Assignee: AllVoice Developments, Ltd.
18
19   <u>Senior Party</u>
20
21   Named Inventors: DOUGLAS HOLT, Phoenix, AZ
22   MICHAEL K. DAVIS, Paradise Valley, AZ
23   JOSEPH H. MIGLIETTA, Scottsdale, AZ
24
25   Involved Application: Application No. 09/351,542, filed 12 July 1999
26
27   Title: Word tagging and editing system for speech
28   recognition
29
30   Assignee: Advanced Voice Recognition Systems, Inc.
31

32   The senior party is assigned exhibit numbers 1001-1999. The junior party

33   is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The

34   senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

3

1   **Part F. Count and claims of the parties**

2   Count 1

3   Claim 28 or Claim 51 or Claim 71 or

4   Claim 73 or Claim 77 of Mitchell's Patent No. 5,799,273

5   The claims of the parties are:

6   Mitchell: 1-78

7   Holt: 51-57, 59-62, 68-76, 78 and 80-94

8   The claims of the parties which correspond to Count 1 are:

9   Mitchell: 1-5, 7, 9, 14-16, 18, 21, 22, 24, 25, 27-31, 33, 35,
10   36, 40, 41, 43, 48, 50, 51, and 60-78
11
12   Holt: 51-57, 59-62, 68-76, 78 and 80-94

13   The claims of the parties which do not correspond to Count 1, and therefore

14   are not involved in the interference, are:

15   Mitchell: 6, 8, 10-13, 17, 19, 20, 23, 26, 32, 34, 37-39, 42,
16   44-47, 49, and 52-59
17
18   Holt: none

19   The parties are accorded the following benefit for the Count:

20   Mitchell: none
21
22   Holt: App. No. 08/556,077, filed 13 November 1995,
23   now Patent No. 5,960,447, issued 28 September
24   1999
25
26

27   **Part G. Heading to be used on papers**

28   The following heading must be used on all papers filed in this interference,

29   see SO ¶ 106.1.1:

4

1   UNITED STATES PATENT AND TRADEMARK OFFICE
2
3
4   BEFORE THE BOARD OF PATENT APPEALS
5   AND INTERFERENCES
6
7
8   JOHN C. **MITCHELL**, ALAN J. HEARD,
9   STEVEN N. CORBETT, and NICHOLAS J. DANIEL
10 Junior Party
11 (Patent No. 5,799,273),
12
13 v.
14
15 DOUGLAS **HOLT**, MICHAEL K. DAVIS,
16 and JOSEPH H. MIGLIETTA
17 Senior Party
18 (Application No. 09/351,542).
19
20
21
22 Patent Interference No. 105,746 (SCM)
23 (Technology Center 2600)
24
25
26 **Part H. Order form for requesting file copies**

27   When requesting copies of files, use of SO Form 4 will greatly expedite

28 processing of the request. Please attach a copy of Parts E and F of this

29 DECLARATION with a hand-drawn circle around the patents and applications

30 for which a copy of a file wrapper is requested.

31   /Sally C. Medley/
32   Administrative Patent Judge

1   Enc:
2   Copy of STANDING ORDER
3   Copy U.S. Patent 5,799,273
4   Copy of claims of Application 09/351,542
5   Copy U.S. Patent 5,960,447
6   Copy Form PTO-850
7
8   Revised 3 January 2006

1   cc (via overnight delivery):
2
3   Attorney for Mitchell:
4
5   SCHWEGMAN, LUNDBERG, WOESSNER, P.A.
6   121 South 8th Street
7   Suite 1600
8   Minneapolis, MN 55402
9   Tel: 612-373-6900
10
11
12   Attorney for Holt:
13
14   OBLON, SPIVAK, McCLELLAND,
15   MAIER & NEUSTADT, L.L.P.
16   1940 Duke Street
17   Alexandria, VA 22314
18   Tel: 703-413-3000

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EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Allvoice Developments US, LLC,	§ § §	
Plaintiff,	§ §	
vs.	§ §	**CIVIL ACTION NO. 6:09-CV-366 LED**
Microsoft Corp.,	§ § §	
Defendant.	§ § §	

MICROSOFT CORPORATION'S INVALIDITY CONTENTIONS

Microsoft Corporation ("Microsoft") respectfully submits these Invalidity Contentions pursuant to Local Patent Rule 3-3.

