

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

TOUTVIRTUAL, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendants.

Case No. 2:25-cv-00943-RWS-RSP

DEFENDANT'S PRELIMINARY INVALIDITY CONTENTIONS

- “selecting one or more of the virtual assets for storage of the set of data based on an allocation of data on the virtual storage assets”;
- Claim 9:
 - “at least two of the virtual assets on the one or more of the physical resources include virtual storage assets”;
- Claim 18:
 - “at least two of the virtual assets on one or more of the physical resources include virtual data storage assets”;
 - “selecting one or more of the virtual assets for storage of the set of data based on an allocation of data on the virtual data storage assets.”

B. Indefiniteness Under 35 U.S.C. § 112 ¶ 2

35 U.S.C. § 112, ¶ 2 requires that a patent claim “particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112, ¶ 2. Claim terms that fail to inform those skilled in the art “with reasonable certainty . . . about the scope of the invention” fail the definiteness requirement of 35 U.S.C. § 112, ¶ 2. *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). Microsoft contends that, at least under ToutVirtual’s actual and/or apparent application of the claims, the Asserted Claims of the Asserted Patents fail to distinctly claim what the inventors regard as their alleged invention.

Each of the asserted claims below are invalid as indefinite under 35 U.S.C. § 112 because they fail to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. In particular, the following limitations, read in light of the intrinsic evidence, fail to inform those skilled in the art with reasonable certainty about the scope of the claimed inventions:

1. ‘431 patent

- Claim 1:

3. '050 patent

- Claim 1:
 - “receiving a virtual asset provisioning request that specifies parameters to be considered for the virtual asset provisioning request”;
 - “automatically provisioning of a particular virtual asset to a particular physical resource in the virtualization system that matches the parameters in the virtual asset provisioning request”;
- Claim 9:
 - “the control center computer executing a virtual mapping layer that determines an inventory of network resources and virtual assets available to the virtualization environment”;
 - “without regard to processors, operating systems, virtualization platforms, and application software of the virtualization environment”;
 - “receive a virtual asset provisioning request that specifies parameters to be considered for the virtual asset provisioning request”;
 - “automatically provision a particular virtual asset to a particular physical resource in the virtualization system that matches the parameters in the virtual asset provisioning request”;

4. '915 Patent

- Claim 1:
 - “the virtual assets are managed by virtualization layer instances running on each of the physical resources”;
 - “accessing, through the control computer connection, the virtual assets by the end user.”

- Claim 9:
 - “providing the virtual assets further comprise providing a logical network resource.”
- Claim 11:
 - “virtualization layer instances running on each of the one or more physical resources.”

5. '667 patent

- Claim 1:
 - “obtaining a set of data to be stored the virtual storage assets on any of the physical resources”;
 - “selecting one or more of the virtual assets for storage of the set of data based on an allocation of data on the virtual storage assets”;
 - “causing storage of the set of data at the selected virtual storage assets on any of the physical resources.”
- Claim 9:
 - “at least two of the virtual assets on the one or more of the physical resources include virtual storage assets”;
- Claim 18:
 - “selecting one or more of the virtual assets for storage of the set of data based on an allocation of data on the virtual data storage assets”;
 - “causing storage of the data, by the control center application, at the selected virtual data storage assets on each of the one or more physical resources.”

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on March 12, 2026, to all counsel of record via e-mail.

/s/ Excyllyn Hardin-Smith