

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

Allvoice Developments US, LLC,

Plaintiff,

v.

Microsoft Corp.

Defendant.

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Civil Action No. 6:09-CV-366 (LED)

JURY TRIAL DEMANDED

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

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I. INTRODUCTION

1. Plaintiff Allvoice Developments US, LLC (“Allvoice Developments”) hereby responds to Defendant Microsoft Corp’s (“Microsoft”) Motion to Stay Pending Completion of the Interference Proceeding Involving the Patent-In-Suit (the “Motion”). Microsoft has failed to prove: a) that it will be damaged or undergo hardship if the case is not stayed, b) that a stay will not unduly prejudice or present a clear tactical disadvantage to Allvoice Developments, or c) that a stay will simplify the issues in question and the trial of the case. As discussed below, the interference does not include all of the claims of U.S. Patent No. 5,799,273 (“the ‘273 patent” or “patent-in-suit”). For the claims outside the interference, Microsoft, through its manufacture, use and sales of the same Accused Instrumentalities, has infringed and continues to infringe that patent. Regardless of the outcome of the interference, Allvoice Developments’ current suit against Microsoft would continue. Hence, the requested stay will not simplify the issues to be addressed by this Court and will significantly prejudice Plaintiff with a delay that would likely extend for years. For these reasons and others, Allvoice Developments respectfully urges that the Court deny Microsoft’s motion to stay.

II. BACKGROUND

A. The Interference

2. The subject interference was declared on March 9, 2010. Claims 6, 8, 10-13, 17, 19, 20, 23, 26, 32, 34, 37-39, 42, 44-47, 49, and 52-59 of the patent-in-suit are not included in the interference. Allvoice Developments was unaware of Advanced Voice Recognition Systems, Inc.’s (“AVRS”) efforts to provoke the interference. Microsoft in the motion for stay portrayed itself as an innocent bystander in a dispute between AVRS and Allvoice Developments. Motion, pp. 1-2. That characterization may not accurately describe Microsoft’s interest or involvement in the interference. Shortly after the declaration of the interference, Allvoice asked Microsoft

whether it has a contractual or other relationship with AVRS. Microsoft refused to voluntarily provide that information. Allvoice Developments has served interrogatories on Microsoft to compel it to disclose the details regarding its communication with AVRS and its involvement in the interference. *See* Exh. A, Perque Decl., ¶ 8. Hence, Microsoft’s involvement in those proceedings and its relations with AVRS, while currently unknown, are the subject of discovery.

3. AVRS via its predecessor (collectively, “AVRS”) first sought to provoke the interference on July 12, 1999, after it learned of the issuance of Allvoice Development’s patent-in-suit. On that date, AVRS filed a new patent application (“the AVRS application”) adding therein claims that were copied verbatim from the patent-in-suit. It is remarkable that AVRS repeatedly demanded – for over 10 years thereafter – that the U.S. Patent Office declare an interference between the AVRS application and the patent-in-suit. In response, in at least 10 instances, the U.S. Patent Office rejected those demands consistently based on 35 U.S.C. §112(1), finding that the AVRS application does not describe the invention recited in the patent claims that it copied from the patent-in-suit. Exh. A, Perque Decl., ¶ 5.

4. It is remarkable that shortly after this suit was filed against Microsoft, the patent examiner allowed many of the pending claims in the AVRS application, and the interference was declared. Notwithstanding the initiation of those proceedings, an administrative patent judge will consider in the preliminary motion phase of the interference, whether that proceeding should have been initiated in the first place. Exh. A, Perque Decl., ¶ 4.

5. It is noted that the patent examiner reviewing the pending application for Allvoice Development’s patent-in-suit, also concluded that the patent-in-suit describes a different invention. That patent examiner initially rejected some of the pending claims in the patent-in-suit on the basis that the Digital Dictate software was prior art. That software is the subject of

B. Enforcement of the Patent-in-Suit

6. In support of its motion, Microsoft argued that Allvoice Developments cannot credibly claim it will be unduly prejudiced if the Court were to stay this matter for the duration of the interference. It complained that Allvoice Developments allegedly waited eight years after the commercial release of the Windows XP operating system, and three years after the release of Windows Vista, to file suit. Microsoft's Motion, p.11. Allvoice Developments has diligently enforced its patent-in-suit against other infringers and is currently doing so against Microsoft. A brief review of the history of enforcement of that patent may be useful for the Court's understanding of why Microsoft is incorrect, and why its requested stay of this matter should be denied.