This statement and the accompanying claim charts detail why the asserted claims of U.S. Patent No. 5,799,273 ("the 273 patent") are invalid. These disclosures are based in whole or in part on Microsoft's present understanding of the asserted claims, and the apparent construction of the claims in the Local Patent Rule 3-1 disclosures served by Allvoice Developments US, LLC ("Allvoice"). Microsoft's discovery and investigation in connection with this lawsuit are continuing, and thus, these disclosures are based on information obtained to date. It is likely that information necessary to conduct a complete invalidity analysis will require third-party discovery as this case proceeds through the discovery phase. Microsoft is currently attempting to gather further information and documentation, and reserves the right to amend and supplement this disclosure with additional prior art references as appropriate.

This statement and the accompanying claim charts were prepared prior to the Court's claim construction ruling or claim construction positions from Allvoice. In the absence of a

claim construction ruling, these contentions are made in the alternative and are not necessarily intended to be consistent with each other and the other invalidity contentions herein. Further, by including in this disclosure prior art that would be anticipatory or obvious-rendering based on the scope or construction apparently applied by Allvoice to the claims, Microsoft's contentions herein are not, and should in no way be seen as, adoptions or admissions as to the accuracy of that scope or construction, nor an assertion of a particular construction by Microsoft. Moreover, because Microsoft has based these contentions on Allvoice's infringement positions, which Microsoft disputes, nothing in these disclosures should be construed as an admission that any limitation of the asserted claims is satisfied by the accused products. In addition, the attached claim charts include the § 112(6) structure and function language provided by Allvoice in its infringement contentions; the inclusion of this language is not an adoption of any construction or position with regard to any claim but rather is merely a convenient reference to Allvoice's position. Microsoft reserves all rights to amend these invalidity contentions after the Court issues its claim construction ruling, or if Allvoice amends its infringement contentions.

Subject to the foregoing, references cited in Attachments A - G disclose the elements of the asserted claims either explicitly and/or inherently and/or may be relied upon to show the state of the art in the relevant timeframes. The suggested obviousness combinations are in the alternative to Microsoft's anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not anticipatory. Further, Microsoft endeavored to identify the most relevant portions of the references. The references, however, may contain additional support for particular claim limitations. Microsoft may rely on uncited portions of the prior art references, other documents, and expert testimony to provide context or to aid in understanding the cited portions of the references. Where Microsoft cites to a particular figure in

a reference, the citation should be understood to encompass the caption and description of the figure and any text relating to or discussing the figure. Conversely, where Microsoft cites to text referring to a figure, the citation should be understood to include the figure as well.

The identity of each item of prior art relied upon in this submission is stated herein and in the attached charts, including prior art systems, publications, and patents.

I.   INVALIDITY OF U.S. PATENT 5,799,273

A.   Anticipatory Art

Pursuant to P.R. 3-3, Microsoft identifies the following prior art now known to anticipate Claims 60-75 and 77 of the 273 patent, either expressly or inherently as understood by a person having ordinary skill in the art. Each of these prior art patents, publications, and products anticipate the asserted claims. In some instances, Microsoft treated certain prior art as anticipatory where certain elements are inherently present based on Allvoice's apparent claim construction in its infringement contentions.

The following patents, publications, and systems/products are prior art under at least 35 U.S.C. §§102(a), (b), (e), and/or (g). Charts describing how each prior art reference below discloses the asserted claims of the 273 patent are attached as Attachment A - G.

Microsoft has based its positions on the teaching of the prior art identified within these contentions on Allvoice's allegations in this case, including Allvoice's assertion that the 273 patent meets the definiteness, enablement, and written description requirements of 35 U.S.C. § 112. Microsoft's positions should not be construed as independent admissions that Microsoft would otherwise contend that the disclosure found in these references would provide support for the claims of the 273 patent.

