

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALLVOICE DEVELOPMENTS US, LLC,)
)
Plaintiff,)
)
v.)
)
MICROSOFT CORPORATION,)
)
Defendant.)
_____)

No. 2:10-cv-02102-RAJ

MICROSOFT CORPORATION'S
RESPONSE TO PLAINTIFF'S
MOTION FOR
RECONSIDERATION

1 In seeking reconsideration of the Court’s claim construction of “audio identifiers,”
 2 Allvoice improperly proposes a new construction for the first time without a showing of
 3 manifest error or any new evidence (i.e., Allvoice relies only on evidence already considered
 4 by the Court). Moreover, on the merits, Allvoice’s motion for reconsideration should be
 5 denied because the Court’s construction of “audio identifiers” is mandated by the intrinsic
 6 record and fully consistent with the Court’s construction of “storage means for storing audio
 7 data received from said input means.”

8 I. ARGUMENT

9 A. Allvoice Has No Justification For Seeking Reconsideration of Claim 10 Construction

11 “Motions for reconsideration are disfavored.” *See* Local Civil Rule 7(h). Indeed, such
 12 motions should be denied “in the absence of a showing of *manifest error* in the prior ruling or
 13 a showing of new facts or legal authority that could not have been brought to its attention
 14 earlier with reasonable diligence.” *See id.* Allvoice has failed to make any such showing.
 15 Nor is there any reason why Allvoice could not have raised its new proposed construction that
 16 is the subject of its motion for reconsideration in its prior *Markman* briefing. Allvoice’s
 17 attempt to take “a second bite at the apple” with a new proposed construction should be
 18 denied.

19 B. There is No “Manifest Error” in the Court’s Construction of “Audio 20 Identifiers”

21 1. The Court’s Construction is Mandated by the Specification

22 “Audio identifier” is a coined term in the ’273 patent that has a special meaning in this
 23 context, and the Court properly relied on the Specification in construing it. *See Phillips v.*
 24 *AWH Corporation*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (stating that the specification is the
 25 “single best guide” for claim construction, and it is entirely appropriate for courts “to rely
 26 heavily on the written description for guidance as to the meaning of the claims.”). The “audio
 27 identifiers” are part of the claimed “link data” that is used to enable audio retrieval and
 playback to aid in correction of dictation errors. *See* ’273 patent 6:48-58 (“[T]he audio start

1 point and audio end point of the audio component in the associated audio data file is indicated
 2 to enable the retrieval and playback of the audio component corresponding to the word.”
 3 (emphasis added)). The Specification states that the “audio identifiers” indicate which “file”
 4 contains the audio data to be played back, along with the specific position of the audio
 5 component for a word within that “file,” as follows:

6 The link data 25 also includes information identifying **where**
 7 **the audio data can be found in the files** in the temporary
 8 directory of the disk storage 15. This information is provided in
 9 the tag field. The tag field will not only include the identified
 10 tag **identifying the position of the audio component for a**
 11 **word within a file**, it will also include **an identification of**
 12 **which file contains the audio component.**

13 [’273 patent at 7:11-18 (emphasis added)]

14 In addition, the Specification consistently teaches that the audio identifiers identify the
 15 “file” where audio data is located. *See, e.g.*, ’273 patent at 6:53-58 (“Each of the words
 16 recognised is identified by an identifier tag Also, the audio start point and audio end
 17 point of the audio component in the associated audio data file is indicated”) (emphasis
 18 added); 12:3-6 (“If the user selects to play the message the link data identifies the audio data
 19 file containing the audio message”) (emphasis added); Abstract (“the recognized words or
 20 characters are stored as a file together with the corresponding audio data”) (emphasis added);
 21 Fig. 8A (noting that the “identifier tag” is used to “retrieve [the] audio component from the
 22 SR run time created files in the temporary directory”) (emphasis added); *see also id.* at Fig.
 23 8B; 14A; 14B. Indeed, the asserted patent does not disclose a single instance where the
 24 “audio identifiers” point to audio data not stored in a “file.” As such, the Court’s construction
 25 of “audio identifier” is correct because it is fully supported by the Specification.

26 Despite the overwhelming evidence in the intrinsic record that “audio identifiers”
 27 indicate “file” locations, Allvoice would have the Court rewrite the Specification to replace
 the word “file” with “storage location” in order to alter the definition of the disputed claim
 term. *See* Allvoice Motion at 6. That would be error. Allvoice’s proposed substitution,
 “storage location,” is not found anywhere in the Specification, and it would be improper to

1 inject it into the claim construction. Furthermore, adopting Allvoice’s proposed substitution
 2 would introduce an additional dispute over the meaning of “storage location,” which itself
 3 would require construction.

