IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NUANCE COMMUNICATIONS, INC.,	:	CIVIL ACTION
	:	NO. 16-5173
Plaintiff,	:	
	:	
v.	:	
	:	
INTERNATIONAL BUSINESS MACHINES	:	
CORP.,	:	
	:	
Defendant.	:	

MEMORANDUM

EDUARDO C. ROBRENO, J.   June 21, 2021

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I.   INTRODUCTION

This is a breach of contract case arising under New York law. But more than that, this case is a contemporary window into the brave new world of artificial intelligence ("AI") commercial applications. In 2011, Watson, a computer system embedding IBM-designed software technology DeepQA, defeated two human former champions in a real-time competition on national television on the popular game show Jeopardy!. DeepQA accepts natural language questions and searches a body of information, generates a range of hypotheses, ranks these hypotheses, and returns the hypothesis it has the most confidence correctly answers the question, all in no more than seconds. The public debut of this modern deus ex machina received world-wide attention.[1] But to fully interact with humans and be useful, Watson needed to understand and process questions beyond the Jeopardy! domain, asked through human voice.

IBM's search for sophisticated partners with whom it could develop applications for DeepQA beyond winning Jeopardy! forms the backdrop of this case.

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[1]   "Yet the concept of intelligent computers, advanced by the British mathematician Alan Turing in 1950, isn't new; nor is the term 'artificial intelligence,' first used at a research conference in 1956." David A. Shaywitz, They Think They're So Smart, Wall St. J., May 22, 2021, at C7. "What has changed is AI's power and reach, especially with the arrival of what is called 'deep learning'—the capacity for powerful pattern recognition, with seemingly little human instruction required." Id.

Beginning in 2010, even before DeepQA's triumphant appearance in Jeopardy!, IBM and Nuance were discussing possible partnership opportunities to build technological solutions to business problems.[2] These discussions ripened in late 2010 into a Software License Agreement ("SLA"). The SLA entitled Nuance to one copy of IBM Research Group's "Automatic Open-Domain Question Answering" software system (which embedded IBM's DeepQA technology[3]), Tools to create commercial applications based on this technology and Nuance's technology, and ten years of software "updates." In return, Nuance paid IBM $25 million.

Nuance contends that under the SLA, IBM was to supply it with updates created by all IBM groups (i.e., not just IBM Research Group, which created the technology). IBM argues to the contrary, i.e., that the delivery of updates was limited to only those developed by the Research Group. Crucial to the distinction is that under IBM's interpretation of the SLA, it was not obligated to deliver to Nuance the "blue-washed" code (created by the Software Group), a set of updates which Nuance claims made DeepQA commercially viable.

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[2]   Although IBM and Nuance entered into collaboration agreements prior to 2010, see, e.g., Reuters Staff, Nuance to Buy IBM Speech Patents, to Collaborate, Reuters, https://www.reuters.com/article/ibm-nuance/nuance-to-buy-ibm-speech-patents-to-collaborate-idUSN1548243220090115 (Jan. 15, 2009, 9:06 AM), these agreements focused on other technology that is not at issue in this case.
[3]   For clarity's sake, and because the parties refer to it as such, the Court will refer to the software system as "DeepQA" for the remainder of the memorandum.

For the reasons set forth below, the Court finds that Nuance was entitled to receive one set of updates that would allow DeepQA to be used in a commercial setting (i.e., the blue-washed code), and while IBM delivered some updates to Nuance, IBM breached the agreement by failing to deliver the blue-washed code. However, Nuance was sufficiently aware of the significant possibility that IBM was breaching the agreement prior to June 30, 2014 (i.e., more than two years before Nuance filed suit). Given what Nuance knew at the time, Nuance avoided making the appropriate inquiry to IBM and was willfully blind. Under these circumstances, Nuance's claims are barred by the contractual limitations period.

II.   PROCEDURAL HISTORY

Nuance filed suit on June 30, 2016, in the United States District Court for the Southern District of New York. Nuance brought three counts: declaratory judgment, breach of contract, and breach of the implied covenant of good faith and fair dealing. After completing discovery, the parties filed cross-motions for summary judgment. Judge Karas, who was then presiding over the case, denied Nuance's motion but granted IBM's motion in part and denied it in part. Nuance's claim for breach of the implied covenant of good faith and fair dealing

was dismissed with prejudice because it was duplicative of the breach of contract claim.

Due to temporary docket congestion in the Southern District of New York, and with Judge Karas's consent, the undersigned[4] was designated by the Committee on Intercircuit Assignments to preside over all subsequent proceedings in the case. The matter proceeded to a bench trial[5] in February 2020 for four days in New York. Due to the COVID-19 pandemic, the balance of the trial was then conducted at the end of July 2020 in Philadelphia, with some witnesses testifying via Zoom. After the bench trial concluded, the parties submitted proposed findings of fact and conclusions of law and the Court heard closing arguments.[6]

While the outcome of the case turns on the Court's determination that Nuance was willfully blind, for the sake of completeness and as a necessary part of the Court's decision on willful blindness, the Court has included in its decision factual and legal determinations on the issues relating to contract interpretation and the breach of contract claim.

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[4]   The Honorable Eduardo C. Robreno serves as a United States District Judge in the Eastern District of Pennsylvania.
[5]   At trial, witnesses on direct examination testified by way of declarations. These witnesses were then subjected to cross-examination, re-direct, and re-cross. Also, the deposition testimonies of certain witnesses not available at trial were admitted. The declarations and the deposition testimonies are part of the trial record.
[6]   This memorandum constitutes the Court's findings of fact and conclusions of law. See Fed. R. Civ. P. 52(a)(1).

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