7. The patent-in-suit issued on August 25, 1998. It has been successfully enforced, beginning in 1999 through 2008, against significant competitors that challenged its validity and enforceability. Those competitors included Nuance Communications, Inc., IBM Corp., Dragon Systems, Inc., and Lernout & Hauspie, Inc. In the most recent case, the United States Court of Appeals for the Federal Circuit confirmed the validity of the patent-in-suit. *See Allvoice Computing, Plc. v. Nuance Communications, Inc.*, 504 F.3d 1236 (Fed. Cir. 2007). Ultimately, all challengers have paid for a license.

8. John Mitchell owns plaintiff Allvoice Developments. He was also Managing Director of AllVoice Computing PLC ("AllVoice Computing"), the company that previously owned and enforced the patent-in-suit. Its primary business was the development and marketing of software products related to speech recognition. Under Mr. Mitchell's direction, AllVoice

Computing in 1995 developed WordExpress, a software product that included many of the inventions claimed in the '273 patent. WordExpress was marketed and sold for years in the U.S. and U.K. Document # 17, Exh. 1, Mitchell Decl., ¶¶ 1 and 7.

9. In 1998, when the patent-in-suit was issued, AllVoice Computing's primary competitors were IBM and Dragon Systems, Inc. As discussed more fully below, AllVoice Computing demonstrated WordExpress to IBM in late 1995, and IBM obtained a copy to evaluate. Less than a year later, IBM released an updated version of its speech recognition product, VoiceType, which included features covered in the patent-in-suit. After its issuance, AllVoice Computing notified IBM that it had infringed the '273 patent. IBM settled the dispute on confidential terms without AllVoice Computing having to file suit. Document # 17, Exh. 1, Mitchell Decl., ¶ 3.

10. AllVoice Computing also notified Dragon Systems that its product, Dragon Naturally Speaking, infringed the patent-in-suit. In 1999, when the discussions with Dragon Systems reached an impasse, AllVoice Computing sued Dragon Systems for patent infringement in a Massachusetts district court. While the case was pending, Lernout & Hauspie, Inc. ("L&H"), purchased Dragon Systems, and later sought bankruptcy protection in Delaware. In the course of those proceedings, AllVoice Computing and L&H settled the suit in 2001. Document # 17, Exh. 1, Mitchell Decl., ¶¶ 2-4.

11. Nuance Communications, Inc. (then named Scansoft, Inc.) ("Nuance") purchased the Dragon Naturally Speaking software out of the L&H bankruptcy. AllVoice Computing promptly informed Nuance that the software infringed the '273 patent and sought a meeting to discuss its concerns. When a meeting could not be arranged, AllVoice Computing filed suit in the S.D. of Texas in November 2002. That case settled on confidential terms in April 2008,

12. AllVoice Computing was soon thereafter dissolved, as it was unable to compete with larger companies that had been infringing its patents for years. AllVoice Computing no longer had any employees or sales of WordExpress by the time the case against Nuance settled in 2008. Mr. Mitchell later created Allvoice Developments, the plaintiff in this case. Document # 17, Exh. 1, Mitchell Decl., ¶¶ 6-7. Allvoice Developments filed the current suit against Microsoft a little over a year after the settlement with Nuance.

