

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IPA TECHNOLOGIES INC., )  
)  
Plaintiff, )  
)  
v. ) C.A. No. 18-01 (RGA)  
)  
MICROSOFT CORPORATION, )  
)  
Defendant. )

**OPENING BRIEF IN SUPPORT OF MICROSOFT CORPORATION'S  
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

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### **NATURE AND STAGE OF THE PROCEEDINGS**

IPA Technologies Inc. (“IPA”) alleges infringement of two groups of patents. The Court previously found claim 1 of each patent in the first group, the “Halverson patents,” unpatentable under 35 U.S.C. § 101. *See* D.I. 30 in C.A. No. 16-1266-RGA (the “101 Decision” – re U.S. Patents 6,742,021 (“the ’021 patent”), 6,523,061 (“the ’061 patent”), and 6,757,718 (“the ’718 patent”)). IPA alleges infringement of “one or more claims” of each of the Halverson patents, although it provides specific allegations only as to claim 1 of each patent. (*See* D.I. 16 ¶¶ 164, 176, 188.) To the extent the Court’s prior ruling on the Halverson patents does not expressly resolve all of IPA’s contentions on these patents, the remaining claims of those patents also recite patent-ineligible subject matter under 35 U.S.C. § 101. In its second group of patents, the “Cheyer patents,” IPA alleges infringement of claim 61 of U.S. Patent 6,851,115 (“the ’115 patent”), claim 52 of U.S. Patent 7,069,560 (“the ’560 patent”), and claim 1 of U.S. Patent 7,036,128 (“the ’128 patent”). (D.I. 16 ¶¶ 204, 228, 250). Like the claims of the Halverson patents, these claims of the Cheyer patents recite patent-ineligible subject matter under 35 U.S.C. § 101 for the same reasons set forth in the Court’s prior ruling. The remaining allegations in IPA’s Second Amended Complaint are not material to assessing patent eligibility of the asserted patents in either group. Accordingly, Defendant Microsoft Corporation (“Microsoft”) respectfully requests that the Court dismiss this action under Fed. R. Civ. P. 12(b)(6).

### **INTRODUCTION**

Claim 1 of each of the Halverson patents is “directed to the abstract idea of retrieving electronic data in response to a spoken request and transmitting the retrieved data to a user,” “fail to provide technological solutions to the problems they identify,” and are invalid. (*See* 101 Decision at 9, 17, 25.) Although the Court did not reach the other claims of the Halverson patents, as IPA’s arguments at the hearing on 101 motions confirmed, there are but minor differences between those

claims and those the Court found invalid. None of those differences define patentable subject matter, and all claims of the Halverson patents are thus invalid. The additional allegations in the Second Amended Complaint do not change that result.

The Cheyer patents are directed to the same idea, at an even higher level of abstraction: retrieving electronic data in response to a request. The asserted claims do not limit the idea to spoken requests, nor do they require transmitting the result. But like the Halverson patents, the Cheyer claims use broad language to describe receiving a request, interpreting it, and coming up with a response—without providing the specific technological solutions for accomplishing those steps. The Cheyer patents refer to the same “facilitators” and “agents” that appear in the ’061 patent (*see* 101 Decision at 11-12) along with other purported technical terminology related to the admittedly pre-existing Open Agent Architecture (OAA) software platform. As this Court observed, Plaintiff concedes it did not invent OAA, and it existed before the filing of all of the asserted patents. *See* 101 Decision at 20 n.9 (citing C.A. No. 17-055, D.I. 16, at 16). Further, the Cheyer claims fail to explain *how* the pre-existing OAA technology (or any other technological solution) interprets a user’s request and determines a response. Instead, like the Halverson patents, the Cheyer patents claim the result of the receive-interpret-respond operations, without providing a technological solution to accomplish that goal.

### **SUMMARY OF THE ARGUMENT**

1. The claims of the Halverson patents not addressed by the Court’s 101 Decision are directed to the same abstract idea as those the Court already found ineligible. The minor wording variations in the remaining claims add no inventive concept, and they are thus also invalid under Section 101.

2. The Cheyer patents are directed to the abstract idea of retrieving electronic data in response to a request and transmitting the retrieved data to a user and fail step 1 of the *Alice*

framework. The claims fail to disclose any specific technical solution for accomplishing that result, and do not recite any inventive concept or technical solution sufficient to transform the abstract idea into patent-eligible subject matter. Instead, the claims recite the abstract idea using functional steps and reference to generic computer components, which is insufficient to make the claims patent-eligible. Accordingly, the Cheyer patent claims also fail step 2 of the *Alice* framework and are invalid under Section 101.

3. The further factual allegations IPA added to its Second Amended Complaint do not raise any issue of material fact as to the patentability of any of the claims.

### **STATEMENT OF FACTS**

#### **A. The Halverson Patents**

The Halverson patents claim the abstract idea of retrieving electronic data in response to a spoken request and transmitting the retrieved data to a user. The '021 patent (D.I. 12 Ex. A), the '061 patent (D.I. 12 Ex. B), and the '718 patent (D.I. 12 Ex. C) share a common specification. Claim 1 of the '021 patent recites the generic operations of the Halverson patents: (1) receiving a spoken request; (2) interpreting the request; (3) constructing a query; (4) getting additional input from the user to supplement the query; (5) retrieving a response to the request using the query; and (6) transmitting the response to the user. ('021 patent at 15:12-33.) Independent claim 27 is a system claim, and independent claim 46 is a “computer program” claim, each with elements corresponding to the same six method steps as claim 1. (*Id.* at 16:43-67, 17:63-18:19.) Independent claims 72, 90, and 109 differ from claims 1, 27, and 46 only in that they specify that the spoken request is in “natural language.” (*E.g., id.* at 20:48-51.) However, the known, pre-existing technology disclosed in the specification for parsing and interpreting spoken requests already processes “Spoken Natural Language Requests” using (for example) the “Gemini Natural Language Understanding System.” (*Id.* at 7:8-8:32.) Finally, independent claims 127 and 130 are nearly

identical to claim 72, requiring that the soliciting step involves seeking additional input based on either “results generated from said at least part of a navigation query,” or on “one or more deficiencies encountered” while constructing the query. (*Id.* at 23:28-31, 24:18-22.)