	PRIOR ART PATENTS
1.	U.S. Patent No. 5.960,447 – Holt et al. (issued Sept. 28, 1999) ("Holt")
2.	U.S. Patent No. 5,231,670 – Goldhor et al. (issued Jul. 27, 1993) ("Goldhor")
3.	U.S. Patent No. 6,125,347 – Cote et al. (issued Sept. 26, 2000) ("Cote")

	PRIOR ART PUBLICATIONS
1.	*Speech API Developer's Guide*, Windows Speech API Version 1.0 - Beta (1995); *Speech API SDK*, Microsoft Speech API Version 1.0 (1995); Mike Rozak, "Developing Applications for the Windows Speech API," Proceedings of AVIOS 1995, presented 12-14, 1995 ("SAPI 1.0")

	PRIOR ART SYSTEMS
1.	IBM VoiceType 3.0 for Windows 95 and User's Guide (June 1996) ("VoiceType 3.0")
2.	IBM VoiceType 1.1 for Windows and User's Guide (January 1995) ("VoiceType 1.1")
3.	Digital Dictate 2.2 and 2.3 ("Digital Dictate")

B.   Obviousness

Microsoft further contends that Claims 60-75 and 77 of the 273 patent are invalid as obvious under 35 U.S.C. §103.

Each anticipatory prior art reference disclosed above, either alone or in combination with other prior art, also renders the asserted claims invalid as obvious. In particular, each anticipatory prior art reference may be combined with (1) information known to persons skilled in the art at the time of the alleged invention, and/or (2) any of the other anticipatory prior art references. The anticipatory references above all pertain to the same field of speech recognition technology and address common problems—such as dictating into text processing applications

and linking properties to recognized text in an application—thus providing a clear motivation to a person of ordinary skill in the art to combine these references.

The United States Supreme Court has clarified the standard for what types of inventions are patentable. *See KSR Int'l Co. v. Teleflex, Inc.,* 550 U.S. 398 (2007). In particular, the Supreme Court emphasized that inventions arising from ordinary innovation, ordinary skill, or common sense should not be patentable. *Id.* at 417-20. Restated, "the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. Because the 273 patent simply combines elements well known in the art and yields no more than one skilled in the art would expect from such a combination, the combination is obvious. The asserted claims are therefore invalid under 35 U.S.C. §103 because they do nothing more than combine well-known techniques and technologies according to their known and ordinary uses.

Microsoft has identified a number of prior art references in these contentions that describe technology that was designed and developed at Microsoft. The combination of these Microsoft references would be obvious because, in addition to the reasons described below and in the appended charts, they relate to and reflect the efforts of individuals at one company to address similar subject matter, similar goals, and similar solutions for related problems. One of skill in the art with knowledge of one Microsoft reference would naturally look to other Microsoft references to find analogous solutions.

Additionally, the asserted claims are obvious in light of the following combinations of prior art (these combinations are given in the alternative to Microsoft's anticipation contentions and are not to be construed to suggest that any reference included therein is not anticipatory). However, to the extent that Allvoice contends that any prior art reference fails to disclose one or

more limitations of the asserted claims not addressed below or in the attached charts, Microsoft reserves the right to identify other prior art references or describe additional combinations that would render the claims obvious.

Microsoft has based its positions on the teaching of the prior art identified within these contentions on Allvoice's allegations in this case, including Allvoice's assertion that the 273 patent meets the definiteness, enablement, and written description requirements of 35 U.S.C., § 112. Microsoft's positions should not be construed as independent admissions that Microsoft would otherwise contend that the disclosure found in these references would provide support for the claims of the 273 patent.

1.   Providing a Common Interface to Multiple Applications

To the extent Allvoice contends that any of the references identified within these contentions do not provide a separate interface application layer between the speech recognition engine and multiple end-user applications that receive the recognized text, it would have been obvious to a person of ordinary skill in the art to implement such an interface layer. All of the anticipatory references identified above disclose a speech recognition engine in communication with at least one word processing application. Faced with the prospect of rewriting code over and over to again enable the recognition engine to communicate with each additional application, there would have been an obvious motivation to provide a common interface that abstracts the differences between various end-user applications. Moreover, at the time of the filing of the 273 patent, and long beforehand, it was a well-known and widely-used convention to add an intermediate interface layer or abstraction layer when moving from a scenario in which a single source (e.g. speech recognition engine) communicates with a single target application to a scenario in which that source is communicating with multiple target applications.

Providing such an interface layer or abstraction layer is a basic software engineering convention disclosed in a variety of prior art references, covering a broad range computer systems, including:

- Windows NT Resource Kit, Volume 1, Microsoft Press, 1993   (*See, e.g.,* "Hardware Abstraction Layer" at 5-6).

- Inside Macintosh: Interapplication Communication, Addison Wesley Publishing Company, 1993.

