

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

SAS INSTITUTE INC.,

Plaintiffs,

v.

WORLD PROGRAMMING
LIMITED, LUMINEX SOFTWARE,
INC., YUM! BRANDS, INC.,
PIZZA HUT, INC., and SHAW
INDUSTRIES GROUP, INC.,

Defendants.

No. 2:18-cv-00295-JRG-RSP

Patent Case

Jury Trial Demanded

**SAS INSTITUTE INC.'S PRELIMINARY CLAIM CONSTRUCTIONS AND
EXTRINSIC EVIDENCE PURSUANT TO P.R. 4-2**

Pursuant to Local Patent Rule 4-2 and the Court's Docket Control Order, Plaintiff SAS Institute Inc. ("SAS") provide its Preliminary Claim Constructions and Extrinsic Evidence for the asserted claims of U.S. Patent Nos. 7,170,519, 7,447,686, and 8498,996.

I. RESERVATIONS

SAS reserves its right to supplement this disclosure, including the right to add to, or remove from or otherwise modify or amend its proposed claim constructions and extrinsic evidence to the extent allowed by applicable law, rule, order or other practice or agreement. SAS may further supplement this disclosure in light of positions that Defendants World Programming Limited ("WPL"), Yum! Brands, Inc. ("Yum"), or Pizza Hut, Inc. ("Pizza Hut") (collectively, "Patent Defendants") take in this litigation. Such positions may require the Court to construe other claim terms in addition to the ones provided herein. SAS's investigation is

continuing and the proposals and disclosures herein are based on information available to SAS at this time.

For the avoidance of doubt, SAS expressly reserves the right to propose additional claim terms or otherwise propose supplemental or amended constructions in view of the fact that the Patent Defendants served amended P.R. 4-1 disclosures on July 25, 2019 which added numerous claim terms for first time.

SAS further expressly reserves the right to identify additional extrinsic evidence, including expert testimony, as claim construction proceeds in view of any contentions made or information disclosed by the Patent Defendants, including, for example, in rebuttal to their claim construction positions, and/or extrinsic evidence, including expert testimony, they may present in support of their proposed claim constructions, including arguments concerning the “ordinary meaning” of claim terms.

SAS reserves the right to rely on testimony from William Rosenblatt in support of any of its proposed claim constructions or claim construction arguments. The substance of such expert testimony may include a description of Mr. Rosenblatt’s qualifications, a description of the state of the art around the time of any of the patents-in-suit’s priority dates, a description of one of ordinary skill in the art with respect to the patents-in-suit, a discussion of why a proposed construction of a claim term comports with the plain and ordinary meaning of that term to one of ordinary skill in the art or comports with the patent’s specification or file history, or a discussion about why a proposed construction of a claim term deviates from the plain and ordinary meaning of that term to one of ordinary skill in the art or deviates from the patent’s specification or file history.

SAS reserves the right to ask Mr. Rosenblatt to opine on any claim construction issue for which the Patent Defendants may provide expert testimony. SAS further reserves the right to call Mr. Rosenblatt as a live witness at the Claim Construction Hearing should the Patent Defendants request, and be permitted, to call any live witnesses at the Claim Construction Hearing or should Mr. Rosenblatt's testimony otherwise aid the Court.

II. PRELIMINARY PROPOSED CLAIM CONSTRUCTIONS

SAS's preliminary proposals for claim construction of the disputed claim terms and identification of supporting extrinsic evidence is attached as Exhibit A. Identification of a term, phrase, or clause for construction applies equally to variations or other instances of that term, phrase, or clause in any of the asserted claims in the Patents-in-Suit, unless otherwise stated. SAS's identification of supporting extrinsic evidence is exemplary. SAS reserves the right to rely on any extrinsic evidence not expressly identified, for example, to respond to the Patent Defendants' proposed constructions, in connection with their Patent Local Rule 4-2 disclosures or otherwise, and to respond to their claim construction arguments. SAS also reserves the right to rely on any extrinsic evidence cited by the Patent Defendants in support of their proposed constructions.

Pursuant to P.R. 4-2(c), SAS will be available to "meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement" in advance of the deadline for the parties' joint Patent Rule 4-3 filing.

Dated: July 30, 2019

Respectfully submitted,

/s/ Jason W. Cook

Michael C. Smith

Texas Bar No. 18650410

Siebman, Forrest, Burg & Smith, LLP

113 E. Austin Street
Marshall, Texas 75670
Tel: (903) 938-8900
michaelsmith@siebman.com

Jason W. Cook
Texas State Bar No. 24028537
Shaun W. Hassett
Texas State Bar No. 24074372
McGuireWoods LLP
2000 McKinney Avenue - Suite 1400
Dallas, TX 75201
Telephone: (214) 932-6400
Facsimile: (214) 273-6499
jcook@mcguirewoods.com
shassett@mcguirewoods.com

Attorneys for SAS Institute Inc.

Of counsel:

Brian C. Riopelle (VA Bar No. 036454)
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-
3916
Tel: 804-775-1000
Fax: 804-775-1061
briopelle@mcguirewoods.com

Rachelle H. Thompson (NC Bar No.
46450) MCGUIREWOODS LLP
434 Fayetteville Street
Suite 2600
Raleigh, NC 27601
Tel: 919-755-6600
Fax: 919-755-6699
rthompson@mcguirewoods.com

Brad R. Newberg (VA Bar No.
73654) MCGUIREWOODS LLP
1750 Tysons Blvd. Tysons Corner, VA 22102
Tel: 703-712-5061
Fax: 703-712-5187
bnewberg@mcguirewoods.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record on this 30th day of July 2019, via electronic mail.

/s/ Shaun W. Hassett

Shaun W. Hassett

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