IPA agreed that claim 1 of the '021 is representative of many of the claims in the '021 patent, but contended that it was not representative of claims 3, 4, 8, 15-23, and 25. (Transcript of Hearing in C.A. Nos. 16-1266-RGA & 17-55-RGA (D. Del. Nov. 16, 2017) (hereinafter, “Tr.”) 45:8-14, 45:25-46:1, 47:1-4, 48:4-18.)

Claim 3 depends from claim 1, and recites:

3. The method of claim 1, wherein the step of constructing a navigation query further includes the steps of extracting an input template for an online scripted interface to the data source, and using the input template to construct the navigation query.

('021 patent at 15:38-42.) Claim 4 depends from claim 3:

4. The method of claim 3, wherein the step of extracting the input template includes dynamically scraping the online scripted interface.

(*Id.* at 15:43-45.) Claim 8 also depends from claim 1, and recites:

8. The method of claim 1, wherein the step of soliciting additional input is performed in response to one or more deficiencies encountered during the step of constructing a navigation query.

(*Id.* at 15:56-59.) Claims 15 through 23 all depend from claim 1, and recite various modified articulations of the “soliciting” step, enumerating options for alerting the user that more input is needed, or options for receiving that additional input. (*Id.* at 16:12-32.) Finally, claim 25 (which also depends from claim 1) adds a step of picking between different data sources:

25. The method of claim 1, further including the step of selecting the data source from among a plurality of candidate electronic data sources, in response to the interpretation of the spoken request.

(*Id.* at 16:36-39.) The other dependent claims (stemming from claims 27, 46, 72, 90, 109, 127, and 130) are corresponding versions of these same independent claims.

Representative claim 1 of the '061 patent recites the same basic steps as claim 1 of the '021 patent. It does not include the “soliciting” and “refining” steps, but adds generic “agents” to select a portion of the data source and to provide a response to the user. ('061 patent at 15:21-38.) Independent claims 7 and 13 are computer-readable-medium and system versions of method claim 1. (*See id.* at 15:56-16:7, 16:29-45.) The only other claim of the '061 patent IPA has distinguished is claim 4 (*see* Tr. 52:18-21), which depends from claim 1 and recites:

4. The method of claim 1, further comprising the steps of soliciting additional input from the user, including user interaction in a modality different than the original request; and refining the navigation query, based upon the additional input; wherein the at least one agent uses the refined navigation query to select a portion of the electronic data source.

('061 patent at 15:43-49.) This claim adds “soliciting” and “refining” limitations similar to those appearing in claim 1 of the '021 patent. Claims 10 and 16 add similar “soliciting” limitations. (*See id.* at 16:15-21, 16:53-59.) Claims 2, 3, 5, 8, 9, 11, 14, 15, and 17 of the '061 patent variously require certain steps of claim 1 to be performed by “agent[s].” (*Id.* at 15:39-43, 15:50-53, 16:8-14, 16:22-25, 16:46-52, 16:60-62.) Finally, claims 6, 12, and 18 specify that the electronic data source is a “web page.” (*Id.* at 15:52-54, 16:25-28, 16:63-65.)

Representative claim 1 of the '718 patent recites the same basic steps as claim 1 of the '021 patent. It does not include the “soliciting” and “refining” steps, and replaces the “client device of the user” with “a mobile information appliance of the user,” which “comprises a portable remote control device or a set-top box for a television.” ('718 patent at 15:25-42.) IPA chose not to distinguish any other claims of the '718 patent. (*See* Tr. 49:16-18.) Independent claims 10 and 19 are computer-readable-medium and system versions of method claim 1. (*See* '718 patent at 15:65-16:17, 16:42-59.) Dependent claims 2-3, 11-12, and 20-21 simply specify whether the “rendering” step takes place at the user’s device or at a network server. (*E.g.*, '718 patent at 15:43-48, 16:18-23, 16:60-65.) Dependent claims 4, 13, and 22 add “soliciting” and “refining” limitations similar to

those appearing in claim 1 of the '021 patent. Dependent claims 5-9, 14-18, and 23-27 add limitations that a cellular network is used, that the user's device could be a cell phone or PDA, or that the system might have multiple users. (*E.g.*, '718 patent at 15:55-64, 16:31-39, 17:6-18:7.)

## **B. The Cheyer Patents**

### **1. The '115 patent**

Claim 61 of the '115 patent (the only claim identified in IPA's complaint) recites:

61. A facilitator agent arranged to coordinate cooperative task completion within a distributed computing environment having a plurality of autonomous service-providing electronic agents, the facilitator agent comprising:

an agent registry that declares capabilities of service-providing electronic agents currently active within the distributed computing environment; and

a facilitating engine operable to parse a service requesting order to interpret a compound goal set forth therein, the compound goal including both local and global constraints and control parameters, the service request formed according to an Interagent Communication Language (ICL), wherein the ICL includes

a layer of conversational protocol defined by event types and parameter lists associated with one or more of the events, wherein the parameter lists further refine the one or more events; and

a content layer comprising one or more of goals, triggers and data elements associated with the events; and

the facilitating engine further operable to construct a goal satisfaction plan by using reasoning that includes one or more of domain-independent coordination strategies, domain-specific reasoning, and application-specific reasoning comprising rules and learning algorithms.