4 **2. Allvoice Incorrectly Contends That The Court’s Constructions Are**
 5 **“Irreconcilable”**

6 Rather than showing any evidence in the intrinsic record that supports its new
 7 construction, Allvoice instead argues that the Court must adopt it in order to avoid an
 8 inconsistency in the Court’s constructions. *See* Allvoice Motion at 2. In particular, Allvoice
 9 argues that the Court’s construction of “audio identifier” is somehow “irreconcilable” with the
 10 Court’s construction of “storage means.” *See id.* There is no such inconsistency.

11 The mere fact that the Court’s construction of “storage means” can cover different
 12 types of memory does not change the fact that the “audio identifiers” indicate “file” locations
 13 where audio data is stored for audio playback. While the Specification states that audio data
 14 is “temporarily” held in RAM (i.e., “volatile memory 20”), it further states that the audio data
 15 is passed to “files” in disk storage before the audio data is retrieved for audio playback, as
 16 follows:

17 When the speech recognition engine application 11 is activated
 18 and receives audio data via the interface device 7, the speech
 19 recognition output data 24 is temporarily held in the volatile
 20 memory 20. The output data is then passed to **files** which are
 21 opened in the temporary directory of the disk storage 15.

22 [’273 patent at 6:41-46 (emphasis added)]

23 The Specification states that disk storage is used for audio playback because it would
 24 be “impractical” to use RAM: “[A]udio data requires a great deal of storage capacity and it is
 25 impractical to hold audio data of any length in the volatile memory 20 [RAM].” *See* ’273
 26 patent at 6:30-34. It is therefore not surprising that the Specification requires “audio
 27 identifiers” to indicate “file” locations where the audio data is stored because the “audio
 identifiers” are used to locate and retrieve audio files during audio playback. While RAM
 may be used to “temporarily” buffer audio data when it is first created, the “audio identifiers”

1 are not used to retrieve data from RAM because the Specification teaches that the audio data
2 is passed into “files” before it can be retrieved for audio playback. *See id.* at 6:41-58.

3 In short, nothing in the Court’s constructions of “audio identifiers” and “storage
4 means” is inconsistent, and there is no justification for Allvoice’s proposal to alter the
5 meaning of “audio identifier” that is found in the Specification.

6 3. Claim Differentiation Does Not Support Allvoice’s Construction

7 Allvoice further argues that the mere inclusion of the word “file” in dependent claim
8 6, “is a strong indicator that such a limitation” is not required by the independent claims. *See*
9 Allvoice Motion at 6. This is incorrect. The doctrine of claim differentiation, which Allvoice
10 appears to rely on in support of this argument, is inapplicable where, as here, the court’s claim
11 construction does not render any claim superfluous. *See Andersen Corp. v. Fiber Composites,*
12 *LLC*, 474 F.3d 1361, 1370 (Fed. Cir. 2007) (holding that claim differentiation was
13 inapplicable where “the district court’s construction does not make the [other] claims
14 redundant” due to other differences varying the scope of the claims); *Curtiss-Wright Flow*
15 *Control Corp. v. Velan, Inc.*, 438 F.3d 1374, 1381 (Fed. Cir. 2006) (“claim differentiation
16 takes on relevance in the context of a claim construction that would render additional, or
17 different, language in another independent claim superfluous”). In this case, the claim raised
18 by Allvoice (i.e., claim 6) recites “separate file[s]” and a host of additional related limitations
19 that make claim differentiation inapplicable. Specifically, claim 6 recites “a word string []
20 formed of a plurality of separately dictated passages of words” that are each stored in a
21 “separate file,” along with several other additional limitations that further distinguish claim 6
22 from the claim on which it depends. *See* ’273 patent at 17:18-25 (claim 6). Consequently,
23 Allvoice’s claim differentiation argument fails because nothing in the Court’s claim
24 construction of “audio identifier” would make claim 6 superfluous.

25 II. CONCLUSION

26 For the foregoing reasons, Microsoft respectfully requests that the Court deny
27 Allvoice’s motion for reconsideration.

1 DATED this 12th day of January, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2012, I caused to be served a true and correct copy of the following document(s) by the method indicated below and addressed as follows:

Microsoft Corporation’s Response to Plaintiff’s Motion for Reconsideration

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16 DATED this 12th day of January, 2012.

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