C. Pertinent Time Period – 15 Years Ago

13. The requested stay, and years of delay if granted, would be prejudicial to Allvoice Developments in this case, in part, because the recollection of important witnesses will be degraded further during that period, especially here where the witnesses will be required to recall – even without the requested additional delay – events that occurred 15 years ago. As mentioned above, AllVoice Computing developed the technology described in the patent-in-suit in 1995. That software, then called WordExpress was demonstrated to IBM in Europe in early October 1995 and then again to IBM in New York on or about October 12, 1995. Document #17, Exh. 1, Mitchell Decl., ¶ 2. Microsoft is relying upon the IBM VoiceType product as prior art. Exh. B, Microsoft Invalidity Contentions, pp. 4 and 12. Hence, the recollection of IBM employees of those events is significant in this case because they may be relied upon by Allvoice Developments to corroborate a date of invention prior to September 27, 1996, the filing date for the patent-in-suit, and to show that IBM included in its product features similar to WordExpress after it evaluated WordExpress.

14. The requested stay may also affect whether a witness is available to testify. There are four named inventors on that patent, including Nicholas Daniel, who died in the last few years. Exh. A, Perque Decl. ¶ 2.

15. An additional delay may also degrade the institutional knowledge of Microsoft and the recollection of its current and former employees. In 1995, the Microsoft Windows® operating system had been on the market for years. Microsoft, however, had failed to implement an interface between the user's word processor and speech recognition engine that enhanced the combined usability of those products. The interface described in the patent-in-suit allows the end user to use those products together in the same manner as using a word processor alone, and it did so combined with other improvements described in the '273 patent. The failure of others to adequately address those needs inspired the inventors named on the patent-in-suit to conceive and develop the inventions recited in the patent. Microsoft's products and internal discussions are pertinent, in part, because the Defendant is relying upon them in its prior art contentions. Exh. B, Microsoft Invalidity Contentions, pp. 4 and 7-10.

16. Notably, the intervening 15 years may have already degraded Microsoft's institutional knowledge. After conducting an investigation in connection with its initial disclosures in this case, Microsoft was only able to identify three individuals with knowledge of its products and development efforts in 1995. Exh. C, Microsoft's Initial Disclosures, pp. 8-9.

III. LEGAL STANDARD

17. Allvoice Developments agrees with Microsoft that the courts in the Eastern District of Texas courts have never squarely decided whether a stay is warranted pending the completion of an interference proceeding involving a patent-in-suit. However, this Court has considered whether to stay pending cases when the patent-in-suit is the subject of reexamination. The same analysis should be applicable here.

18. In such cases, the courts in the Eastern District typically consider: (1) whether a stay will unduly prejudice or present a clear tactical disadvantage to the nonmoving party, (2) whether a stay will simplify the issues in question and trial of the case, and (3) whether discovery is complete and a trial date has been set. *Soverain Software LLC v. Amazon.com, Inc.* 356 F. Supp. 2d 660, 662 (E.D. Tex. 2005). While motions to stay are considered on a case-by-case basis, there is no policy to routinely grant such motions. *See SpaSyspatronic, AG v. Verifone, Inc.*, No. 2:07-cv-416, 2008 WL 1886020, slip op. at 7 n.6 (E.D. Tex. 2008).

IV. ARGUMENT

A. Microsoft will not undergo hardship if this case is not stayed.

19. Microsoft has failed to carry its burden and demonstrate that it will be damaged or undergo hardship if the case is not stayed. Microsoft's claim that it could be sued by both Allvoice Developments and AVRS is pure speculation at this point, as the interference proceeding may be disposed of or significantly narrowed at the preliminary motions phase. In addition, the argument is a red-herring. Microsoft has infringed and continues to infringe claims of the patent-in-suit that are not included in the interference. Hence, Allvoice Developments has an infringement suit against Microsoft, even if it is assumed *arguendo* that AVRS will prevail in the interference. If AVRS does so and it has not entered into an agreement with Microsoft, then AVRS may have a patent infringement suit against Microsoft as well. Even so, that would not provide justification for staying and delaying for years the adjudication of Allvoice Development's claim against Microsoft, where Microsoft is infringing claims outside the interference.

20. Microsoft cited in its motion statistics that the senior party in an interference, AVRS in this instance, typically prevails. While such statistics are commonly reported, even Microsoft must acknowledge that the declaration of the AVRS interference is in no way typical.