('115 patent at 35:4-28.) Like claim 1 of the '061 patent, this claim describes the use of a facilitator (here, a "facilitating engine"), which receives requests, communicates with multiple agents, and responds. The claim explicitly avoids describing how the facilitator determines its response. Instead, the facilitator "us[es] reasoning" selected from a variety of methods not described in the specification, including unknown and unspecified "rules" and "algorithms."

## 2. The '560 Patent

Claim 52 of the '560 patent (the only claim identified in IPA's complaint) recites:

52. A computer implemented process for providing coordinated task completion within a distributed computing environment, the distributed computing environment including a plurality of autonomous electronic agents, the computer implemented method comprising the steps of:

providing at least one agent registry including capabilities of service providing electronic agents;

interpreting a service request in the form of a base goal, the service request being in a interagent communication language (ICL), the ICL including a layer of conversational protocol defined by event types and parameter lists associated with one or more of the events, wherein the Parameter lists further refine the one or more events;

determining a plurality of sub goals necessary to accomplish the base goal;

selecting from said registry at least one service providing agent capable of completing said sub goals;

delegating at least one sub goal as a peer to peer service request directly from a service requesting agent to a service providing agent; and

delegating any remaining sub goals as service request in the interagent communication language to the selected agents capable of completing the remaining sub-goals.

('560 patent at 35:16-39.) Although the claim does not use the term "facilitator," the method outlines the same "facilitating" tasks described in claim 61 of the '115 patent or claims of the '061 patent—receive a request, and use multiple agents to respond.

## 3. The '128 Patent

Claim 1 of the '128 patent (the only claim identified in IPA's complaint) recites:

1. A collaborative computer-implemented community of distributed electronic agents, organized to provide a mobile computing environment, the computer-implemented community of distributed electronic agents comprising:

an agent registry wherein one or more capabilities of each of the electronic agents are registered in the form of an interagent communication language (ICL), wherein the interagent language includes a layer of conversational protocol defined by event types and parameter lists associated with one or more events, and wherein the parameter lists further refine the one or more events;

a facilitator agent arranged to coordinate cooperative task completion among the electronic agents by delegating one or more received ICL goals to a selected one or more of the electronic agents based upon the registered capabilities of the selected agents;

one or more service-providing electronic agents, being in bi-directional communication with the facilitator agent, including at least one location agent operable to ascertain a current physical location of a user; and

one or more computer interface agents being in bi-directional communication with the facilitator agent, the mobile computer interface agents being operable to process at least one mobile user input type and to responsively generate and present to the facilitator agent one or more ICL goals corresponding to the user's desired request.

(’128 patent at 35:27-53.) Like the previous Cheyer claims, claim 1 describes a “facilitator agent” that receives a request and responds using multiple agents. And like the Cheyer claims (and the Halverson claims) the claim does not specify *how* the facilitator and agents come up with a response. Instead, the claim simply declares that the agents are “operable ... to responsively generate ... goals corresponding to the user’s desired request.”

## ARGUMENT

### **I. LEGAL STANDARD**

Abstract ideas are not eligible for patent protection, under “the longstanding rule that ‘[a]n idea of itself is not patentable.’” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014) (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). As the Supreme Court has explained, “monopolization” of abstract ideas “through the grant of a patent might tend to impede innovation more than it would tend to promote it.” *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012). Accordingly, abstract ideas belong to the “storehouse of knowledge ... free to all ... and reserved exclusively to none.” *Bilski v. Kappos*, 561 U.S. 593, 602 (2010) (citation omitted).

**A. The *Alice* Framework**

The Supreme Court applies a two-step approach for determining patent eligibility under Section 101. First, a court must ask whether the claims are directed to a patent-ineligible concept, such as an abstract idea. *Alice*, 134 S. Ct. at 2355. Second, if the claims are directed to an abstract idea, the court must decide whether the claims add an “inventive concept”—“an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [concept] itself.’” *Alice*, 134 S. Ct. at 2355, quoting *Mayo*, 566 U.S. at 73. Claims that fail to add such a concept to the abstract idea are ineligible. *Alice*, 134 S. Ct. at 2355. Merely calling for an abstract idea to be implemented using well-known computer components or functions, limiting the idea to a particular technological environment, or adding other token steps is insufficient. *See id.* at 2357-59; *Bilski*, 561 U.S. at 610-11.

**B. Claims Directed to Implementing an Abstract Idea on a Generic Computer Are Not Patent Eligible**

Many of the Federal Circuit’s post-*Alice* decisions consider whether the claims are directed to “a specific means or method that improves the relevant technology” (and thus patentable), or whether they are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery” (and thus not patentable). *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016) (quotation marks omitted). Reciting the abstract idea using functional steps and reference to generic computer components is insufficient to make the claims patent-eligible. *See, e.g., Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1338 (Fed. Cir. 2017) (“the use of generic computer components to carry out the recited abstract idea ... is not sufficient”); *Affinity Labs of Tex., LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (“The features set forth in the claims are described and claimed generically rather than with the specificity necessary to show how those components provide a concrete solution

to the problem addressed by the patent.”); *In re TLI Commc 'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (despite reciting “concrete, tangible components,” claims ineligible where “the physical components merely provide[d] a generic environment in which to carry out the abstract idea”).