- Kathryn Heninger Britton, et al, "A Procedure for Designing Abstract Interfaces for Device Interface Modules," 5th Annual Conf. on Software Engineering, 1981, pp. 195-204.

- Wayne P. Stevens, et al, "Structured Design," IBM Systems Journal Vol. 13, (1974), 115-139.

Providing an interface layer between a speech recognition engine and multiple end-user applications is taught by:

- U.S. Patent No. 5,632,002 (issued May 20, 1997 to Hashimoto et al) (*See, e.g.*, 3:29-34: "It is therefore an object of the present invention to provide a speech recognition interface system capable of handling a plurality of application programs simultaneously, and realizing convenient speech input and output modes which is suitable for the application in the window systems and speech mail systems.").

- Eric Ly, et al, "Speech Recognition Architecture for Multimedia Environments," Proceedings of AVIOS 1993, pp. 1-8 (*See, e.g.,* p.7: "Speech recognizers are beginning to move out of the prototyping stage into application use. As part of a multimedia platform, their functionality should be accessed through a standard

programmatic interface so applications do not have to be rewritten for every recognizer.")

- Alexander Rudnicky, et al, "Spoken Language Recognition in an Office Management Domain," Proceedings of ICASSP, 1991, pp. 829-832 (*See¸ e.g.*, p.829: "In this paper, we highlight the needs related to a voice interface and describe the implementation of a general-purpose spoken language interface" that "provides interface services to different applications running on the same computer.")

- Jean-Michel Lunati & Alexander Rudnicky, "Spoken Language Interfaces: The OM System," Proceedings of CHI Conference 1991, pp. 453-454 (*See, e.g.*, p.454: "The Spoken Language Shell has been used to implement the Office Manager, a system that provides voice access to several common office applications.")

- J. A. Hewitt & P. G. R. Halford, "Design of an Intelligent Interface to Standard PC Applications which Maximizes the Ability of the Disabled User," Knowledge-Based Systems Vol. 6, No. 1, March 1993, pp. 24-30.

- Carol Tough, "The Design of an Intelligent Transparent Speech Interface," IEE Colloquium on Systems & Applications of Man-Machine Interaction Using Speech I/O, March 18, 1991, pp. 2/1-2/4.

- R. A. Sharman, "Speech Interfaces for Computer Systems," Displays Vol. 14, No. 1 (1993)

- "Speech Recognition Application Programming Interface Specification," Version 0.8 for Windows 3.1 and Windows 95, Sept. 11, 1995 ("SRAPI")

Further, a teaching and/or motivation for using an interface layer as a means for tracking character position information in applications is provided by the following prior art references:

- U.S. Patent No. 5,437,036 (issued Jul, 25, 1995 to Stamps et al)

- U.S. Patent No. 5,511,193 (issued Apr. 23, 1996 to Tung et al)

- U.S. Patent No. 5,649,222 (issued Jul. 15, 1997 to Mogilevsky)

In addition, to the extent Allvoice contends that a shared dynamic link library (DLL) can constitute an interface covered by the asserted claims, implementing a shared DLL would have been an obvious means of providing the interface described in the 273 patent. For example, Microsoft developed the Windows Open Services Architecture (WOSA) in which a shared DLL interface acts as a single translator between multiple clients and a server. This model enabled multiple applications to link to a set of services without the client and server programs having to understand the complexities of each other. Prior art interfaces embodying the WOSA architecture were well-known and included:

- Speech Application Programming Interface (SAPI)[1]

- License Service Application Programming Interface (LSAPI)

- Messaging Application Programming Interface (MAPI)

- Open Database Connectivity (ODBC)

- Telephone Application Programming Interface (TAPI)

The SAPI interface was implemented, for example, in the Watson[TM] speech recognition system developed by AT&T. *See* "A System Developer's Guide," Watson[TM] for Windows, Version 1.0. (1996). The WOSA interfaces are discussed in Michael Amundsen, MAPI, SAPI, & TAPI Developer's Guide, Sams Publishing, 1996. (*See, e.g.*, p. 12: "No matter what changes are made to the client or server applications, both software modules (client and server) will be compatible as long as they both continue to conform to the API/SPI model and use the universal interface.").

---

[1] *See* Attachment D for the chart describing how SAPI 1.0 invalidates the 273 patent.