As discussed above, AVRS repeatedly demanded for 10 years that the U.S. Patent Office declare an interference between its application and the patent-in-suit. And, the U.S. Patent office repeatedly refused noting that the AVRS patent application does not describe the invention recited in the patent claims that it copied from the patent-in-suit. AVRS' repeated demands were either the equivalent of well placed drops of water wearing away at the patent examiner's resolve or he changed his position due to other influences. Regardless, an administrative patent judge will review the examiner's acquiescence in the preliminary motions phase of the interference. At that time, the interference may be dismissed in its entirety or other patent claims of the patent-in-suit may be found to be outside of the interference.

21. Allvoice Developments will more than likely prevail in the interference. As discussed above, AVRS copied claims out of the patent-in-suit and filed its application including those claims in 1999. However, the mere copying of claims does not entitle AVRS to the inventions recited therein. AVRS' patent application describes "embedded tagging," which uses a word processor feature, like Bookmarks in MS Word, to associate the stored audio data for spoken words with the text representing those words as they appear in the word processor document. In instances where Bookmarks and other means for embedding tags are not available in a word processor, the AVRS application describes a "mirrored embodiment" where it embeds the tags in a hidden window that "mirrors" the word processor display. AVRS' approach has numerous drawbacks, including: (i) the end user may delete or otherwise render useless the embedded tags in the end user's document, (ii) if the word processor is modified or updated, the embedded tags may no longer work, and (iii) significant demands on the system overhead for the mirrored embodiment.

22. The patent-in-suit describes an invention that employs a more robust interface application between the speech engine and word processor. Also, it correlates the audio data for the spoken words with their corresponding recognized words in a word processor document in a different way than the AVRS application. And, it does so without the short comings of the “embedded tagging” and, its cousin, the “mirrored application” as described in the AVRS application. The patent-in-suit describes an interface application that maintains in its own memory – not in the end user document – the link data that correlates audio data with recognized words. In the preferred embodiment, it does so based on the character positions of the recognized words in the word processing application, that is, the character positions of those words are stored by the link data in its memory in correlation with references to their corresponding audio data. Also, the interface application of the patent-in-suit monitors for changes in the position of recognized words associated with the correction of recognition errors or the insertion of newly dictated words into previously dictated words, and updates its link data accordingly. Exh. A, Perque Decl., ¶ 6.

23. The AVRS application simply does not describe an interface application that performs those functions in the manner recited in the claims that it copied from the patent in suit. During the *ex parte* prosecution of its patent application, AVRS, after 10 years of shoe-horning its specification into those claims, browbeat the patent examiner into allowing some of them. Notwithstanding the result of that effort, the administrative patent judge in the interference will consider anew, in the preliminary motions phase of the interference, whether the AVRS application supports the copied claims. At minimum, Microsoft’s motion to stay is premature.

B. Allvoice Developments will be prejudiced by the requested stay.

24. Whether a stay would unduly prejudice or present a tactical disadvantage to Allvoice Developments weighs in favor of denying a stay. Specifically, Allvoice Developments

would be prejudiced as an extended delay would deprive Allvoice Developments of its right to enforce its patent rights for an extended period of time. While Microsoft argues that interference proceedings before the Board of Patent Appeals and Interferences on average are terminated in 10 months and over 93% of interference proceedings conclude in under two years,¹ Microsoft does not account for the additional delays that would occur due to appeals. The results of the interference may be appealed to the district court and then to the Federal Circuit and beyond. At minimum, the requested stay would extend for several years. *See* 35 U.S. C. § 141 and 146.

25. Also, Microsoft's statistics do not clearly account for the duration of interferences when there is co-pending litigation. In those cases, the stakes are raised in the interference which may not be resolved without settling the co-pending lawsuit. It may well be that the unaccounted 7% in Microsoft's statistics – where the interferences were not resolved in two years and extended for an undetermined period – are primarily cases involving co-pending litigation.

26. Allvoice Developments would be at a tactical disadvantage if the case were stayed because the interference action could be lengthy, witnesses could become unavailable, their memories could fade, and evidence may be lost. Of the four inventors listed on the patent-in-suit, one has passed away. Also, as discussed above, the development activities of AllVoice Computing, Microsoft and IBM in 1995 are relevant in this case. 15 years have already lapsed and Microsoft would like to extend it for several more. It is more than likely that the memories of the three remaining inventors and other witness referenced above would be impacted by even a two-year delay.