Similarly, patents that do not claim a particular way of carrying out an invention, but instead “merely claim the resulting systems” or “are directed to certain functionality” without disclosing a specific technical solution are not patent eligible. *See, e.g., Two-Way Media*, 874 F.3d at 1337 (patent-ineligible claim “requires the functional results ... but does not sufficiently describe how to achieve these results in a non-abstract way”); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (claim language “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”); *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258-59 (Fed. Cir. 2016) (patent-ineligible claims recite only a function, “not a particular way of performing that function”); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016) (patent-ineligible claims “defin[e] a desirable information-based result” but are “not limited to inventive means of achieving the result”). Even in cases upholding claims under Section 101, the Federal Circuit has reiterated and applied the “foundational patent law principle [ ] that a result, even an innovative result, is not itself patentable.” *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305 (Fed. Cir. 2018). Such decisions reaffirm the rule that claims reciting an abstract idea are only patent-eligible where they describe an inventive, technical solution for implementing the abstract idea. The claims in those cases recited specific structures or steps specifying how to achieve the result—they did not simply propose using “whatever works.” *E.g. Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300-01 (Fed. Cir. 2016) (claims

disclosed an “unconventional technological solution” to the possibly abstract idea of correlating accounting records).

**C. Section 101 and Rule 12(b)(6)**

Patent eligibility can be determined at the Rule 12(b)(6) stage, *e.g.*, *Genetic Techs. Ltd. v. Merial LLC*, 818 F.3d 1369, 1373 (Fed. Cir. 2016), so long as “there are no factual allegations that, taken as true, prevent resolving the eligibility question as a matter of law,” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1125 (Fed. Cir. 2018). *See also Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

In evaluating any allegations in the complaint in consideration of a motion to dismiss, the Court “peel[s] away those allegations that are no more than conclusions and thus not entitled to the assumption of truth.” *Shelton v. Harmon*, C.A. No. 14-1032-RGA (D. Del. Oct. 31, 2014), quoting *Bistrrian v. Levi*, 696 F.3d 352, 365 (3d Cir. 2012). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.”); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (court is “not bound to accept as true a legal conclusion couched as a factual allegation”). Further, “[m]ere restatements of the elements of a claim are not entitled to the assumption of truth,” *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 224 (3d Cir. 2011), and allegations that are “not plausible” need not be accepted, *Brodzki v. Fox Broadcasting Co.*, 868 F. Supp. 2d 386, 389 (D. Del. 2012). Finally, as the Federal Circuit has made clear in the § 101 context, “[i]n ruling on a 12(b)(6) motion, a court need not ‘accept as true allegations that contradict matters properly subject to judicial notice or by exhibit,’ such as the claims and the patent specification.” *Secured Mail Solutions. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 913 (Fed. Cir. 2017).

## **II. THE HALVERSON PATENT CLAIMS ARE NOT PATENT-ELIGIBLE**

The Court has already ruled that claim 1 of each of the Halverson patents is invalid. Those claims are “directed to the abstract idea of retrieving electronic data in response to a spoken request and transmitting the retrieved data to a user,” “fail to provide technological solutions to the problems they identify,” and are not patent eligible. (*See* 101 Decision at 9, 17, 25.) IPA’s Complaint alleges infringement of “one or more claims” of each of the Halverson patents but provides specific allegations and identifies an accused product only as to claim 1 of each patent. (*E.g.*, D.I. 16 ¶¶ 164-65.) Aside from the allegations concerning ineligible claims, the Complaint fails to “connect anything in the patent claims to anything about any of the accused products,” *SIPCO, LLC v. Streetline, Inc.*, 230 F. Supp. 3d 351, 353 (D. Del. 2017) (granting motion to dismiss)—in fact, there are no allegations as to which products (if any) might be accused of infringement of any other claim. Counts I, II, and III accordingly fail to state a claim of patent infringement of any other claim of the Halverson patents, and should be dismissed. That dismissal should be with prejudice because, as set forth below, the remaining Halverson claims are also ineligible under § 101.

### **A. The Remaining Halverson Claims Are Directed to the Same Abstract Idea**

The remaining claims of the Halverson patents are directed to the same abstract idea as claim 1 of each patent: retrieving electronic data in response to a spoken request and transmitting the retrieved data to a user. Those claims either depend from the already-adjudicated claims, or are variants thereof, reciting (for example) systems instead of methods with the same set of limitations. *See Elec. Power*, 830 F.3d at 1353 (*Alice* step one involves “looking at the ‘focus’ of the claims, their ‘character as a whole’”). As described above in Sections A-C of the Statement of Facts, *supra* at 3-8, these claims add nothing more than specifying components (known technology) of the particular environment for the claimed abstract idea, and do not change the focus or character of the

claims. All of the Halverson claims are directed to the same abstract idea, requiring analysis under step 2 of the *Alice* test.