Further, to the extent Allvoice contends that the Text Services Framework (TSF) is an "interface" within the meaning of the asserting claims, it would have been obvious to instead use Microsoft's prior art Input Method Editor (IME) and Input Method Manager (IMM) software in conjunction with a prior art speech recognition engine to provide an analogous "interface" between the speech recognition engine and text processing applications. IME/IMM facilitated the linking of character streams from foreign language keyboards with multiple applications. The IMM/IME software would be obvious to combine with prior art speech recognition systems as both involve outputting recognized characters into multiple Windows applications.

2.   Linking Recognized Text with Audio Data Using Character Positions

The anticipatory references above maintain link data that associates recognized words with their corresponding audio data recorded during the dictation session. To the extent Allvoice contends that a prior art reference is not anticipatory because it links the audio data to recognized words using references to tags or codes embedded in the text-receiving application rather than using references to character positions[2] in the application, it would have been obvious to implement link data tied to the character position of recognized words. Mapping audio properties to text based on embedded codes versus mapping to character position is merely an implementation decision well within the grasp of a person of ordinary skill in the art. Standardized, well-documented techniques for determining, monitoring and updating the character position information of text in a document were well-known by the time 273 patent application was filed. Indeed, Allvoice's own representatives have admitted as much in prior litigations.

---

[2] Microsoft is not taking a position here regarding whether any claims require particular character position information to be obtained or whether such information be obtained in a particular manner, but is merely describing an argument Allvoice may put forth.

For example, Alan James Heard, one of the named inventors, submitted an affidavit in the *Allvoice Computing PLC v. Dragon Systems, Inc.* litigation in which he stated: "A software programmer in the art would be fully aware of how the Microsoft Windows API allows a Windows application, such as that defined in the Mitchell patent, to obtain information about the activities of another application, such as Microsoft Word, including data about the document and the location of the text in that document." [Heard Aff. (11/8/00) at ¶ 14] Allvoice's technical expert in the subsequent *Allvoice Computing PLC v. Nuance Communications, Inc.* case, Richard Sonnier, reiterated this position. In his Second Supplemental Declaration, Mr. Sonnier described Windows inter-process communication mechanisms—such as Windows messaging, "hook" functions, and "spy" programs—all of which were well-understood by programmers as means for tracking the character position of text in an application. [*See* Sonnier 2nd Supp. Decl. (8/11/04) at ¶¶ 8-9] After discussing these mechanisms and specific methods for using them to obtain character position information [*id. at* ¶¶ 16-19], Mr. Sonnier made clear that a person skilled in the art "would know that any of these techniques could be used to determine the position of a recognized word in the third party application, would know the software to use and how to implement it." [*Id*. at ¶ 17] Mr. Sonnier also stated in his Supplemental Declaration that "the programming techniques that the person of ordinary skill in the art would use like sending Windows messages to retrieve information, reading and writing to files, or forming link data are common tasks for programmers." [Sonnier Supp. Decl. (12/31/03) at ¶ 89] Therefore, according to Allvoice's own litigation positions, it would have been obvious to maintain link data mapped to the character position of text in a document.

Moreover, applying properties to specific text ranges in a document has been well known to programmers for many years prior to the filing of the 273 patent. Microsoft's binary file

format, in use since the 1980s, employs relational tables that map properties to character positions in Microsoft Word documents. *See also* U.S. Patent Nos. 5,649,222 and 5,437,036. This provides further teaching and motivation to one skilled in the art to provide links to associated audio data via character position mapping. Moreover, Microsoft's own prior art shows that embedded coding and character-based mapping are interchangeable. Microsoft's rich text format (RTF) (also in use since the 1980s and based on embedded codes) and the Word binary file format (based on character-position mapping) were alternative ways of applying properties to documents. Because Microsoft Word was one of the principal prior art text receiving applications used together with prior art speech recognition systems, including those identified in these contentions, one of skill in the art with knowledge of these systems would naturally be motivated to look to Word and understand how it applied properties to text when determining how to apply audio properties to text.