27. In support of its argument that Allvoice Developments would not be prejudiced by a stay, Microsoft argues that Allvoice Developments waited eight years after the commercial release of Windows XP and three years after the release of the Vista operating system to file suit

¹ Microsoft's Motion, p. 10-11.

against Microsoft. As explained in the Background section above, Allvoice Developments has continuously prosecuted infringement claims against infringers of the patent-in-suit. As a small company with limited resources, however, Allvoice Developments could not simultaneously bring suit against all infringers.

C. The requested stay will not simplify the issues in question or trial of this case.

28. Whether a stay would simplify the issues in question and trial of the case, weighs in favor of denying the stay. Specifically, it is too early to predict the final outcome of the interference, especially here given the tortured past of the AVRS application. As previously argued, Microsoft's motion is premature as the interference may be disposed of or significantly narrowed in the preliminary motions phase.

29. In addition, Microsoft has infringed and continues to infringe claims in the patent-in-suit that are not included in the interference. Allvoice is currently preparing supplemental infringement contentions regarding those claims and others in the patent-in-suit. Allvoice Developments has informed Microsoft that it intends to move for leave to amend its infringement contentions as 1) Allvoice Developments has obtained confidential information from Microsoft that was not publically available that supports the additional infringement contentions, and 2) Allvoice Developments was not aware of the interference and, in the interest of justice, should be allowed to expand the scope of its asserted claims to include claims that are not in the interference.

30. Whether discovery is complete and whether a trial date has been assigned, also weigh in favor of denying a stay. Discovery is ongoing at this time. The parties have exchanged disclosures pursuant to the local patent rules. They have exchanged significant amounts of documents. In addition, Allvoice Developments has served written interrogatories upon Microsoft. Trial of this matter has been scheduled for July 11, 2011.

V. CONCLUSION AND PRAYER

31. Because Microsoft has failed to establish: a) that it will be damaged or undergo hardship if the case is not stayed, b) that a stay will not unduly prejudice or present a clear tactical disadvantage to Allvoice Developments, or c) that a stay will simplify the issues in question and the trial of the case, Allvoice Developments respectfully requests that the Court deny Microsoft's Motion to Stay Pending Completion of the Interference Proceeding Involving the Patent-In-Suit, and grant it all further relief to which it is entitled.

Dated: April 9, 2010

Respectfully submitted,

/s/ Chris P. Perque (with permission by Robert Christopher Bunt)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies 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 the date set forth with the signature above.

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Allvoice Developments US, LLC,

Plaintiff,

v.

Microsoft Corp.,

Defendant.

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Civil Action No. 6:09-cv-366

DECLARATION OF CHRIS P. PERQUE

I, Chris P. Perque, a U.S. citizen over eighteen years of age hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am serving as an attorney for Plaintiff in the above captioned matter.
2. I reviewed an email from Alan Heard, one of the named inventors on the patent-in-suit, reporting that Nicholas Daniel, one of his co-inventors, died in 2008.
3. Attached as Exhibit 1 hereto is a true and correct copy of the McNeely & Hale, LLP website found at (<http://www.patentek.com/CM/Patent/Patent72.asp>), which provides in pertinent part:

A patent interference request will result in a patent interference proceeding about two years after the date the request for the patent interference is filed. Therefore, a complete patent interference proceeding and its judicial review may take about five years.

4. Attached as Exhibit 2 hereto is a true and correct copy of Patent Interference Practice Handbook, Aspen Publishers, Chapter 9, entitled: "Early Issues," pp. 9-1 to 9-6.4. It

provides at page 9-4 that an interference may be terminated at the preliminary motions phase on three bases, including “where an applicant adds claims to provoke an interference and the added claims do not have written descriptive support. 37 C.F.R. §41.201.”