**B. The Remaining Claims Contain No Inventive Element Rendering Them Patent Eligible**

The Court must thus determine whether the remaining claims contain an “inventive concept” sufficient to transform that “abstract idea into a patent-eligible application.” *Alice*, 134 S. Ct. at 2357. Generic computer technology, or “well-understood, routine, conventional” or “purely functional” elements cannot supply the required inventive concept. *Id.* at 2357-60. Functional, result-focused claims, which “do no more than describe a desired function or outcome, without providing any limiting detail that confines the claim to a particular solution,” are not patent-eligible. *Affinity/Amazon*, 838 F.3d at 1269. Rather, to survive step 2 of *Alice*, IPA’s patents must claim a “technology-based solution (not an abstract-idea-based solution implemented with generic technical components in a conventional way).” *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016). The remaining claims use generic, functional language and reference well-known and conventional technology, and do not survive step 2 of *Alice*.<sup>1</sup>

**1. The remaining claims of the ’021 patent add no technical substance to claim 1**

As noted above, IPA has suggested that claim 1 of the ’021 patent is not representative of claims 3, 4, 8, 15-23, and 25. None of these claims add anything of technical substance to claim 1 (nor do the parallel dependent claims that stem from the other independent claims of the ’021 patent). Claims 3 and 4 depend from claim 1, and recite steps of extracting a template and using it to construct the navigation query. (*See id.* at 15:39-45.) IPA contends these

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<sup>1</sup> The Court already found that the ordered combination of the claimed components in claim 1 of each of the Halverson patents “fail[ed] to impart an inventive concept.” 101 Order at 23. The remaining claims order the relevant steps in the same sequence, and as the Court observed for the first claim of each patent, changing that order “would render the claims useless.” *Id.* at 23-24.

claims correspond to Figure 5 of the patent, and show “a very specific way of accomplishing [ ] constructing the query.” (Tr. 46:4-24.) But these limitations add nothing substantive at all—as is clear from their language, these are more “whatever works” limitations. If the data source (which IPA did not invent) provides a template for queries (a template that IPA did not invent), these limitations say “extract that template and use it.” The specification concedes that these steps are accomplished using existing, available technology. (*See* ’021 patent at 9:25-10:9 (discussing CGI scripts and the WebL scripting language.) The limitations in claims 3 and 4 use different words to provide the same vague guidance that the specification does: the query should be “structured appropriately” based on “whatever content and structure is required . . . to access” the data source. (’021 patent at 8:55-62.) Dependent claims 29-30, 48-49, 74-75, 92-93, and 111-12 of the ’021 patent add the same limitations to other independent claims. These limitations do not add any technical solution or inventive element to claim 1.

Claim 8 also depends from claim 1, and states that the “soliciting” step is performed when “one or more deficiencies” are found in the query. (*See id.* at 15:56-59.) Claims 9-13 add additional limitations concerning the types of “deficiencies” that might be encountered. Claim 1 already described soliciting additional input. The added limitation in claim 8 vaguely sets out a possible reason why additional input is needed—“one or more deficiencies” were “encountered.” Claims 9-13 describe different possible categories of deficiencies. But neither these claims nor the specification says anything about how to recognize such deficiencies, or how to solicit input to resolve those deficiencies. Dependent claims 34-39, 53-58, 79-84, 97-102, and 116-121 of the ’021 patent add the same limitations to other independent claims; dependent claim 71 recites repeating the solicitation step until the “query is deemed adequate.” These claims do not provide any inventive or technical contribution.

Claims 15 through 23 all depend from claim 1, and recite various additional limitations on the “soliciting” step. Some claims set out options for alerting the user that more input is needed: show some text, make a sound, present a menu or a list to select from (claims 15-18). The other claims list options for receiving the user’s additional input: speech, anything other than speech, a list selection (claims 19-23). These are conventional aspects of computer user interfaces. IPA did not invent them, and they add nothing inventive to the abstract idea of claim 1. *See Apple*, 842 F.3d at 1244-45 (adding preexisting “voice capture technologies” to an unpatentable independent claim does not make dependent claims patentable); *Affinity/DIRECTV*, 838 F.3d at 1261 (interface “used to display a menu of options to the user” is “conventional technology” “used in [a] conventional way[ ]”). Dependent claims 66-70 of the ’021 patent add the same limitations to a different independent claim, and similarly fail to contribute any inventive step.

Finally, claim 25 (which also depends from claim 1) recites selecting a data source from among multiple candidates. (*See* ’021 patent at 16:36-39.) These words only introduce additional abstraction—there may be multiple possible sources to consult. But claim 25 does not explain *how* to select the appropriate data source, and the specification provides only a black box—a “facilitator” that based on the interpreted query will route it “to appropriate agents.” (*Id.* at 14:18-28. *See also id.* at 14:39-44.) The patent does not provide any technical solution for how the “facilitator” accomplishes selecting the “appropriate” data source. Dependent claims 42, 62, 88, 105, and 125 of the ’021 patent add the same limitations to different independent claims, and similarly fail to contribute any inventive step.

The other independent claims include system (claim 27) and computer program (claim 46) versions of claim 1, and a set of three corresponding method, system, and computer program claims (claims 72, 90, and 109) that differ only in that they specify that the spoken request

is in “natural language.” As noted above, the specification discloses known, pre-existing technology for processing “natural language” requests. (*Id.* at 7:8-8:32.) Finally, independent claims 127 and 130 are nearly identical to claim 72, requiring that the soliciting step involves seeking additional input based on either “results generated from at least part of a navigation query,” or on “one or more deficiencies encountered” while constructing the query. (*Id.* at 23:28-31, 24:18-22.) For the reasons noted above for claim 8, these limitations do not provide any inventive element to the claims.

