

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

BMC SOFTWARE, INC.,

Plaintiff,

v.

SERVICENOW, INC.,

Defendant.

§
§
§
§
§
§
§
§
§
§
§
§

Civil Action No. 2:14-CV-903-JRG

MEMORANDUM OPINION AND ORDER

On July 10, 2015, the Court held a hearing to determine the proper construction of the disputed claim terms in United States Patent Nos. 5,978,594 (“the ’594 Patent”), 6,816,898 (“the ’898 Patent”), 6,895,586 (“the ’586 Patent”), 7,062,683 (“the ’683 Patent”), 7,617,073 (“the ’073 Patent”), 8,646,093 (“the ’093 Patent”), and 8,674,992 (“the ’992 Patent”) (collectively, the “Asserted Patents”). After considering the arguments made by the parties at the hearing and in the parties’ claim construction briefing (Dkt. Nos. 99, 106, and 108), the Court issues this Claim Construction Memorandum and Order.

TABLE OF CONTENTS

I. BACKGROUND 4

 A. The '586 Patent..... 4

 B. The '898 Patent..... 6

 C. The '594 Patent..... 8

 D. The '683 Patent..... 11

 E. The '093 Patent..... 14

 F. The '073 Patent..... 16

 G. The '992 Patent..... 18

II. APPLICABLE LAW 21

III. CONSTRUCTION OF AGREED TERMS 23

IV. CONSTRUCTION OF DISPUTED TERMS..... 25

 A. The '586 Patent..... 25

 1. “sharing the plurality of objects with a plurality of the one or more computer system[s]” 25

 2. “hierarchical namespace” 29

 3. “dynamically inherits traits from the prototype” and “wherein the values of the traits inherited from the prototype change dynamically” 33

 4. “traits” 37

 B. The '898 Patent..... 42

 1. “periodically” 42

 2. “script-based program” 46

 3. “service monitor” 49

 C. The '594 Patent..... 55

 1. “interpreting the instructions” 55

 2. “interpretable high-level computer programming language” 58

 3. “uninterpreted form” and “stored on the storage device in their uninterpreted form” 61

D.	The '683 Patent.....	65
1.	“node” and “nodes”	65
2.	“fault model” and “fault model having a plurality of nodes”	70
3.	“enterprise”	73
4.	“up-stream,” “most up-stream,” and “down-stream”	76
5.	“a root cause”	79
6.	“impact value”	81
E.	The '093 Patent.....	84
1.	“license certificate”	84
2.	“exception indication”	88
F.	The '073 Patent.....	91
1.	“wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit”	91
2.	“subcomponent” and “IT subcomponent”	96
3.	“IT component processor,” “IT subcomponent processor,” and “processor”	99
G.	The '992 Patent.....	101
1.	“importance” and “importance of the corresponding service”	101
2.	“service level agreement (SLA)” and “SLA violation”	105
3.	“graph” and “node”	108
4.	“variable graphical image,” “a variable graphical image positioned with the node,” “spotlight,” and “displaying a spotlight with each of the nodes of the plurality of nodes”	113
V.	CONCLUSION.....	118

I. BACKGROUND

A. The '586 Patent

The '586 Patent is titled “Enterprise Management System and Method which Includes a Common Enterprise-wide Namespace and Prototype-based Hierarchical Inheritance.” It was filed on August 30, 2000, and issued on May 17, 2005. The '586 Patent generally relates to an improved namespace and object description system for enterprise management. *See* '586 Patent at Abstract.¹