5. I reviewed the file copy provided by the U.S. Patent Office for the file history of the patent application owned by Advanced Voice Recognition Systems, Inc. (“AVRS”) that is the pending application in the interference with the patent-in-suit. Those records show that AVRS first requested an interference on July 12, 1999, and it was not granted until March 9, 2010. In an effort to provoke an interference, AVRS copied the claims out of the patent-in-suit. In the intervening 10 years after filing its application, AVRS filed numerous documents requesting an interference with the patent-in-suit. The U.S. Patent Office patent examiner reviewing those submissions rejected AVRS’ requests in 10 separate Office Actions and Advisory Actions, and he consistently did so on the basis that the AVRS application failed to comply with 35 U.S.C. §112(1) because the written description of that application did not support the claims that AVRS copied from the patent-in-suit. Notwithstanding those rejections, the patent examiner subsequently relented allowing some of the pending claims in AVRS’ application in September 2009 and then additional claims in February 2010.

6. Attached as Exhibit 3 hereto is a true and correct copy of U.S. Patent No. 5,799,273 (“the patent-in-suit”). Figures 6, 8A and 8B provide a flowchart showing the operation of the interface application in connection with the dictation process and the correction of recognition errors. At the end of the dictation process, the interface application at S37 of Figure 6 determines whether the current session of dictation has been inserted into previously dictated text and if so, it updates accordingly the link data for the previously dictated text. *See also*, the patent-in-suit, col. 9:5-11. Similarly, in connection with the

correction of recognition errors, in S64 and 84 of Figures 8A and 8B, respectively, the interface application determines whether the word inserted in connection with the correction of a recognition error has more or less characters than the corrected word, and if so, it updates its link data accordingly. *See also*, the patent-in-suit, col. 9:62-65 and col. 10:42-46.

7. Attached as Exhibit 4 hereto is a true and correct copy of the Notice of Allowance dated March 34, 1998 extracted from the prosecution history maintained by the U.S. Patent Office for the patent-in-suit. Therein, the patent examiner allowed the claims of the patent-in-suit, notwithstanding the Digital Dictate product noting that the Digital Dictate product relies upon the features of a word processor, such as Bookmarks in MS Word, to determine the positions of recognized words and update its link data, in contract to the invention of the patent-in-suit, which performs those functions using an interface application that is not dependent of the word processor's features.

8. Attached as Exhibit 5 hereto is a true and correct copy of Plaintiff's Interrogatories served on Defendants on March 30, 2010. Interrogatory Nos. 12 and 13 address Defendant's communications and agreements with AVRS regarding the interference and Defendant's involvement in that interference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of April, 2010.



Chris P. Perque

EXHIBIT B

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

Allvoice Developments US, LLC,

Plaintiff,

vs.

Microsoft Corp.,

Defendant.

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CIVIL ACTION NO. 6:09-CV-366 LED

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.	<i>Speech API Developer’s Guide</i> , Windows Speech API Version 1.0 - Beta (1995); <i>Speech API SDK</i> , Microsoft Speech API Version 1.0 (1995); Mike Rozak, “Developing Applications for the Windows Speech API,” <u>Proceedings of AVIOS 1995</u> , 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[™] speech recognition system developed by AT&T. See “A System Developer’s Guide,” Watson[™] 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 positions² 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,” 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”)

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.

<p>DATED: March 17, 2010</p>	<p>Respectfully submitted,</p> <p><u>/s/ Steven Kalogeras</u> Eric H. Findlay State Bar No. 00789886 efindlay@findlaycraft.com Brian Craft State Bar No. 04972020 bcraft@findlaycraft.com FINDLAY CRAFT LLP 6760 Old Jacksonville Hwy Suite 101 Tyler, TX 75703 Telephone: 903-534-1100 Fax: 903-534-1137</p> <p>David Lender (Lead Attorney) <i>admitted pro hac vice</i> david.lender@weil.com Paul Torchia <i>admitted pro hac vice</i> paul.torchia@weil.com Steven Kalogeras <i>admitted pro hac vice</i> steven.kalogeras@weil.com WEIL, GOTSHAL & MANGES LLP 767 5th Avenue New York, NY 10153 Telephone: 212-310-8000 Fax: 212-310-8007</p> <p>ATTORNEYS FOR DEFENDANT MICROSOFT CORPORATION</p>
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