Although IPA already conceded that claim 1 was representative of all other claims of the '021 patent, the specification further makes clear that the specific technology identified in these other claims is known and conventional. Dependent claims 2, 28, 47, 73, 91, and 110 recite the use of speech recognition and language parser technology that the specification concedes is known. (*Id.* at 7:8-8:32.) The “database query language” as recited in dependent claims 5, 31, 50, 76, 94, and 113 are conventional, existing database query languages like SQL, “a standard interactive and programming language for getting information from and updating a database.” (*Id.* at 8:63-9:14.) Dependent claims 14 and 64 suggest that the “soliciting” step is triggered by a user’s own statement that additional information is required, but the claims do not explain how, and the specification only discusses prompting the user for additional input. (*Id.* at 10:39-13:2.) These claims do not add any inventive step. Claims 15, 22-23, 40-41, 59-60, 65, 85-86, 103-04, 122-23, 128-29, and 131-32 of the '021 patent recite selecting an option from a menu; the specification does not describe any new type of menu, and concedes that “existing navigational systems for browsing” includes “menus.” (*Id.* at 1:46-49.) Claims 6-7, 32-33, 51-52, 77-78, 95-96, and 114-15 of the '021 patent recite conventional client-server technology (*see id.* at 4:11-14), in which processing may occur locally on the client or remotely on a server—but describe nothing inventive about the use of that known technology. Similarly, claims 44 and 107 recite the use of a “communications box” to communicate

with the network, while claims 45 and 108 recite communicating with the network using coaxial cable, DSL, wireless, etc. These are conventional, well-known network communication technologies. (*Id.* at 1:27-32, 4:25-45.) The specification acknowledges that data sources containing video and audio content as required by claims 26, 43, 63, 89, 106, and 126 were already well-known (*see id.* at 1:20-46) and the claims do not describe any new method for querying such sources. Although claims 24, 61, 87, and 124 of the '021 patent recite the notion of implementing the abstract idea with multiple users; the claims and specification do not describe any inventive, technological solution for doing so.

**2. The remaining claims of the '061 patent are not patent-eligible**

The only claim of the '061 patent IPA distinguished beyond claim 1 is dependent claim 4 (*see* Tr. 52:18-21), which (like claims 10 and 16) adds “soliciting” and “refining” limitations similar to those appearing in claim 1 of the '021 patent. (*See* '061 patent at 15:43-49.) For the reasons the Court already found in the 101 Decision, these limitations (which are present in ineligible claim 1 of the '021 patent) do not make claims 4, 10, or 16 patent-eligible. Independent claims 7 and 13 are computer-readable-medium and system versions of method claim 1 (*see id.* at 15:56-16:7, 16:29-45), and are ineligible for the same reasons as claim 1. As noted above, the specification admits web page “scrap[ing]” (claims 6, 12, and 18 of the '061 patent) is conventional. The requirements in claims 2, 3, 5, 8, 9, 11, 14, 15, and 17 that various steps of claim 1 are performed by “agent[s]” do not provide any inventive step as Plaintiff concedes it did not invent the OAA platform and its agent/facilitator model.

**3. The remaining claims of the '718 patent are not patent eligible**

IPA chose not to distinguish any other claims of the '718 patent. (*See* Tr. 49:16-18.) Regardless, independent claims 10 and 19 are computer-readable-medium and system versions of method claim 1 (*see* '718 patent at 15:65-16:17, 16:42-59), and are ineligible for the same reasons.

The “receiving,” “rendering,” “constructing,” and “utilizing” limitations of claim 1 of the ’718 patent also appear in claim 1 of the ’021 patent. The ’718 patent claims replace the more general “client device” in the ’021 patent with a “mobile information appliance,” which includes one of two generic components—a “portable remote control” or a “set-top box for a television.” (*Id.* at 15:25-42). But restricting the set of client devices on which the abstract idea might be implemented to existing “mobile information appliance[s]” like cell phones or PDAs does not provide an inventive concept. *See TLI Commc’ns*, 823 F.3d at 612, 614 (“[T]he telephone unit itself is merely a conduit for the abstract idea.... [T]he telephone unit simply provides the environment in which the abstract idea of classifying and storing digital images in an organized manner is carried out.”).

Specifying whether the “rendering” step takes place at the user’s device or at a network server (as found in dependent claims 2-3, 11-12, and 20-21) is not an inventive concept, and does not make the claim any less abstract. The “soliciting” and “refining” limitations in dependent claims 4, 13, and 22 are materially the same as those appearing in claim 1 of the ’021 patent, which the Court has already found ineligible. Finally, the limitations that a cellular network may be used, that the user’s device could be a cell phone or PDA, or that the system might have multiple users, as found in dependent claims 5-9, 14-18, and 23-27, do not provide any inventive element.

### **III. THE ASSERTED CLAIMS OF THE CHEYER PATENTS ARE NOT PATENT ELIGIBLE**

#### **A. The Cheyer Claims Are Directed to an Abstract Idea**

The asserted Cheyer claims are directed to the abstract idea of retrieving electronic data in response to a request. As set out in the Statement of Facts §§B.1-3, the claims are centered on the same agent-facilitator model recited in claim 1 of the ’061 patent, and recite the same steps of receiving a request and providing a response. The introduction of agent and facilitator intermediaries (from a pre-existing Open Agent Architecture (OAA) platform) does not change the

overall idea to which the Cheyer claims are directed. Moreover, the claims set out the request-response idea in even more abstract terms—the request is a “goal,” and the apparent object of the claims is to “accomplish” that goal. (*E.g.*, ’560 patent at 35:23-31.) Other broad language used in the claims as to how to “accomplish” the “goal”—*e.g.*, the vague references to “reasoning,” “rules,” and “algorithms” that may be used in claim 62 of the ’115 patent—fails to provide any meaningful limitation to the scope of these claims, confirming their overreach.