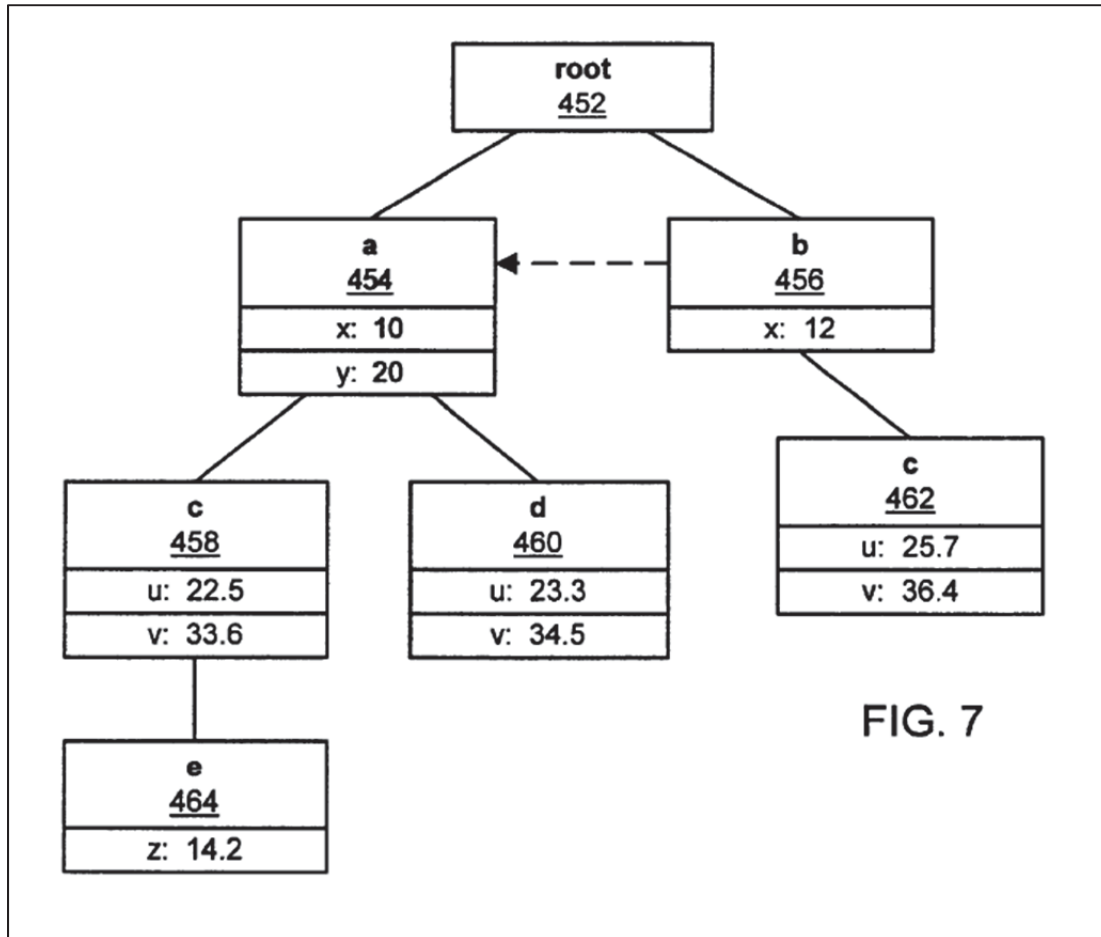
The specification states that “the term ‘namespace’ generally refers to a set of names in which all names are unique,” and that “[a] namespace is typically a logical organization and not a physical one.” *Id.* at 1:52–54; 2:12–13. The specification describes an embodiment where “[t]he namespace comprises a logical arrangement of the objects, stored hierarchically.” *Id.* at 3:62–63. The specification states that “a plurality of objects may be added to the namespace, wherein the objects relate to software and hardware of the one or more computer systems.” *Id.* at 3:63–65. The specification adds that “at least one of the objects is a prototype and at least one of the objects is an instance.” *Id.* at 4:8–10.

The specification defines “prototype” as “an object in a namespace from which attributes, values, and/or children are dynamically inherited by another object.” *Id.* at 14:44–46. The specification further defines “instance” as “an object in a namespace which dynamically inherits attributes, values, and/or children from another object in the namespace.” *Id.* at 14:47–49. The specification states that “[t]he instance inherits from the prototype traits such as attribute values

¹ The Abstract of the '586 Patent follows:

A system and method for providing an improved namespace and object description system for enterprise management are disclosed. The system and method employ a hierarchical namespace with objects including prototypes and instances where an instance inherits traits from a prototype, such as attribute values and/or child objects.

and/or child objects.” *Id.* at 4:8–10. The specification states that Figure 7 illustrates an example of a namespace which includes a prototype-instance relationship. *Id.* at 14:49–51.



Id. at Figure 7. The specification states that Figure 7 illustrates a “dynamic inheritance link from object ‘b’ 456 to object ‘a’ 454; the link is shown as a dashed arrow.” *Id.* at 14:53–54. The specification further states that “[o]bject ‘a’ 454 functions as the prototype and object ‘b’ 456 functions as the instance.” *Id.* at 14:54–55. The specification concludes that “object ‘b’ 456 dynamically inherits the attributes, values, and children of object ‘a’ 454.” *Id.* at 4:55–57. For example, “object ‘b’ 456 has an attribute called ‘x’ of its own and also inherits the attribute ‘y’ from object ‘a’ 454.” *Id.* at 14:60–62.

Claim 1 of the ’586 Patent is representative of the asserted claims and recites the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.