3.   Playing Back Audio Associated with Selected Words

To the extent Allvoice contends that any reference fails to disclose playing back the audio associated with recognized words selected by the user, this functionality would have been obvious for a person of ordinary skill in the art to implement. A number of prior art dictation products that were commercialized prior to the filing of the 273 patent, such as IBM VoiceType 1.1, IBM VoiceType 3.0, and Digital Dictate, offered this very functionality. The following prior art patents and publications also expressly teach this functionality:

- U.S. Patent No. 5,960,447 (issued Sept. 28, 1999 to Holt et al)

- U.S. Patent No. 5,031,113 (issued Jul. 9, 1991 to Höllerbauer) ("Höllerbauer")

- "Improved Correction of Speech Recognition Errors Through Audio Playback," IBM Technical Disclosure Bulletin, 36, pp. 153-154, (Jun. 1993)

- R. A. Sharman, "Speech Interfaces for Computer Systems," <u>Displays</u> Vol. 14, No. 1 (1993)

- "Speech Recognition Application Programming Interface Specification," Version 0.8 for Windows 3.1 and Windows 95, Sept. 11, 1995 ("SRAPI")

Furthermore, there was a clear and express motivation to combine these references, all of which are in the same field of speech recognition and dictation software, in order to give software users a better means for correcting recognition errors. [*See, e.g.*, Holt at 1:57-67; Höllerbauer at 1:40-62; IBM VoiceType 1.1 User's Guide at 67; SRAPI at 63].

C. Indefiniteness & Enablement

Pursuant to P.R. 3-3(d), Microsoft lists below the grounds upon which the asserted claims are invalid based on indefiniteness under 35 U.S.C. §112(2) or based on failure to meet the enablement or written description requirements under 35 U.S.C. §112(a). As Microsoft best understands Allvoice's contentions at this time, the asserted claims fail to meet these requirements for at least the following reasons.

1. 35 U.S.C. § 112(1) Enablement

The asserted claims of the 273 patent may be invalid for lack of enablement under 35 U.S.C. § 112, ¶ 1. Depending on the construction of the claims, the specification of the 273 patent fails to disclose sufficient information to enable a person of ordinary skill in the art to practice the full scope of the alleged invention without undue experimentation. In addition, if Allvoice contends that any of the prior art references disclosed herein are not enabled for lack of a sufficiently detailed disclosure, the corresponding limitations in the 273 patent would similarly fail to be enabled. Therefore, the specification may fail to disclose sufficient information for at least the following limitations of the asserted claims:

Claims 60-63:

- "a universal speech recognition interface" with "output means for outputting the recognized words into at least one of a plurality of different computer related applications"

- "audio playback means for playing back audio data associated with recognized word"

- "means, independent of the computer-related application, for forming link data" comprising "one or more position identifiers which link the recognized words to corresponding positions within the one computer-related application"

- "means, independent of the computer-related application, for updating the position identifiers in response to changes in positions of the recognized words"

- "means for selecting one or more of the recognized words…wherein the audio playback means is responsive to the selection means to playback audio data associated with the…recognized words"

Claims 64-68:

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

- "means, independent of the computer-related application, for monitoring changes in positions of the recognized words"

- "means, independent of the computer-related application, for forming link data" comprising "one or more position identifiers which link the recognized words to corresponding positions within the computer-related application"

- "means for selecting one or more of the recognized words…wherein the audio playback means is responsive to the selection means to playback audio data associated with the…recognized words"

Claims 69-70:

- "means for selectively identifying a word in the displayed words, wherein said interface application program is operative to compare…the selected word with said link data to identify any corresponding audio component"

Claims 71-72:

- "using the interface application program to compare the identity of the selected word with said link data to identify any corresponding audio component"

Claims 73-74:

- "implement the interface application to compare the identity of the selected word with said link data to identify any corresponding audio component"

Claim 75:

- "a second application program which determines the positions of and monitors changes in the positions of the recognised words in said first application program using operating system functions communicated via the computer operating system, and which forms link data linking the audio data to the recognised words and updates said link data in response to monitored changes in the positions of the recognised words"

- "means for selecting at least one word in the displayed words, wherein said second application program is operative to identify any selected audio components, if present, which are linked to the at least one selected word"

Claim 77:

- "implementing a second application program from within the computer operating system to determine the positions of the recognised words and monitor changes in the positions of the recognised words in the first application program using operating system functions communicated via the computer operating system, to form link data linking the audio data to the recognised words, and to update the link data in response to monitored changes in the positions of the recognised words"

- "selecting at least one word in the displayed words, wherein the second application program identifies any selected audio components, if present, which are linked to the at least one selected word"

The asserted claims of the 273 patent also may be invalid for failure to meet the written description requirement of 35 U.S.C. § 112, ¶ 1. Depending on the construction of the claims, the disclosure of the 273 patent fails to reasonably convey to a person of ordinary skill in the art that the inventor had possession of the full scope of the claimed inventions.