**B. The Cheyer Claims Contain No Inventive Elements Rendering Them Patent Eligible**

Claim 61 of the ’115 patent lacks any inventive concept, and merely layers pre-existing technology over the abstract idea. First, the technical terms in the claim’s limitations are all drawn from the existing Open Agent Architecture (OAA) software platform described in the contemporaneously-filed Halverson patent specifications. *See* ’021 patent 13:4-14:67. Plaintiff has already conceded that “agents” and “facilitators” do not provide an inventive concept, and that the contemporaneous Halverson patents do not claim to invent OAA. *See* 101 Decision at 20 n.9 (citing C.A. No. 17-055, D.I. 16, at 16).

The existing OAA platform provided for registration of agents with a facilitator (*see* ’021 patent at 13:10-13, 25-27), overall goals and sub-goals (*id.* at 13:30-40), and the use of the pre-existing ICL language (*id.* at 13:25-30). Although the ’115 patent specification claims that earlier versions of OAA had “a very limited mechanism for dealing with compound goals” (’115 patent at 4:44-46), claim 61 does not describe any more advanced mechanism for dealing with compound goals, nor does it exclude compound goals as handled by the pre-existing OAA platform. Second, the final limitation confirms that claim 61 does not provide any specific, technical solution as to how a facilitator comes up with the correct response to a request—the claim says the facilitator will construct a response “using reasoning,” which may include unspecified “strategies,” “rules,” and

“algorithms.” Claim 61 simply frames the abstract request-interpret-respond idea in terms of the existing OAA architecture, with a final, wide-open limitation suggesting that any reasoning, strategy, rule, or algorithm may be used to determine the proper response. Claim 61 is not rooted in any specific technical solution and accordingly is not patent eligible.

Claim 52 of the '560 patent is similar, and also lacks any inventive concept. As noted above, the “agent registry,” ICL language, and goal handling are all described as existing elements of the known OAA platform that Plaintiff conceded does not provide an inventive concept. *See* 101 Decision at 20 n.9. Further, the specific steps of determining sub-goals and delegating them to agents are also specifically described as capabilities of the pre-existing OAA platform. *See* '021 patent at 13:30-34. Like claim 1 of the '061 Halverson patent, claim 52 does not specify how the facilitator actually interprets the request, nor does it specify how the agents “complete” their sub-goals and thereby produce a response. Claim 52 does not provide any technical solution, and is not patent eligible.

Claim 1 of the '128 patent similarly lacks any inventive concept. Claim 1 recites a facilitator, an agent registry, ICL, goals and sub-goals—all part of the known OAA system. The preamble of Claim 1 notes a “mobile computing environment,” and the claim includes limitations that one agent is “operable to ascertain a current physical location of a user,” and that “mobile computer interface agents” “process at least one mobile user input type.” As the Court already noted with respect to claim 1 of the '718 patent, simply reciting that one aspect of the computing environment is “mobile” does not provide an inventive element. *See* 101 Decision at 20. The specification’s only disclosed mechanism for ascertaining a “physical location” is the existing Global Positioning System (GPS). (*See* '128 patent at 30:28-43.) Moreover, the claim language does not suggest that the introduction of mobile users, mobile agents, or location-aware agents

changes anything about how to solve the purported problem of providing a response to a request. Claim 1 describes the same request-interpret-respond idea as the other Cheyer claims, then declares that the agents are “operable” to accomplish those steps in this mobile environment. But the claim does not explain how the agents do so at all, much less does it describe a mobile-specific technical solution. Claim 1 is therefore not patent eligible.

### **C. The Unasserted Cheyer Claims**

IPA’s complaint does not contain any specific allegations of infringement of the Cheyer patents (or identification of accused products) beyond the three claims above and thus also fails to plead a cause of action on any of the other claims. For the reasons set forth above, those claims are also not patent-eligible. Accordingly, the Complaint fails to set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678. *See SIPCO*, 230 F. Supp. 3d at 353 (dismissing complaint that failed to “connect anything in the patent claims to anything about any of the accused products”). The three Cheyer patents contain a total of 186 unasserted claims, and the Complaint provides no allegations suggesting that even IPA believes that any Microsoft product infringes any of them. Should IPA seek leave to file a third amended complaint to allege infringement of some of these claims by some as-yet unidentified Microsoft product, Microsoft reserves its rights to move to dismiss such a complaint pursuant to Fed. R. Civ. P. 12(b)(6) and 35 U.S.C. § 101.

### **IV. THE ALLEGATIONS IN THE AMENDED COMPLAINT DO NOT PREVENT THIS COURT FROM RESOLVING PATENT ELIGIBILITY AS A MATTER OF LAW**

IPA’s Second Amended Complaint adds numerous paragraphs of allegations concerning the Halverson and Cheyer patents in an apparent attempt to prevent the Court from resolving the Section 101 issue at this stage. IPA’s attempt fails, because none of the allegations raise any factual question over whether IPA’s patents claim eligible subject matter. These

allegations provide no basis for the Court to revisit its prior holding that claim 1 of each of the Halverson patents is not patent eligible, and do not prevent the Court from further ruling that all other claims of the Halverson patents and the asserted claims of the Cheyer patents are also ineligible.

**A. IPA’s Bare Legal Conclusions Should Be Disregarded**

Many of IPA’s allegations simply parrot the legal language of the 101 inquiry in a conclusory fashion. For example, IPA alleges that “[t]he technology disclosed and claimed in the ’021 Patent was not well-understood, routine or conventional,” and that “each claim, as a whole, of the ’021 Patent is inventive, novel, and innovative, and each claim, as a whole, constitutes more than the application of well-understood, routine, and conventional activities. (D.I. 16 ¶¶22, 55.)<sup>2</sup> These legal conclusions (which IPA also makes with respect to the other patents) should be disregarded. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.

