

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

PETER A. HOCHSTEIN, et al.,

Plaintiffs,

Case Number: 04-73071

v.

JUDGE PAUL D. BORMAN  
UNITED STATES DISTRICT COURT

MICROSOFT CORPORATION, INC.,

Defendant.

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**ORDER:**

**(1) GRANTING PLAINTIFFS' MOTION FOR A STATUS CONFERENCE, WHICH WAS HELD TELEPHONICALLY ON JUNE 4, 2009 (Doc. No. 418);**

**(2) DENYING REQUEST FOR PRE-TRIAL CLAIM CONSTRUCTION OF THE TERMS, "VOICE" AND "VIDEO GAME";**

**(3) GRANTING PLAINTIFFS' MOTION TO DISMISS, AS UNTIMELY, DEFENDANT'S MOTION PURSUANT TO FED. R. CIV. P. 56 FOR SUMMARY JUDGMENT OF INVALIDITY ON THE SPECIAL MASTER'S CLAIM**

**CONSTRUCTIONS (Doc. No. 417);**

**(4) IN THE EXERCISE OF DISCRETION, DENYING DEFENDANT'S REQUEST FOR CERTIFICATION FOR INTERLOCUTORY APPEAL OF SPECIAL MASTER'S CLAIM CONSTRUCTION REPORT PURSUANT TO 28 U.S.C. § 1292 (Doc. No. 415)**

For the reasons stated on the record at the June 4, 2009 status conference, as to Orders (1), (2), and (3), the Court has entered the aforelisted orders.

As to Order (4), the Court has ruled, in the exercise of its discretion and notes *Cybor Corp. v. FAS Technologies*, 138 F.3d 1448, 1479 (Fed. Cir. 1998)(en banc); opinion of Judge Newman, joined by Chief Judge Mayer: "Although the district courts have extended themselves, and so-called 'Markman hearings' are common, this has not been accompanied by interlocutory review of the trial judge's claim interpretation. *The Federal Circuit has thus far declined all such certified questions.*"

(emphasis added).

SO ORDERED.

S/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: June 5, 2009

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on June 5, 2009.

S/Denise Goodine  
Case Manager