2.   **35 U.S.C. § 112 Indefiniteness**

The asserted claims 60-70 and 75 of the 273 patent are invalid for failure to particularly point out and distinctly claim the subject matter which applicants regard as their invention under 35 U.S.C. §112. The term "universal speech-recognition interface" is indefinite. Further, the

specification fails to provide adequate structure as required by 35 U.S.C. §112, ¶ 6, for at least

the following means-plus-function claim limitations:

Claims 60-63:

- "input means for receiving speech-recognition data"

- "output means for outputting the recognised words into at least any one of a plurality of different computer-related applications"

- "user operable selection means for selecting one or more of the recognised words in the one computer-related application"

- "means, independent of the computer-related application, for updating the position identifiers in response to changes in positions of the recognized words"

Claim 64-68:

- "input means for receiving speech-recognition data"

- "output means for outputting the recognised words into a computer-related application"

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

- "means, independent of the computer-related application, for monitoring changes in positions of the recognized words"

- "user operable selection means for selecting one or more of the recognized words in the computer-related application"

- "means…for updating the position identifiers in response to changes in positions of the recognized words"

Claims 69-70:

- "input means for receiving recognition data from a speech recognition engine"

- "user operable selection means for selectively identifying a word in the displayed words"

Claim 75:

- "input means for receiving recognition data from a speech recognition engine"

- "user operable selection means for selecting at least one word in the displayed words"

Microsoft reserves its right to amend this disclosure to the extent that Allvoice asserts and/or the Court adopts claim constructions that would render the claims invalid under 35 U.S.C. § 112.

II.   RESERVATION OF RIGHTS

Microsoft reserves the right to supplement or amend these Invalidity Contentions. Microsoft's investigation regarding invalidity of the 273 patent over prior art and regarding other grounds of invalidity is ongoing. First, as stated previously, Microsoft continues to investigate additional prior art, including commercial software programs, and is attempting to obtain related documentation. Accordingly, Microsoft specifically reserves the right to modify, amend, or supplement these disclosures as additional information becomes available, and as its discovery and investigation proceed.

Second, the Court has yet to construe the claims of the 273 patent. While Microsoft believes this submission contains the most relevant prior art currently in its possession, the constructions adopted by the Court may require alternative or additional invalidity arguments. Microsoft reserves the right to withdraw prior art from this disclosure and to add additional prior art to this disclosure in light of the Court's claim construction rulings.

III.   ACCOMPANYING DOCUMENT PRODUCTION

Pursuant to P.R. 3-4(b), Microsoft is producing prior art references and corroborating evidence concerning prior art references and, to the extent available, prior art systems that do not appear in the file histories of the patents at issue. These prior art references and corroborating evidence are cited in and/or support the accompanying invalidity charts. Microsoft's search for prior art references, additional documentation, and/or corroborating evidence concerning prior art systems is ongoing. Accordingly, Microsoft reserves the right to continue to supplement its

production as Microsoft obtains additional prior art references, documentation, and/or

corroborating evidence concerning invalidity during the course of discovery.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MICROSOFT CORPORATION'S INVALIDITY CONTENTIONS** was served on all Counsel of Record on March 17, 2010 via electronic mail:

<div align="right">

/s/ *Steven Kalogeras*
Steven Kalogeras

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EXHIBIT D

United States Patent and Trademark Office

An Agency of the Department of Commerce

FY 2009 BPAI Performance Measures

FISCAL YEAR 2009

United States Patent and Trademark Office
Board of Patent Appeals and Interferences

Performance Measures	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	FY09 Cumulative
APPEAL PENDENCY MEASURES					
Pendency of decided appeals from Appeal number assignment date to decision date (average number of months)	6.2	6.7	7.2	7.7	
INTERFERENCE PENDENCY MEASURES					
Pendency of terminated Interferences (average number of months)	9.5	11.5	9.5	10.3	10.1
Interferences Terminated in less than 2 years (% of Interferences Terminated)	100%	94.7%	89.5%	91.7%	93.7%

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