**B. Purported Factual Allegations Contradicted by the Patents or IPA’s Concessions Should Be Disregarded**

Other IPA allegations are refuted by the content of the patents themselves, or by IPA’s concessions, and thus cannot save the claims. *See Secured Mail*, 873 F.3d at 913; *Nami v. Fauver*, 82 F.3d 63, 69 (3d Cir. 1996) (allegations that are “self-evidently false” are not accepted). For example, IPA alleges that its patents “achieve a fundamental technological advance to the state of the art of navigating network-based electronic information because it enables ‘users to speak directly in terms of what the user wants.’” (D.I. 16 ¶ 31.) But the patents admit that the disclosed systems *do not* advance the state of the art in speech recognition, because they simply use the prior art to accomplish that aspect of the alleged invention—one of “[a] variety of commercial quality,

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<sup>2</sup> Throughout this section Microsoft provides illustrative citations to IPA’s allegations concerning the ’021 patent; similar allegations are made with respect to each of the other five asserted patents, and should receive the same treatment from the Court.

speech recognition engines [ ] readily available on the market,” including products from Nuance Communications or IBM. (’021 patent at 7:19-31.)

IPA alleges that its patents are inventive because “they can function as a voice interface on top (or on the front end) of a pre-existing non-voice navigational system” (D.I. 16 ¶ 32.) But PA already conceded that “lots of systems,” including prior art systems, “add a front end voice-driven system for accessing a single electronic data source.” (Tr. 48:19-24). Claiming something implemented in the prior art is not inventive.

IPA contradicts both the 101 Decision and its own concessions by suggesting that claim 1 of the ’061 patent is inventive due to its use of “agent[s]” and a “specific software architecture.” (D.I. 16 ¶ 68.) But the specification makes clear that these elements are conventional, and part of the OAA, which Plaintiffs conceded these patents did not invent. *See* 101 Decision at 20 n.9. Similarly, IPA alleges that the use of “a specialized interagent communication language” and other elements of OAA by the Cheyer patents show an “unconventional technical solution” to “a technological problem rooted in computer technology.” (D.I. 16 ¶¶ 107, 127, 148.) IPA simply cannot plead around the concessions about the use of known, conventional means to implement the abstract idea that run throughout the Halverson patents’ common specification. (*See* ’021 patent at 13:4-14:38 (describing Interagent Communication Language and other aspects of the pre-existing OAA platform).)

### **C. IPA’s Implausible Allegations Should Be Disregarded**

Finally, still other allegations in the Second Amended Complaint fail to plausibly suggest that IPA’s claims are patent-eligible. For each patent, IPA includes a summary of the prosecution history, and then concludes that because the patent office allowed each patent to issue over prior art references, “each of the claims ... as a whole was shown to be inventive, novel, and innovative.” (D.I. 16 ¶¶ 54, 76, 93.) But *every* patent issues only after such patent examination (as

the Complaint itself explains, D.I. 16 ¶ 43). These allegations could be made about any patent, and suggest nothing as to why IPA's claims are patent-eligible.

IPA's tally of the number of times each of its patents has been cited by another patent or patent application (240, 350, and 350 times for the Halverson patents, 266, 188, and 292 times for the Cheyer patents) does not "reveal" that its patents and "claimed inventions are directed to" eligible subject matter. (D.I. 16 ¶¶ 56-57, 78-79, 95-96, 117-118, 137-138 160-161.) As just a single example, U.S. Patent No. 5,970,479, which the Supreme Court held to claim ineligible subject matter in *Alice*, has been cited by 326 patents and patent applications—just as frequently as IPA's patents.<sup>3</sup> As such, the allegation that these citation counts suggest that IPA's patents satisfy Section 101 is implausible on its face and can be ignored. *See Schuylkill Energy Res., Inc. v. Pennsylvania Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997) ("unsupported conclusions and unwarranted inferences" are insufficient to survive a motion to dismiss); *Brodzki*, 868 F. Supp. 2d at 389 ("not plausible" allegations need not be accepted).

Finally, IPA hints at abstract benefits supposedly provided by its claims, alleging that they "improve[ ] computer technology" or provide "increased convenience, efficiency, accuracy, and speed." (E.g., D.I. 16 ¶¶ 35, 37.) But these vague, boilerplate allegations fail to raise any factual issue that would prevent this Court from ruling on the eligibility of the claims. IPA could not provide any answer to the Court's request to "tell me what the claims say that technical solution is" beyond restating the claims' functional language and describing the abstract concept of using a computer to respond to a spoken request. (See Tr. 41:8-42:14.) The claims recite only functional descriptions of an abstract concept, and IPA is unable to identify any "improvement" to computer

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<sup>3</sup> See <https://patents.google.com/patent/US5970479A/en?q=+5%2c970%2c479+#citedBy> (visited April 26, 2018). These citations are reflected in public USPTO records, of which this Court

technology that its claims actually provide. Therefore, the Second Amended Complaint's bare allegations that some unspecified "improvement" exists should be disregarded. *See Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) ("[A] court need not credit a complaint's 'bald assertions' ... when deciding a motion to dismiss.").

### CONCLUSION

For the foregoing reasons, Microsoft respectfully requests that the Court dismiss the Second Amended Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

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may take judicial notice in resolving Microsoft's motion. *See Versata Software, Inc. v. Callidus Software, Inc.*, 771 F.3d 1368, 1372 (Fed. Cir. 2014) (taking judicial notice of PTO proceedings).

**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2018, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on April 26, 2018, upon the following in the manner indicated:

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